

VOLUME 3
Titles 29 through 36

1992
REVISED CODE OF WASHINGTON

Published under authority of chapter 1.08 RCW.

Containing all laws of a general and permanent nature through the 1992 regular session, which adjourned sine die March 12, 1992.

REVISED CODE OF WASHINGTON

1992 Edition

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CERTIFICATE

The 1992 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**

PREFACE

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

Citation to the Revised Code of Washington: The code should be cited as RCW; see RCW 1.04-.040. An RCW title should be cited Title 7 RCW. An RCW chapter should be cited chapter 7.24 RCW. An RCW section should be cited RCW 7.24.010. Through references should be made as RCW 7.24.010 through 7.24.100. Series of sections should be cited as RCW 7.24.010, 7.24.020, and 7.24.030.

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

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

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

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

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

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

Sections repealed or decodified; Disposition table: Memorials to RCW sections repealed or decodified are no longer carried in place. They are now tabulated in numerical order in the table entitled "Disposition of former RCW sections."

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

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

(2) Although considerable care has been used in the production of this code, within the limits of available time and facilities it is inevitable that in so large a work that there will be errors, both mechanical and of judgment. As such errors are detected or are believed to exist in particular sections, by those who use this code, it is requested that a note citing the section involved and the nature of the error be mailed to: Code Reviser, Legislative Building, Olympia, WA 98504, so that correction may be made in a subsequent publication.

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68.52.090.*commissioners:* RCW 68.52.140.**election***ballots:* RCW 68.52.160.*canvass of returns:* RCW 68.52.170.*how conducted:* RCW 68.52.150.*necessity for:* RCW 68.52.140.*hearing:* RCW 68.52.110, 68.52.130.*notices:* RCW 68.52.120.*petition for:* RCW 68.52.100.*questioning formation:* RCW 68.52.180.*resolution of organization:* RCW 68.52.170.*establishment in all counties and islands:* RCW 68.52.090.**fund***creation:* RCW 68.52.280.*disbursement:* RCW 68.52.300.*tax levy for:* RCW 68.52.290.*general powers of:* RCW 68.52.190.*indebtedness, limitation:* RCW 68.52.310.**merger***action by merger district on petition:* RCW 68.54.040.*authority:* RCW 68.54.020.*certification of sufficiency of signatures on petition by auditor:* RCW 68.54.050.*election, procedure after:* RCW 68.54.060.**partial merger***effect of partial merger:* RCW 68.54.120.*when election not necessary:* RCW 68.54.110.*partial merger and transfer, authorized, when, election, effect:* RCW 68.54.100.**petition***contents:* RCW 68.54.030.*when election may be waived:* RCW 68.54.070.*power of commissioners of merged district:* RCW 68.54.080.**taxation***authority for:* RCW 68.52.290.*limitations:* RCW 68.52.310.*transfer of property and funds to the merger district by the merging district:* RCW 68.54.090.*city harbor in two counties:* RCW 36.08.010, 36.08.020.**commissioners***board established—Quorum:* RCW 36.32.010.*chairman—Election, powers:* RCW 36.32.100.*districts:* RCW 36.32.020.*elected by entire county:* RCW 36.32.050.*nomination by districts:* RCW 36.32.040.*terms:* RCW 36.32.030.*vacancies on board:* RCW 36.32.070.*consolidated road improvement districts:* RCW 36.88.375.*county road fund, payment of:* RCW 36.82.080.*county seat, removal of election on:* State Constitution Art. 11 § 2, chapter 36.12 RCW.*election reserve fund, use:* RCW 36.33.200, 36.33.210.*ferry districts in, establishment, officers, election on:* RCW 36.54.080 through 36.54.100.**fire protection districts***commissioners, generally:* Chapter 52.12 RCW.*formation and organization, generally:* Chapter 52.04 RCW.*merger with other districts:* RCW 52.06.060.*funding indebtedness in, election for:* RCW 39.52.010.**funds***election reserve fund:* RCW 36.33.200, 36.33.210.*reserve fund—Purpose—Election to allow other specified use:* RCW 36.33.020.*highways, open spaces—General obligation bonds, proposition to issue:* RCW 36.89.040.*"Home Rule" charter, election on:* State Constitution Art. 11 § 4 (Amendment 21).*hospitals, bond election for:* RCW 36.62.050, 36.62.060.*intoxicating liquor, sale of, local option:* Chapter 66.40 RCW.**officers, generally***election and terms:* State Constitution Art. 11 § 5 (Amendment 57).*elective county officers enumerated:* RCW 36.16.030.*offices of auditor and clerk may be combined in counties with a population of less than five thousand—Salary:* RCW 36.16.032.*term of county and precinct officers:* RCW 36.16.020.*time of election:* RCW 36.16.010.*vacancies, how filled:* State Constitution Art. 11 § 6 (Amendment 52).*vacancies in office:* RCW 36.16.110.**park and recreation districts****commissioners***residence qualification—Terms—Election procedure:* RCW 36.69.090.*vacancies:* RCW 36.69.100.*declaration of result of election:* RCW 36.69.080.*district subdivisions—Candidates—Election for formation:* RCW 36.69.060.*elections—Procedure:* RCW 36.69.070.*special levies for authorized:* RCW 36.69.140.**park and recreation service areas***election procedure, etc.:* RCW 36.68.480.*resolution ordering election:* RCW 36.68.470.*vote required:* RCW 36.68.490.**prosecuting attorney***county "Home Rule" charter not to affect election of:* State Constitution Art. 11 § 4 (Amendment 21).*eligibility to office:* RCW 36.27.010.*public hospital districts:* RCW 70.44.020.*recreation districts:* RCW 36.69.060 through 36.69.080.**removal of county seats***failure of election—Limitation on subsequent removal election:* RCW 36.12.080.*limitation on successive removal elections:* RCW 36.12.090.*manner of voting:* RCW 36.12.040.*notice of election—Election, how held:* RCW 36.12.030.*requisites of petition—Submission to electors:* RCW 36.12.020.*vote required—Notice of result:* RCW 36.12.050.**road improvement districts***election on:* RCW 36.88.030, 36.88.040.*sufficiency of signatures on petitions, ballots, objections:* RCW 36.88.370.*roads and bridges, bonds, for, election on, 1913 Act**authority for:* RCW 36.76.080.*city assistance:* RCW 36.76.110.**election***ballots for:* RCW 36.76.090.*notice:* RCW 36.76.100.*procedure:* RCW 36.76.090.*requirement:* RCW 36.76.080.*proceeds, disposition of:* RCW 36.76.110.*toll bridge authority, county assistance:* RCW 36.76.140.

- roads and bridges, election on issuance of bonds for toll bridges within or without county: RCW 36.76.140.
- sewer districts
annexation of territory, election method: RCW 56.24.070 through 56.24.100.
formation: RCW 56.04.050.
- territory stricken from, election on: State Constitution Art. 11 § 3.
- transfer of territory where city's harbor lies in two counties
conduct of election—Proclamation of change: RCW 36.08.020.
petition and notice of election: RCW 36.08.010.
- water districts
annexation of territory: RCW 57.24.050.
formation: RCW 57.04.050.
withdrawal of territory: RCW 57.28.090, 58.28.100.
- County canvassing board—Sewer districts, conduct of elections: RCW 56.04.080.
- County clerk, initial election: State Constitution Art. 27 § 7.
- County commissioners
generally: RCW 36.16.010.
procedure: RCW 36.32.040, 36.32.050.
- County superintendent, "Home Rule" charter not to affect election of: State Constitution Art. 11 § 4 (Amendment 21).
- Court of appeals judges: RCW 2.06.070, 2.06.075.
- Diking districts
commissioners, vacancies: RCW 85.05.085.
election of governing board: RCW 85.38.070.
election to authorize district: RCW 85.38.050, 85.38.060.
- Diking, drainage, and sewerage improvement districts
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merge with irrigation district, election on: RCW 85.08.860 through 85.08.880.
- Diking or drainage districts
in two or more counties
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governing board—Election—Terms, etc.: RCW 85.38.070.
- reorganization into improvement districts
1917 Act, election on: Chapter 85.20 RCW.
1933 Act, election on: Chapter 85.22 RCW.
- Disqualification
for conviction of felony or malfeasance in office: RCW 9.92.120.
from voting or holding public office, subversive activities: RCW 9.81.040.
- District judges
election of: RCW 3.34.050.
eligibility: RCW 3.34.060.
number: RCW 3.34.010, 3.34.020.
oath: RCW 3.34.080.
qualifications: RCW 3.34.060.
term of office: RCW 3.34.070.
vacancies—remuneration: RCW 3.34.100.
- District officers: State Constitution Art. 11 § 5.
- Drainage districts
commissioners, vacancies: RCW 85.06.080.
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owners of extraterritorial lands on rolls as electors, may be commissioners under drainage district revenue act: RCW 85.32.150.
- Elections generally
continuity of government act as affecting: State Constitution Art. 2 § 42 (Amendment 39).
freedom of elections: State Constitution Art. 1 § 19.
time of holding, constitutional requirements: State Constitution Art. 6 § 8.
- Electors and voters
absence of certain persons not to affect rights as: State Constitution Art. 6 § 3.
age: State Constitution Art. 6 § 1.
basis for ascertaining number of voters required on referendum petition: State Constitution Art. 2 § 1(a).
citizenship qualifications: State Constitution Art. 6 § 1.
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conviction of subversive act, bars right to vote: RCW 9.81.040.
insane persons, criminals: State Constitution Art. 6 § 3.
- exempt from military duty on election day: State Constitution Art. 6 § 5.
initiative measure, percentage of voters required to propose: State Constitution Art. 2 § 2(a).
majority vote as required for approval of measures submitted to popular vote: State Constitution Art. 2 § 1.
number of voters on referendum petition: State Constitution Art. 2 § 1(a).
percentage of voters required on proposed initiative measures: State Constitution Art. 2 § 1(a).
percentage of voters required on referendum petition: State Constitution Art. 2 § 1(a).
presidential elections: State Constitution Art. 6 § 1(a).
privilege from arrest, when: State Constitution Art. 6 § 5.
qualifications: State Constitution Art. 6 § 1.
recall of public officer, percentage of voters required for petition: State Constitution Art. 1 §§ 33, 34.
referendum petition, basis for ascertaining number of voters required: State Constitution Art. 2 § 1(a).
residence qualifications: State Constitution Art. 6 §§ 1, 4.
secrecy in voting, secured by legislature: State Constitution Art. 6 § 6.
Eligibility to hold public office in general: RCW 42.04.020.
Employer's duty to provide time to vote: RCW 49.28.120.
- Executive—State
certain offices may be abolished: State Constitution Art. 3 § 25 (Amendment 31).
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- Federal social security, public employees may elect to come under: RCW 41.48.070.
- Filings—Initiative and referendum petitions: State Constitution Art. 2 § 1.
- Financial disclosure by candidates and public officials: Chapter 42.17 RCW.
- Fire protection districts
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formation and organization, generally: Chapter 52.04 RCW.
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- Flood control districts
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- Flood control zone districts
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- Free exercise of right of suffrage: State Constitution Art. 1 § 19.
- Freeholders—Home rule charter: State Constitution Art. 11 § 4.
- General municipal incorporation election, effect: RCW 35.02.130.
- Governor, vacancy in office of, election to fill: State Constitution Art. 3 § 10.
- Initiative and referendum
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as legislative power: State Constitution Art. 2 § 1 (Amendments 7, 26, 30, 36).
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change or amendment of, prohibition against: State Constitution Art. 2 § 1.
cities and towns
cities with commission form of government, ordinances subject to: RCW 35.17.220, 35.17.240.
first class cities, charter provisions: RCW 35.22.200.
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- ordinances by petition, commission government cities:* RCW 35.17.260 through 35.17.360.
- conflicting measures, method of submitting to popular vote:* State Constitution Art. 2 § 1.
- effective date of acts or bills subject to referendum:* State Constitution Art. 2 § 41.
- effective date of measure after approval on submission to the people:* State Constitution Art. 2 § 1.
- elections**
- amendment or repeal of bills approved by electors:* State Constitution Art. 2 § 41.
- majority vote as required for approval of measure submitted:* State Constitution Art. 2 § 1.
- special, regular, reference of measures to people at:* State Constitution Art. 2 § 1.
- exceptions from power of referendum:* State Constitution Art. 2 § 1.
- filed when, with whom:* State Constitution Art. 2 § 1 (a) and (d) (Amendment 7).
- legislature**
- member of, retains right to introduce measure:* State Constitution Art. 2 § 1.
- proposal of different measure by legislature:* State Constitution Art. 2 § 1.
- referendum through action of:* State Constitution Art. 2 § 1.
- rejection of initiative measure by:* State Constitution Art. 2 § 1.
- repeal of bill:* State Constitution Art. 2 § 41.
- transmitting petition to:* State Constitution Art. 2 § 1.
- noncharter code cities, in:* RCW 35A.11.080 through 35A.11.100.
- petition**
- precedence over other bills:* State Constitution Art. 2 § 1.
- rejected or not acted upon by legislature:* State Constitution Art. 2 § 1.
- signatures, number required:* State Constitution Art. 2 § 1(a).
- transmission to legislature:* State Constitution Art. 2 § 1.
- petition to people, initiative**
- form:* State Constitution Art. 2 § 1.
- reservation by the people of the power of:* State Constitution Art. 2 § 1.
- precedence of initiative measures over other bills:* State Constitution Art. 2 § 1.
- public institutions, exception from power of referendum of bills affecting:* State Constitution Art. 2 § 1.
- publicity:* State Constitution Art. 2 § 1(e) (Amendment 36).
- referendum by legislature—Power of, exception:* State Constitution Art. 2 § 1.
- sales tax referendum by county or city:* RCW 82.14.036.
- secretary of state**
- filing of proposals and petitions with:* State Constitution Art. 2 § 1.
- general laws governing:* State Constitution Art. 2 § 1.
- signatures required:* State Constitution Art. 2 § 1(a) (Amendment 30).
- style of bill proposed by initiative petition:* State Constitution Art. 2 § 1.
- veto power of governor as extending to measures:* State Constitution Art. 2 § 1.
- voters' pamphlet—Publication date:* State Constitution Art. 2 § 1.
- Intercounty rural library districts, establishment:* RCW 27.12.100.
- Intercounty weed district directors:* RCW 17.06.050.
- Intoxicating liquor**
- concurrent liquor elections in same election unit prohibited:* RCW 66.40.150.
- local option on sale, generally:* Chapter 66.40 RCW.
- purchase election day by candidates, certain purposes, prohibition:* RCW 66.44.265.
- Irrigation and rehabilitation districts**
- converting irrigation district to, election on:* RCW 87.84.040.
- special assessments for, election on:* RCW 87.84.070.
- Irrigation districts**
- ballots:* RCW 87.03.075.
- bonds**
- election for:* RCW 87.03.200.
- revenue, election on:* RCW 87.28.103.
- change of boundaries, election on:* RCW 87.03.590.
- comprising two hundred thousand or more acres, contracts with United States by, election on, notice requisites:* RCW 87.68.060.
- consolidation of, election for:* RCW 87.03.535.
- director divisions*
- election of directors—Terms:* RCW 87.04.080.
- election to divide or redivide districts:* RCW 87.04.070.
- directors**
- declaration of candidacy—Election—Qualification, terms, etc.:* RCW 87.03.020 through 87.03.110.
- recall, discharge:* RCW 87.03.083.
- terms, duties, upon consolidation:* RCW 87.03.540.
- dissolution of insolvent districts, election on:* RCW 87.56.010.
- dissolution when bonded indebtedness, election on:* RCW 87.53.040 through 87.53.060.
- dissolution when no bonded indebtedness, 1897 act, election on:* RCW 87.52.030, 87.52.040.
- dissolution when no bonded indebtedness, 1939 act, election on:* RCW 87.52.090.
- elections, generally:* RCW 87.03.020 through 87.03.110.
- exclusion of land from, election on:* RCW 87.03.675, 87.03.680.
- generally:* RCW 87.03.030.
- merger with drainage, joint drainage, or consolidated drainage improvement district, election on:* RCW 87.03.740.
- only one qualified candidate nominated, no election required:* RCW 87.03.075.
- organization, generally:* RCW 87.03.020, 87.03.030 through 87.03.034.
- petitions for nomination:* RCW 87.03.075.
- post-organization:* RCW 87.03.085 through 87.03.110.
- proposed works—Plan of development, special election on:* RCW 87.03.190.
- refunding bonds—1923 act, election for authorization of:* RCW 87.19.010, 87.19.020.
- refunding bonds—1929 act, election to authorize:* RCW 87.22.120 through 87.22.140.
- special assessments—Election—Coupon notes:* RCW 87.03.470.
- voter qualifications, districts of 200,000 acres:* RCW 87.03.045.
- Joint aid river and harbor improvements, indebtedness for, election on:* RCW 88.32.230.
- Judges of court of appeals**
- additional members:* RCW 2.06.075.
- generally:* RCW 2.06.070.
- Judicial**
- superior court judges**
- election:* State Constitution Art. 4 § 5, RCW 2.08.060.
- term of office:* RCW 2.08.070.
- to fill vacancy:* RCW 2.08.120.
- vacancies resulting from creation of additional judgeships:* RCW 2.08.069.
- supreme court justices**
- election:* State Constitution Art. 4 § 3.
- election of:* RCW 2.04.071.
- vacancy, how filled:* RCW 2.04.100.
- Juror must be an elector:* RCW 2.36.070(1).
- Justice and inferior courts act of 1961, election procedure:* RCW 3.34.050.
- Justices of the peace (see also District judges)**
- construction of:* RCW 3.30.015.
- Legislature**
- contest of election—Depositions:* RCW 44.04.100.
- election of (own) officers:* State Constitution Art. 2 § 10.
- election of officers, first legislature to provide for:* State Constitution Art. 27 § 11.
- elections—Viva voce vote:* State Constitution Art. 2 § 27.
- judges of their own election and qualification:* State Constitution Art. 2 § 8.
- limitation on members holding federal or other office:* State Constitution Art. 2 § 14.
- limitation on members holding office in the state:* State Constitution Art. 2 § 13.
- representatives**
- apportionment:* State Constitution Art. 22 § 2.
- election of:* State Constitution Art. 2 § 4.
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- senators**
- apportionment:* State Constitution Art. 22 § 1.
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Legislature—Congressional, representatives, election of: *State Constitution Art. 27 § 13.*

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board of trustees, election of: RCW 27.12.190.
county, executory conditional sales contracts for purchase of property by, election on, when: RCW 39.30.010.
dissolution of, election on: RCW 27.12.320.
district, executory conditional sales contracts for purchase of property by, election on, when: RCW 39.30.010.
election to establish: RCW 27.12.030.
excess levies for, election on: RCW 27.12.222.
intercounty rural library districts
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rural library district
election to establish: RCW 27.12.040.
election to expand into intercounty rural library district: RCW 27.12.110.

Limitation on levies: *State Constitution Art. 7 § 2 (Amendments 55 and 59).*

Liquor

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local option, election on: Chapter 66.40 RCW.
purchase on election day by candidates, certain purposes, prohibition: RCW 66.44.265.

Materials specifically authorized to be printed and distributed by secretary of state: RCW 43.07.140.

Metropolitan municipal corporations

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annexation of territory: RCW 35.58.530 through 35.58.550.
comprehensive plan, functions: RCW 35.58.114.
election procedure for formation and tax levy: RCW 35.58.090.

Metropolitan park districts

ballots: RCW 35.61.030.
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certification of results: RCW 39.40.030.
existing election laws apply: RCW 39.40.020.
vote required: RCW 39.40.010.
council ordinances, publication: RCW 35.61.030.
favorable vote, effect: RCW 35.61.090.
laws governing: RCW 35.61.090.
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petitions for: RCW 35.61.020.
voter eligibility: RCW 35.61.080.

Military duty, when voter excepted from: *State Constitution Art. 6 § 5.*

Military interference prohibited: *State Constitution Art. 1 § 19.*

Militia

officers of may be elected if legislature so directs: *State Constitution Art. 10 § 2.*
privileged from arrest while attending elections of officers: *State Constitution Art. 10 § 5.*

Mosquito control district

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election on dissolution of: RCW 17.28.420, 17.28.430.
election on proposition to levy tax: RCW 17.28.100.
excess tax levy proposition: RCW 17.28.252.
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Municipal corporations, indebtedness, election to permit special indebtedness: *State Constitution Art. 8 § 6 (Amendment 27).*

Municipal courts—Cities over five hundred thousand
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Park and recreation districts

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formation procedure: RCW 36.69.440.

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bond elections

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forty percent poll of voters required: RCW 39.40.010.
change of name, election on: RCW 53.04.110.

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- Public officers**
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Chapter 29.01
DEFINITIONS

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29.01.005 Scope of definitions. Words and phrases as defined in this chapter, wherever used in Title 29 RCW, shall have the meaning as in this chapter ascribed to them, unless where used the context thereof shall clearly indicate to the contrary or unless otherwise defined in the chapter of which they are a part. [1965 c 9 § 29.01.005. For like prior law see 1907 c 209 § 1, part; RRS § 5177, part.]

29.01.006 Ballot and related terms. As used in this title:

- (1) "Ballot" means, as the context implies, either:
 - (a) The issues and offices to be voted upon in a jurisdiction or portion of a jurisdiction at a particular primary, general election, or special election;
 - (b) A facsimile of the contents of a particular ballot whether printed on a paper ballot or ballot card or as part of a voting machine or voting device;
 - (c) A physical or electronic record of the choices of an individual voter in a particular primary, general election, or special election; or
 - (d) The physical document on which the voter's choices are to be recorded;
- (2) "Paper ballot" means a piece of paper on which the ballot for a particular election or primary has been printed,

on which a voter may record his or her choices for any candidate or for or against any measure, and that is to be tabulated manually;

(3) "Ballot card" means any type of card or piece of paper of any size on which a voter may record his or her choices for any candidate and for or against any measure and that is to be tabulated on a vote tallying system;

(4) "Sample ballot" means a printed facsimile of all the issues and offices on the ballot in a jurisdiction and is intended to give voters notice of the issues, offices, and candidates that are to be voted on at a particular primary, general election, or special election. [1990 c 59 § 2; 1977 ex.s. c 361 § 1.]

Intent—1990 c 59: "By this act the legislature intends to unify and simplify the laws and procedures governing filing for elective office, ballot layout, ballot format, voting equipment, and canvassing." [1990 c 59 § 1.]

Effective date—1990 c 59: "Sections 1 through 6, 8 through 96, and 98 through 112 of this act shall take effect July 1, 1992." [1990 c 59 § 113.]

The above two annotations apply to 1990 c 59. For codification of that act, see Codification Tables, Volume 0.

Effective date—1977 ex.s. c 361: "This 1977 amendatory act shall take effect January 1, 1978." [1977 ex.s. c 361 § 113.]

Severability—1977 ex.s. c 361: "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 361 § 112.]

29.01.008 Canvassing. "Canvassing" means the process of examining ballots or groups of ballots, subtotals, and cumulative totals in order to determine the official returns of and prepare the certification for a primary or general election and includes the tabulation of any votes for that primary or election that were not tabulated at the precinct or in a counting center on the day of the primary or election. [1990 c 59 § 3.]

Intent—Effective date—1990 c 59: See notes following RCW 29.01.006.

29.01.010 City clerk. "City clerk" includes every officer, by whatever name designated, who performs the functions usually performed by a city or town clerk. [1965 c 9 § 29.01.010.]

29.01.020 City council. "City council" includes the governing body of any city or town, by whatever name it may be designated. [1965 c 9 § 29.01.020.]

29.01.030 City precinct. A "city precinct" is a voting precinct lying wholly or partly within a city or town. [1965 c 9 § 29.01.030. Prior: 1957 c 251 § 2; prior: 1939 c 15 § 1, part; 1933 c 1 § 3, part; RRS § 5114-3, part; prior: 1891 c 104 §§ 1, part, 2, part; RRS §§ 5116, part, 5117, part.]

29.01.040 Constituency. A "constituency" is a body of voters having the right to take part in the election of a specific public officer or group of public officers. [1965 c 9 § 29.01.040.]

29.01.042 Counting center. "Counting center" means the facility or facilities designated by the county auditor in

which the canvassing of ballots on a vote tallying system is conducted on the day of a primary or election. [1990 c 59 § 4.]

Intent—Effective date—1990 c 59: See notes following RCW 29.01.006.

29.01.043 County auditor. "County auditor" includes the county auditor in a noncharter county or the officer, irrespective of title, having the overall responsibility to maintain voter registration and to conduct state and local elections in a charter county. [1984 c 106 § 1.]

Effective date—Severability—1984 c 106: See RCW 29.81A.900 and 29.81A.901.

29.01.045 Date of mailing. For registered voters voting by absentee or voting by mail, "date of mailing" means the date of the postal cancellation on the envelope in which the ballot is returned to the election official by whom it was issued. For all other absentee voters, "date of mailing" means the date stated by the voter on the envelope in which the ballot is returned to the election official by whom it was issued. [1987 c 346 § 3.]

Legislative intent—Effective date—1987 c 346: See notes following RCW 29.36.010.

29.01.047 Disabled voter. "Disabled voter" means any registered voter who qualifies for special parking privileges under RCW 46.16.381, or who is defined as blind under RCW 74.18.020, or who qualifies to require assistance with voting under RCW 29.51.200. [1987 c 346 § 4.]

Legislative intent—Effective date—1987 c 346: See notes following RCW 29.36.010.

29.01.050 Election. "Election" when used alone means a general election except where the context indicates that a special election is included. "Election" when used without qualification does not include a primary. [1990 c 59 § 5; 1965 c 9 § 29.01.050. Prior: 1907 c 209 § 1, part; RRS § 5177(c). See also 1950 ex.s. c 14 § 3.]

Intent—Effective date—1990 c 59: See notes following RCW 29.01.006.

29.01.055 Election board. "Election board" means a group of election officers serving one precinct or groups of precincts in a polling place. [1986 c 167 § 1.]

Severability—1986 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." [1986 c 167 § 26.]

29.01.060 Election officer. "Election officer" includes any officer who has a duty to perform relating to elections under the provisions of any statute, charter, or ordinance. [1965 c 9 § 29.01.060.]

29.01.065 Elector. "Elector" means any person who possesses all of the qualifications to vote under Article VI of the state Constitution. [1987 c 346 § 2.]

Legislative intent—Effective date—1987 c 346: See notes following RCW 29.36.010.

29.01.068 Filing officer. "Filing officer" means the county or state officer with whom declarations of candidacy for an office are required to be filed under this title. [1990 c 59 § 77.]

Intent—Effective date—1990 c 59: See notes following RCW 29.01.006.

29.01.070 General election. "General election" means an election required to be held on a fixed date recurring at regular intervals. [1965 c 9 § 29.01.070.]

29.01.080 Infamous crime. An "infamous crime" is a crime punishable by death in the state penitentiary or imprisonment in a state correctional facility. [1992 c 7 § 31; 1965 c 9 § 29.01.080. Prior: Code 1881 § 3054; 1865 p 25 § 5; RRS § 5113.]

Contests, conviction of felony without reversal or restoration of civil rights as grounds for: RCW 29.65.010.

29.01.087 Local voters' pamphlet. "Local voters' pamphlet" means a pamphlet produced by a county or a first-class or code city that provides information about ballot measures or candidates, or both, and other information related to a primary, special election, or general election. [1984 c 106 § 2.]

Effective date—Severability—1984 c 106: See RCW 29.81A.900 and 29.81A.901.

29.01.090 Major political party. "Major political party" means a political party of which at least one nominee for president, vice president, United States senator, or a state-wide office received at least five percent of the total vote cast at the last preceding state general election in an even-numbered year: PROVIDED, That any political party qualifying as a major political party under the previous subsection (2) or subsection (3) of this section prior to its 1977 amendment shall retain such status until after the next state general election following June 30, 1977. [1977 ex.s. c 329 § 9; 1965 c 9 § 29.01.090. Prior: 1907 c 209 § 6, part; RRS § 5183, part.]

Partisan primaries, application of chapter: RCW 29.18.010.

Political parties: Chapter 29.42 RCW.

29.01.100 Minor political party. "Minor political party" means a political organization other than a major political party. [1965 c 9 § 29.01.100. Prior: 1955 c 102 § 8; prior: 1907 c 209 § 26, part; RRS § 5203, part.]

Minor party convention: Chapter 29.24 RCW.

Political parties: Chapter 29.42 RCW.

29.01.110 Measures. "Measure" includes any proposition or question submitted to the voters of any specific constituency. [1965 c 9 § 29.01.110.]

29.01.113 Out-of-state voter. "Out-of-state voter" means any elector of the state of Washington outside the state but not outside the territorial limits of the United States or the District of Columbia. [1987 c 346 § 5.]

Legislative intent—Effective date—1987 c 346: See notes following RCW 29.36.010.

29.01.117 Overseas voter. "Overseas voter" means any elector of the state of Washington outside the territorial limits of the United States or the District of Columbia. [1987 c 346 § 6.]

Legislative intent—Effective date—1987 c 346: See notes following RCW 29.36.010.

29.01.120 Precinct. "Precinct" means a geographical subdivision for voting purposes within or without the limits of a city or town, whether established by a board of county commissioners, by a city council, or by the board of supervisors of a township. [1965 c 9 § 29.01.120. Prior: 1933 c 1 § 2; RRS § 5114-2; prior: 1915 c 16 § 1; RRS § 5114.]

29.01.130 Primary. "Primary" or "primary election" means a statutory procedure for nominating candidates to public office at the polls. [1965 c 9 § 29.01.130. Prior: 1907 c 209 § 1, part; RRS § 5177(a). See also 1950 ex.s. c 14 § 2.]

Nonpartisan primaries: Chapter 29.21 RCW.

Partisan primaries: Chapter 29.18 RCW.

Times for holding primaries: Chapter 29.13 RCW.

29.01.135 Qualified. "Qualified" when pertaining to a winner of an election means that for such election:

- (1) The results have been certified;
- (2) A certificate has been issued;
- (3) Any required bond has been posted; and
- (4) The winner has taken and subscribed an oath or affirmation in compliance with the appropriate statute, or if none is specified, that he or she will faithfully and impartially discharge the duties of the office to the best of his or her ability. This oath or affirmation shall be administered and certified by any officer or notary public authorized to administer oaths, without charge therefor. [1979 ex.s. c 126 § 2.]

Purpose—1979 ex.s. c 126: RCW 29.04.170(1).

29.01.137 Registered voter. "Registered voter" means any elector who possesses all of the statutory qualifications to vote under chapters 29.07 and 29.10 RCW. The terms "registered voter" and "qualified elector" are synonymous. [1987 c 346 § 7.]

Legislative intent—Effective date—1987 c 346: See notes following RCW 29.36.010.

29.01.140 Residence. "Residence" for the purpose of registering and voting means a person's permanent address where he physically resides and maintains his abode: PROVIDED, That no person gains residence by reason of his presence or loses his residence by reason of his absence:

- (1) While employed in the civil or military service of the state or of the United States;
- (2) While engaged in the navigation of the waters of this state or the United States or the high seas;
- (3) While a student at any institution of learning;
- (4) While confined in any public prison.

Absence from the state on business shall not affect the question of residence of any person unless the right to vote

has been claimed or exercised elsewhere. [1971 ex.s. c 178 § 1; 1965 c 9 § 29.01.140. Prior: 1955 c 181 § 1; prior: (i) Code 1881 § 3051; 1865 p 25 § 2; RRS § 5110. (ii) Code 1881 § 3053; 1866 p 8 § 11; 1865 p 25 § 4; RRS § 5111.]

Residence, contingencies affecting: State Constitution Art. 6 § 4.

29.01.150 Rural precinct. "Rural precinct" means a voting precinct lying wholly outside the limits of a city or town. [1965 c 9 § 29.01.150. Prior: 1957 c 251 § 3; prior: 1939 c 15 § 1, part; 1933 c 1 § 3, part; RRS § 5114-3, part; prior: 1891 c 104 §§ 1, part, 2, part; RRS §§ 5116, part, 5117, part.]

29.01.155 Service voter. "Service voter" means any elector of the state of Washington who is a member of the armed forces under 42 U.S.C. Sec. 1973 ff-6 while in active service, is a student or member of the faculty at a United States military academy, is a member of the merchant marine of the United States, is a program participant as defined in RCW 40.24.020, or is a member of a religious group or welfare agency officially attached to and serving with the armed forces of the United States. [1991 c 23 § 13; 1987 c 346 § 8.]

Effective dates—1991 c 23: See RCW 40.24.900.

Legislative intent—Effective date—1987 c 346: See notes following RCW 29.36.010.

29.01.160 September primary. "September primary" means the primary election held in September to nominate candidates to be voted for at the ensuing election. [1965 c 9 § 29.01.160. Prior: 1907 c 209 § 1, part; RRS § 5177(b).]

29.01.170 Special election. "Special election" means any election that is not a general election. [1965 c 9 § 29.01.170. Prior: Code 1881 § 3056; 1865 p 27 § 2; RRS § 5155.]

29.01.180 Short term. "Short term" means the brief period of time starting upon the completion of the certification of election returns and ending with the start of the full term on the second Tuesday of the next January immediately following the election and is applicable only when the office concerned is being held by an appointee to fill a vacancy which occurred after the last election, at which such office could have been voted upon for an unexpired term, prior to the election for such office for the subsequent full term. [1975-'76 2nd ex.s. c 120 § 14.]

Severability—1975-'76 2nd ex.s. c 120: See note following RCW 29.21.010.

29.01.200 Voting system, device, tallying system.

- (1) "Voting system" means a voting device, vote tallying system, or combination of these together with ballots and other supplies or equipment used to conduct a primary or election or to canvass the votes cast in a primary or election;
- (2) "Voting device" means a piece of equipment used for the purpose of or to facilitate the marking of a ballot to be tabulated by a vote tallying system or a piece of mechani-

cal or electronic equipment used to directly record votes and to accumulate results for a number of issues or offices from a series of voters; and

(3) "Vote tallying system" means a piece of mechanical or electronic equipment and associated data processing software used to tabulate votes cast on ballot cards or otherwise recorded on a voting device or to prepare that system to tabulate ballot cards or count votes. [1990 c 59 § 6.]

Intent—Effective date—1990 c 59: See notes following RCW 29.01.006.

Chapter 29.04 GENERAL PROVISIONS

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- 29.04.170 Local elected officials, commencement of term of office—Purpose, 1979 ex.s. c 126.
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- 29.04.190 Write-in candidates—Notice to auditors, ballot counters.
- 29.04.200 Voting devices, machines—Recording requirements.
- 29.04.210 Ballots, voting systems—Rules by secretary of state.
- 29.04.230 Electronic facsimile documents—Acceptance of.
- 29.04.235 Electronic facsimile documents—Rules.

Elections and elective rights: State Constitution Art. 6.

29.04.010 Registration required for voting—Exception. Only a registered voter shall be permitted to vote:

- (1) At any election held for the purpose of electing persons to public office;
- (2) At any recall election of a public officer;
- (3) At any election held for the submission of a measure to any voting constituency;
- (4) At any primary election.

The provisions of this section shall not apply to township elections. [1965 c 9 § 29.04.010. Prior: 1955 c 181 § 8; prior: (i) 1933 c 1 § 22, part; RRS § 5114-22, part. (ii) 1933 c 1 § 23; RRS § 5114-23. See also 1935 c 26 § 3; RRS § 5189.]

Out-of-state, overseas, service voters, same ballots as registered voters: RCW 29.36.010.

Subversive activities, disqualification from voting: RCW 9.81.040.

29.04.020 County auditor designated supervisor of certain primaries and elections. The county auditor of each county shall be ex officio the supervisor of all primaries and elections, general or special, and it shall be the county auditor's duty to provide places for holding such primaries and elections; to appoint the precinct election officers; to provide for their compensation; to provide ballot boxes and ballots or voting machines, poll books, or precinct lists of registered voters, and tally sheets, and deliver them to the precinct election officers at the polling places; to publish and post notices of calling such primaries and elections in the manner provided by law: PROVIDED, That notice of a general election held in an even-numbered year shall indicate that the office of precinct committee officer will be on the ballot; and to apportion to each city, town, or district, its share of the expense of such primaries and elections: PROVIDED, That this section shall not apply to general or special elections for any city, town, or district which is not subject to RCW 29.13.010 and 29.13.020, but all such elections shall be held and conducted at the time, in the manner, and by the officials (with such notice, requirements for filing for office, and certifications by local officers) as provided and required by the laws governing such elections. [1987 c 295 § 1; 1977 ex.s. c 361 § 2; 1971 ex.s. c 202 § 1; 1965 c 123 § 1; 1965 c 9 § 29.04.020. Prior: 1947 c 182 § 1, part; Rem. Supp. 1947 § 5166-10, part; prior: 1945 c 194 § 3, part; 1941 c 180 § 1, part; 1935 c 5 § 1, part; 1933 ex.s. c 29 § 1, part; prior: 1933 c 79 § 1, part; 1927 c 279 § 2, part; 1923 c 53 § 3, part; 1921 c 61 § 5, part; Rem. Supp. 1945 § 5147, part.]

Effective date—Severability—1977 ex.s. c 361: See notes following RCW 29.01.006.

Conduct of elections—Canvass: RCW 29.13.040.

Constituencies to bear all or share of election costs—Procedure to recover: RCW 29.13.045.

General election laws govern primary: RCW 29.18.120.

Oaths of officers, county auditor to provide forms for: RCW 29.45.080.

29.04.025 Handling of reports filed under public disclosure law. Each county auditor or county elections official shall ensure that reports filed pursuant to chapter 42.17 RCW are arranged, handled, indexed, and disclosed in a manner consistent with the rules of the public disclosure commission adopted under RCW 42.17.375. [1983 c 294 § 2.]

29.04.030 Prevention and correction of election frauds and errors. Any justice of the supreme court, judge of the court of appeals, or judge of the superior court in the proper county shall, by order, require any person charged with error, wrongful act, or neglect to forthwith correct the error, desist from the wrongful act, or perform the duty and

to do as the court orders or to show cause forthwith why the error should not be corrected, the wrongful act desisted from, or the duty or order not performed, whenever it is made to appear to such justice or judge by affidavit of an elector that:

(1) An error or omission has occurred or is about to occur in printing the name of any candidate on official ballots; or

(2) An error other than as provided in subsections (1) and (3) of this section has been committed or is about to be committed in printing the ballots; or

(3) The name of any person has been or is about to be wrongfully placed upon the ballots; or

(4) A wrongful act other than as provided for in subsections (1) and (3) of this section has been performed or is about to be performed by any election officer; or

(5) Any neglect of duty on the part of an election officer other than as provided for in subsections (1) and (3) of this section has occurred or is about to occur; or

(6) An error or omission has occurred or is about to occur in the issuance of a certificate of election.

An affidavit of an elector under subsections (1) and (3) above when relating to a primary election must be filed with the appropriate court no later than the second Friday following the closing of the filing period for nominations for such office and shall be heard and finally disposed of by the court not later than five days after the filing thereof. An affidavit of an elector under subsections (1) and (3) of this section when relating to a general election must be filed with the appropriate court no later than three days following the official certification of the primary election returns and shall be heard and finally disposed of by the court not later than five days after the filing thereof. An affidavit of an elector under subsection (6) of this section shall be filed with the appropriate court no later than ten days following the issuance of a certificate of election. [1977 ex.s. c 361 § 3; 1973 1st ex.s. c 165 § 1; 1971 c 81 § 74; 1965 c 9 § 29.04.030. Prior: (i) 1907 c 209 § 25, part; RRS § 5202, part. (ii) 1889 p 407 § 19; RRS § 5276.]

Effective date—Severability—1977 ex.s. c 361: See notes following RCW 29.01.006.

Certiorari, mandamus, and prohibition: Chapter 7.16 RCW.

Contests: Chapter 29.65 RCW.

Crimes and penalties: Chapter 29.85 RCW.

29.04.035 Prohibition against campaign materials deceptively similar to voters' or candidates' pamphlets. No person or entity may publish or distribute any campaign material that is deceptively similar in design or appearance to a voters' pamphlet or candidates' pamphlet or combination thereof, which pamphlet or combination was published by the secretary of state during the ten-year period prior to the publication or distribution by the person or entity. The secretary of state shall take reasonable measures to prevent or to stop violations of this section. Such measures may include, among others, petitioning the superior court for a temporary restraining order or other appropriate injunctive relief. In addition, the secretary may request the superior court to impose a civil fine on a violator of this section. The court is authorized to levy on and recover from each violator a civil fine not to exceed the greater of: (1) Two dollars for each copy of the deceptive material distributed,

or (2) one thousand dollars. In addition, the violator shall be liable for the state's legal expenses and other costs resulting from the violation. Any funds recovered under this section shall be transmitted to the state treasurer for deposit in the general fund. [1984 c 41 § 1.]

29.04.040 Precincts—Number of voters—Dividing, altering, or combining—Creating new precincts. (1) No paper ballot precinct may contain more than three hundred voters. The county legislative authority may divide, alter, or combine precincts so that, whenever practicable, overpopulated precincts shall contain no more than two hundred fifty registered voters in anticipation of future growth.

(2) Precinct boundaries may be altered at any time as long as sufficient time exists prior to a given election for the necessary procedural steps to be honored. Except as permitted under subsection (5) of this section, no precinct boundaries may be changed during the period starting on the thirtieth day prior to the first day for candidates to file for the primary election and ending with the day of the general election.

(3) Precincts in which voting machines or electronic voting devices are used may contain as many as nine hundred registered voters, but there shall be at least one voting machine or device for each three hundred registered voters or major fraction thereof when a state primary or general election is held in an even-numbered year.

(4) On petition of twenty-five or more voters resident more than ten miles from any place of election, the county legislative authority shall establish a separate voting precinct therefor.

(5) The county auditor shall temporarily adjust precinct boundaries when a city annexes county territory to the city. The adjustment shall be made as soon as possible after the approval of the annexation. The temporary adjustment shall be limited to the minimum changes necessary to accommodate the addition of the territory to the city and shall remain in effect only until precinct boundary modifications reflecting the annexation are adopted by the county legislative authority.

The county legislative authority may establish by ordinance a limitation on the maximum number of registered voters in each precinct within its jurisdiction. The limitation may be different for precincts based upon the method of voting used for such precincts and the number may be less than the number established by law, but in no case may the number exceed that authorized by law.

The county legislative authority of each county in the state hereafter formed shall, at their first session, divide their respective counties into election precincts with two hundred fifty voters or less and establish the boundaries of the precincts. The county auditor shall thereupon designate the voting place for each such precinct. [1986 c 167 § 2; 1980 c 107 § 3. Prior: 1977 ex.s. c 361 § 4; 1977 ex.s. c 128 § 1; 1975-'76 2nd ex.s. c 129 § 3; 1967 ex.s. c 109 § 1; 1965 c 9 § 29.04.040; prior: (i) 1921 c 178 § 1, part; 1915 c 11 § 1, part; 1907 c 130 § 1, part; 1889 p 402 § 7, part; Code 1881 § 3067, part; 1865 p 30 § 1, part; RRS § 5171, part. (ii) 1907 c 130 § 2, part; 1889 p 408 § 21, part; RRS § 5278, part. (iii) Code 1881 § 2679; 1854 p 65 § 4, part; No RRS.]

Severability—1986 c 167: See note following RCW 29.01.055.

Effective date—Severability—1977 ex.s. c 361: See notes following RCW 29.01.006.

Severability—1977 ex.s. c 128: "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 128 § 6.]

Effective date—Severability—1975-'76 2nd ex.s. c 129: See notes following RCW 29.04.140.

"City precinct" defined: RCW 29.01.030.

"Precinct" defined: RCW 29.01.120.

"Rural precinct" defined: RCW 29.01.150.

29.04.050 Precincts—Restrictions on precinct boundaries—Designated by number. (1) Every voting precinct must be wholly within a single congressional district, a single legislative district, and a single district of a county legislative authority.

(2) Every voting precinct shall be composed, as nearly as practicable, of contiguous and compact areas.

(3) Except as provided in this subsection, changes to the boundaries of any precinct shall follow visible, physical features delineated on the most current maps provided by the United States census bureau. A change need not follow such visible, physical features if (a) it is necessitated by an annexation or incorporation and the proposed precinct boundary is identical to an exterior boundary of the annexed or incorporated area which does not follow a visible, physical feature; or (b) doing so would substantially impair election administration in the involved area.

(4) After a change to precinct boundaries is adopted by the county legislative authority, the county auditor shall send to the secretary of state a copy of the legal description and a map or maps of the changes and, if all or part of the changes do not follow visible, physical features, a statement of the applicable exception under subsection (3) of this section. For boundary changes made pursuant to subsection (3)(b) of this section, the auditor shall include a statement of the reasons why following visible, physical features would have substantially impaired election administration.

(5) Every voting precinct within each county shall be designated consecutively by number for the purpose of preparation of maps and the tabulation of population for apportionment purposes. These precincts may be identified with names or other numbers for other election purposes.

(6) After a change to precinct boundaries in a city or town, the county auditor shall send one copy of the map or maps delineating the new precinct boundaries within that city or town to the city or town clerk.

(7) Precinct maps are public records and shall be available for inspection by the public during normal office hours in the offices where they are kept. Copies shall be made available to the public for a fee necessary to cover the cost of reproduction. [1989 c 278 § 1; 1977 ex.s. c 128 § 2; 1965 c 9 § 29.04.050. Prior: 1921 c 178 § 1, part; 1915 c 11 § 1, part; 1907 c 130 § 1, part; 1889 p 402 § 7, part; Code 1881 § 3067, part; 1865 p 30 § 1, part; RRS § 5171, part.]

Severability—1977 ex.s. c 128: See note following RCW 29.04.040.

29.04.055 Combining or dividing precincts, election boards. At any election, general or special, or at any

primary, the county auditor may combine, unite, or divide precincts and may combine or unite election boards for the purpose of holding such election. [1986 c 167 § 3; 1977 ex.s. c 361 § 5; 1974 ex.s. c 127 § 1; 1965 c 9 § 29.04.055. Prior: 1963 c 200 § 22; 1951 c 70 § 1.]

Severability—1986 c 167: See note following RCW 29.01.055.

Effective date—Severability—1977 ex.s. c 361: See notes following RCW 29.01.006.

29.04.060 Publication of election laws by secretary of state. In every year in which state and county officers are to be elected, the secretary of state shall cause the election laws of the state then in force to be published in pamphlet form and distributed through the county auditors at least twenty days prior to the primary next preceding the election in sufficient number to place a copy thereof in the hands of all officers of elections. [1965 c 9 § 29.04.060. Prior: (i) 1907 c 209 § 16; RRS § 5193. (ii) 1889 p 413 § 34; RRS § 5299.]

Candidates' pamphlet, secretary of state's duties: Chapter 29.80 RCW.

Primaries, when held: RCW 29.13.070.

Voters' pamphlet, distribution by secretary of state to voters, officers, and institutions: RCW 29.81.140, 29.81.150.

29.04.070 Secretary of state designated chief election officer. The secretary of state through his election division shall be the chief election officer for all federal, state, county, city, town, and district elections and it shall be his duty to keep records of such elections held in the state and to make such records available to the public upon request. [1965 c 9 § 29.04.070. Prior: 1963 c 200 § 23; 1949 c 161 § 12; Rem. Supp. 1949 § 5147-2.]

29.04.080 Secretary of state to make rules and regulations—Use of electronic or automatic data processing systems. The secretary of state shall make rules and regulations not inconsistent with the federal, state, county, city, town, and district election laws to facilitate the execution of their provisions in an orderly manner and to that end shall assist local election officers by devising uniform forms and procedures. He shall provide uniform regulations governing the maintenance of voter registration records on electronic or automatic data processing systems so that the records of counties using such systems shall be compatible. He shall supervise the development and use of such systems to insure that they conform to all the provisions of Title 29 RCW and the regulations provided for in this section. [1971 ex.s. c 202 § 2; 1965 c 9 § 29.04.080. Prior: 1963 c 200 § 24; 1949 c 161 § 13; Rem. Supp. 1949 § 5147-3.]

Absentee voters, secretary of state duties regarding: RCW 29.36.150.

Candidates' pamphlets, rules by secretary of state: RCW 29.80.070.

Forms

report of deaths, secretary of state to furnish: RCW 29.10.095.

statement of change in residence of voter, design by secretary of state—Availability to public: RCW 29.10.150.

statement registered voter is deceased, design by secretary of state: RCW 29.10.090.

Statutory recount proceedings, rules for: RCW 29.64.070.

Sworn statement of cancellations (registration), furnished by secretary of state: RCW 29.10.120.

Voters' pamphlet, rules by secretary of state: RCW 29.81.070.

29.04.095 Definitions for purposes of RCW 29.04.100 through 29.04.120. For purposes of RCW 29.04.100 through 29.04.120, the following words shall have the following meanings:

(1) "County auditor" means the county auditor in any noncharter county and in a charter county that county official having the overall responsibility to maintain voter registration information.

(2) "Person" means an individual, partnership, joint venture, public or private corporation, association, 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.

(3) "Political purpose" means a purpose concerned with the support of or opposition to any candidate for any partisan or nonpartisan office or concerned with the support of or opposition to any ballot proposition or issue; "political purpose" includes, but is not limited to, such activities as the advertising for or against any candidate or ballot measure or the solicitation of financial support. [1973 1st ex.s. c 111 § 1.]

29.04.100 Poll books, current lists of voters—As public records—Information to be furnished upon request—Restriction. All poll books or current lists of registered voters shall be public records and be made available for inspection under such reasonable rules and regulations as the county auditor may prescribe. The county auditor shall promptly furnish current lists or mailing labels of registered voters in his possession, at actual reproduction cost, to any person requesting such information: PROVIDED, That such lists and labels shall not be used for the purpose of mailing or delivering any advertisement or offer for any property, establishment, organization, product or service or for the purpose of mailing or delivering any solicitation for money, services or anything of value: PROVIDED, HOWEVER, That such lists and labels may be used for any political purpose. In the case of political subdivisions which encompass portions of more than one county, the request may be directed to the secretary of state who shall contact the appropriate county auditors and arrange for the timely delivery of the requested information. [1975-'76 2nd ex.s. c 46 § 1; 1974 ex.s. c 127 § 2; 1973 1st ex.s. c 111 § 2; 1971 ex.s. c 202 § 3; 1965 ex.s. c 156 § 6.]
Forms, secretary of state to design—Availability to public: RCW 29.10.150.
Signature required to vote—Procedure if voter unable to sign name: RCW 29.51.060.

29.04.110 Poll books and precinct lists—Furnishing of data upon request—Cost—Use restricted. A reproduction of any form of data storage, in the custody of the county auditor, for poll books and precinct lists of registered voters, including magnetic tapes or discs, punched cards, and any other form of storage of such books and lists, shall at the written request of any person be furnished to him by the county auditor pursuant to such reasonable rules and regulations as the county auditor may prescribe, and at a cost equal to the county's actual cost in reproducing such form of data storage. Any data contained in a form of storage furnished under this section shall not be used for the purpose of

mailing or delivering any advertisement or offer for any property, establishment, organization, product or service or for the purpose of mailing or delivering any solicitation for money, services or anything of value: PROVIDED, HOWEVER, That such data may be used for any political purpose. Whenever the county auditor furnishes any form of data storage under this section, he shall also furnish the person receiving the same with a copy of RCW 29.04.120. [1973 1st ex.s. c 111 § 3.]

29.04.120 Violations of restricted use of registered voter data—Penalties—Liabilities. (1) Any person who uses registered voter data furnished under RCW 29.04.100 or 29.04.110 for the purpose of mailing or delivering any advertisement or offer for any property, establishment, organization, product, or service or for the purpose of mailing or delivering any solicitation for money, services, or anything of value shall be guilty of a felony punishable by imprisonment in a state correctional facility for a period of not more than five years or a fine of not more than five thousand dollars or both such fine and imprisonment, and shall be liable to each person provided such advertisement or solicitation, without the person's consent, for the nuisance value of such person having to dispose of it, which value is herein established at five dollars for each item mailed or delivered to the person's residence: PROVIDED, That any person who mails or delivers any advertisement, offer or solicitation for a political purpose shall not be liable under this section, unless the person is liable under subsection (2) of this section. For purposes of this subsection, two or more attached papers or sheets or two or more papers which are enclosed in the same envelope or container or are folded together shall be deemed to constitute one item. Merely having a mailbox or other receptacle for mail on or near the person's residence shall not be any indication that such person consented to receive the advertisement or solicitation. A class action may be brought to recover damages under this section and the court may award a reasonable attorney's fee to any party recovering damages under this section.

(2) It shall be the responsibility of each person furnished data under RCW 29.04.100 or 29.04.110 to take reasonable precautions designed to assure that the data is not used for the purpose of mailing or delivering any advertisement or offer for any property, establishment, organization, product or service or for the purpose of mailing or delivering any solicitation for money, services, or anything of value: PROVIDED, That such data may be used for any political purpose. Where failure to exercise due care in carrying out this responsibility results in the data being used for such purposes, then such person shall be jointly and severally liable for damages under the provisions of subsection (1) of this section along with any other person liable under subsection (1) of this section for the misuse of such data. [1992 c 7 § 32; 1974 ex.s. c 127 § 3; 1973 1st ex.s. c 111 § 4.]

29.04.140 Maps and census correspondence lists—Apportionment—Duties of secretary of state. (1) With regard to functions relating to census, apportionment, and the establishment of legislative and congressional districts, the secretary of state shall:

(a) Adopt rules pursuant to chapter 34.05 RCW governing the preparation, maintenance, distribution, review, and filing of precinct maps under RCW 29.04.050;

(b) Coordinate and monitor precinct mapping functions of the county auditors and county engineers;

(c) Maintain official state base maps and correspondence lists and maintain an index of all such maps and lists;

(d) Furnish to the United States bureau of the census as needed for the decennial census of population, current, accurate, and easily readable versions of maps of all counties, cities, towns, and other areas of this state, which indicate current precinct boundaries together with copies of the census correspondence lists.

(2) The secretary of state shall serve as the state liaison with the United States bureau of census on matters relating to the preparation of maps and the tabulation of population for apportionment purposes. [1989 c 278 § 2; 1977 ex.s. c 128 § 4; 1975-'76 2nd ex.s. c 129 § 2.]

Severability—1977 ex.s. c 128: See note following RCW 29.04.040.

Effective date—1975-'76 2nd ex.s. c 129: "This 1976 amendatory act shall take effect on February 1, 1977." [1975-'76 2nd ex.s. c 129 § 5.]

Severability—1975-'76 2nd ex.s. c 129: "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 129 § 6.]

29.04.150 Computer tape or data file of records of registered voters—Duplicate to be furnished secretary of state by county auditors—Master tape or file to be compiled. Not earlier than January 1st nor later than February 1st of each calendar year and not earlier than July 1st nor later than August 1st of each calendar year each county auditor shall provide to the secretary of state, or a data processing agency designated by him, a duplicate computer tape or data file of the records of the registered voters in that county, containing the information specified in RCW 29.07.220. The secretary of state shall reimburse each county for the actual cost of reproduction and mailing of the duplicate computer tape or data file. He shall arrange for a master computer tape or data file of the records of all the registered voters of the state to be compiled. [1975-'76 2nd ex.s. c 46 § 2.]

29.04.160 Computer tape or data file of records of registered voters—Master state-wide tape or file furnished to political parties—Duplicate copy to statute law committee—Restrictions and penalties. No later than February 15th and no later than August 15th of each year, the secretary of state shall provide a duplicate copy of the master state-wide computer tape or data file of registered voters to the state central committee of each major political party, at actual duplication cost, and shall provide a duplicate copy of the master state-wide computer tape or data file of registered voters to the statute law committee without cost. The master state-wide computer tape or data file of registered voters or portions of the tape or file shall be available to any other political party, at actual duplication cost, upon written request to the secretary of state. Restrictions as to the commercial use of the information on the state-wide computer tape or data file of registered voters, and penalties for its misuse, shall be the same as provided in RCW

29.04.110 and 29.04.120 as now existing or hereafter amended. [1977 ex.s. c 226 § 1; 1975-'76 2nd ex.s. c 46 § 3.]

29.04.170 Local elected officials, commencement of term of office—Purpose, 1979 ex.s. c 126. (1) The legislature finds that certain laws are in conflict governing the election of various local officials. The purpose of *this legislation is to provide a common date for the assumption of office for all the elected officials of counties, cities, towns, and special purpose districts other than school districts where the ownership of property is not a prerequisite of voting. It is also the purpose of *this legislation to remove these conflicts and delete old statutory language concerning such elections which is no longer necessary.

(2) For elective offices of counties, cities, towns, and special purpose districts other than school districts where the ownership of property is not a prerequisite of voting, the term of incumbents shall end and the term of successors shall begin after the successor is elected and qualified, and the term shall commence immediately after December 31st following the election, except as follows:

(a) Where the term of office varies from this standard according to statute; and

(b) If the election results have not been certified prior to January 1st after the election, in which event the time of commencement for the new term shall occur when the successor becomes qualified in accordance with RCW 29.01.135.

(3) For elective offices governed by this section, the oath of office shall be taken as the last step of qualification as defined in RCW 29.01.135 but may be taken either:

(a) Up to ten days prior to the scheduled date of assuming office; or

(b) At the last regular meeting of the governing body of the applicable county, city, town, or special district held before the winner is to assume office. [1980 c 35 § 7; 1979 ex.s. c 126 § 1.]

***Reviser's note:** The phrase "this legislation" refers to the enactment of RCW 29.01.135, 29.04.170, and 42.17.241, the 1979 ex.s. c 126 amendment of RCW 14.08.304, 28A.57.312, 28A.57.328, 28A.57.355 through 28A.57.358, 29.13.021 through 29.13.025, 29.13.050, 29.13.060, 35.03.040, 35.17.020, 35.17.400, 35.18.020, 35.18.270, 35.23.040, 35.24.050, 35.27.090, 35.61.050, 35A.29.090, 36.16.020, 36.32.030, 36.69.070, 36.69.080, 36.69.090, 52.12.010, 52.12.020, 52.12.060, 53.12.172, 53.12.220, 54.08.060, 54.12.010, 56.12.020, 57.12.030, 68.16.140, and 70.44.040, and the repeal of RCW 28A.57.329 and 53.12.240 by 1979 ex.s. c 126.

Severability—1980 c 35: See note following RCW 28A.315.450.

29.04.180 Write-in voting—Candidates, declaration. Any person who desires to be a write-in candidate and have such votes counted at a primary or election may, if the jurisdiction of the office sought is entirely within one county, file a declaration of candidacy with the county auditor not later than the day before the primary or election. If the jurisdiction of the office sought encompasses more than one county the declaration of candidacy shall be filed with the secretary of state not later than the day before the primary or election. Votes cast for write-in candidates who have filed such declarations of candidacy and write-in votes for persons appointed by political parties pursuant to RCW 29.18.160 need only specify the name of the candidate in the appropri-

ate location on the ballot in order to be counted. Write-in votes cast for any other candidate, in order to be counted, must designate the office sought and position number or political party, if applicable.

No person may file as a write-in candidate where:

(1) At a general election, the person attempting to file either filed as a write-in candidate for the same office at the preceding primary or the person's name appeared on the ballot for the same office at the preceding primary;

(2) The person attempting to file as a write-in candidate has already filed a valid write-in declaration for that primary or election, unless one or the other of the two filings is for the office of precinct committeeperson;

(3) The name of the person attempting to file already appears on the ballot as a candidate for another office, unless one of the two offices for which he or she is a candidate is precinct committeeperson.

The declaration of candidacy shall be similar to that required by RCW 29.15.010. No write-in candidate filing under RCW 29.04.180 may be included in any voter's pamphlet produced under chapter 29.80 RCW unless that candidate qualifies to have his or her name printed on the general election ballot. The legislative authority of any jurisdiction producing a local voter's pamphlet under chapter 29.81A RCW may provide, by ordinance, for the inclusion of write-in candidates in such pamphlets. [1990 c 59 § 100; 1988 c 181 § 1.]

Intent—Effective date—1990 c 59: See notes following RCW 29.01.006.

29.04.190 Write-in candidates—Notice to auditors, ballot counters. The secretary of state shall notify each county auditor of any declarations filed with the secretary under RCW 29.04.180 for offices appearing on the ballot in that county. The county auditor shall ensure that those persons charged with counting the ballots for a primary or election are notified of all valid write-in candidates before the tabulation of those ballots. [1988 c 181 § 2.]

29.04.200 Voting devices, machines—Recording requirements. (1) Beginning January 1, 1993, no voting device or machine may be used in a county with a population of seventy thousand or more to conduct a primary or general or special election in this state unless it correctly records on a separate ballot the votes cast by each elector for any person and for or against any measure and such separate ballots are available for audit purposes after such a primary or election.

(2) Beginning January 1, 1993, the secretary of state shall not certify under this title any voting device or machine for use in conducting a primary or general or special election in this state unless the device or machine correctly records on a separate ballot the votes cast by each elector for any person and for or against any measure and such separate ballots are available for audit purposes after such a primary or election.

(3) Beginning January 1, 1993, a county with a population of less than seventy thousand may use a voting machine or device for conducting a primary or general or special election which does not record on a separate ballot, available for audit purposes after the primary or election, the votes

cast by each elector for any person and for or against any measure if:

(a) The device was certified under this title before January 1, 1993, for use in this state;

(b) The device otherwise satisfies the requirements of this title; and

(c) Not more than twenty percent of the votes cast during any primary or general or special election conducted after January 1, 1998, in the county are cast using such a machine or device.

(4) The purpose of subsection (3) of this section is to permit less populous counties to replace voting equipment in stages over several years. These less populous counties are, nonetheless, encouraged to secure as expeditiously as possible voting equipment which would satisfy the requirements of subsection (1) of this section established for more populous counties. The secretary of state shall report to the legislature by January 1st of each odd-numbered year through 1997 on the progress of such less populous counties in replacing equipment which does not satisfy the requirements of subsection (1) of this section established for more populous counties. [1991 c 363 § 30; 1990 c 184 § 1.]

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

29.04.210 Ballots, voting systems—Rules by secretary of state. The secretary of state shall adopt rules to:

(1) Establish standards for the design, layout, and production of ballots;

(2) Provide for the examination and testing of voting systems for certification;

(3) Specify the source and scope of independent evaluations of voting systems that may be relied upon in certifying voting systems for use in this state;

(4) Establish standards and procedures for the acceptance testing of voting systems by counties;

(5) Establish standards and procedures for testing the programming of vote tallying software for specific primaries and elections;

(6) Establish standards and procedures for the preparation and use of each type of certified voting system including procedures for the operation of counting centers where vote tallying systems are used;

(7) Establish standards and procedures to ensure the accurate tabulation and canvassing of ballots;

(8) Provide consistency among the counties of the state in the preparation of ballots, the operation of vote tallying systems, and the canvassing of primaries and elections;

(9) Ensure the secrecy of a voter's ballot when a small number of ballots are counted at the polls or at a counting center;

(10) Govern the use of substitute devices or means of voting when a voting device at the polling place is found to be defective, the counting of votes cast on the defective device and from the substitute device or means, and the documentation that must be submitted to the county auditor regarding such circumstances; and

(11) Govern the transportation of sealed containers of voted ballots or sealed voting devices.

The secretary shall publish proposed rules implementing this section not later than December 15, 1991. [1990 c 59 § 7.]

Intent—1990 c 59: See note following RCW 29.01.006.

29.04.230 Electronic facsimile documents—

Acceptance of. The secretary of state or a county auditor shall accept and file in his or her office electronic facsimile transmissions of the following documents:

- (1) Declarations and affidavits of candidacy;
- (2) County canvass reports;
- (3) Candidates' pamphlet statements;
- (4) Arguments for and against ballot measures that will appear in a voters' pamphlet;
- (5) Requests for recounts;
- (6) Certification of candidates and measures by the secretary of state;
- (7) Direction by the secretary of state for the conduct of a mandatory recount;
- (8) Requests for absentee ballots;
- (9) Any other election related document authorized by rule adopted by the secretary of state under RCW 29.04.235.

The acceptance by the secretary of state or the county auditor is conditional upon the document being filed in a timely manner, being legible, and otherwise satisfying the requirements of state law or rules with respect to form and content.

If the original copy of a document must be signed and a copy of the document is filed by facsimile transmission under this section, the original copy shall be subsequently filed with the official with whom the facsimile was filed. The original copy shall be filed by a deadline established by the secretary by rule. The secretary may by rule require that the original of any document, a copy of which is filed by facsimile transmission under this section, also be filed by a deadline established by the secretary by rule. [1991 c 186 § 1.]

29.04.235 Electronic facsimile documents—Rules.

The secretary of state shall adopt rules in accordance with chapter 34.05 RCW to implement RCW 29.04.230. [1991 c 186 § 2.]

Chapter 29.07

REGISTRATION OF VOTERS

Sections

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- 29.07.015 Definitions.
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- 29.07.400 Registration law—Registrar violations.
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Out-of-state, overseas, service voters, same ballots as registered voters: RCW 29.36.010.

Registration

state Constitution Art. 6 § 7.

transfers and cancellations: Chapter 29.10 RCW.

Residence defined for purpose of registering and voting: RCW 29.01.140.

29.07.010 County auditor as chief registrar of voters, custodian of records—Deputy registrars. (1) In all counties, the county auditor shall be the chief registrar of voters for every precinct within the county. He or she shall appoint a deputy registrar for each precinct or group of precincts and shall appoint city or town clerks as deputy registrars to assist in registering persons residing in cities, towns, and rural precincts within the county.

(2) In addition, the auditor shall appoint a deputy registrar for each common school. A deputy registrar in a common school shall be a school official or school employee. The auditor shall appoint a deputy registrar for each fire station that he or she finds is convenient to the public for registration purposes and is adequately staffed so that registration would not be a great inconvenience for the fire station personnel. A fire station appointee shall be a person employed at the station.

(3) The auditor shall also appoint deputy registrars to provide voter registration services for each state office providing voter registration under RCW 29.07.025.

(4) A deputy registrar shall be a registered voter. Except for city and town clerks, each registrar shall hold office at the pleasure of the county auditor.

(5) The county auditor shall be the custodian of the official registration records of each precinct within that county. [1984 c 211 § 3; 1980 c 48 § 1; 1971 ex.s. c 202 § 4; 1965 c 9 § 29.07.010. Prior: 1957 c 251 § 4; prior: 1939 c 15 § 1, part; 1933 c 1 § 3, part; RRS § 5114-3, part; prior: 1891 c 104 §§ 1, part, 2, part; RRS §§ 5116, part, 5117, part.]

Intent—1984 c 211: See note following RCW 29.07.025.

Rural precinct defined: RCW 29.01.150.

29.07.015 Definitions. (1) A "permanent voter registration facility" means any offices or other locations specifically required to provide voter registration services under this chapter or the location of any deputy registrar appointed by the county auditor to serve for an indefinite period of time.

(2) A "temporary voter registration facility" means the location of any deputy registrar appointed by the county auditor to serve for a definite or limited period of time. [1985 c 205 § 15.]

29.07.020 City clerk as deputy registrar. The city clerk shall be a deputy registrar of voters in all precincts within the county. [1971 ex.s. c 202 § 5; 1965 c 9 § 29.07.020. Prior: 1957 c 251 § 5; prior: 1939 c 15 § 1, part; 1933 c 1 § 3, part; RRS § 5114-3, part; prior: 1891 c 104 §§ 1, part, 2, part; RRS §§ 5116, part, 5117, part.]

29.07.025 Voter registration in state offices. (1) The director or chief administrative officer of each state agency shall provide voter registration services for employees and the public within each office of that agency which is convenient to the public for registration purposes except where, or during such times as, the director or officer finds that there would be a great inconvenience to the public or to the operation of the agency due to inadequate staff time for this purpose.

(2) The secretary of state shall design and provide a standard notice informing the public of the availability of voter registration, which notice shall be posted in each state agency where such services are available. [1984 c 211 § 2.]

Intent—1984 c 211: "It is the intention of the legislature, in order to encourage the broadest possible participation in the electoral process by the citizens of the state of Washington, to make voter registration services available in state offices which have significant contact with the public." [1984 c 211 § 1.]

29.07.030 Expense of registration. The expense of registration in all rural precincts shall be paid by the county; in all precincts lying wholly within a city or town by the city or town. In precincts lying partly within and partly outside of a city or town, the expense of registration shall be apportioned between the county and city or town according to the number of voters registered in the precinct living within the city or town and the number living outside of it. [1965 c 9 § 29.07.030. Prior: 1939 c 82 § 1, part; 1933 c 1 § 4, part; RRS § 5114-4, part; prior: 1891 c 104 § 4; RRS § 5119.]

29.07.040 Fees of deputy registrars. Each deputy registrar, other than city or town clerks so deputized, shall be entitled to receive a fee of not less than twenty cents, the exact fee to be set by the board of county commissioners, for each elector registered: PROVIDED, That no employee of the county receiving a salary shall be entitled to such fees. [1971 ex.s. c 202 § 6; 1965 c 9 § 29.07.040. Prior: 1957 c 251 § 7; prior: (i) 1945 c 74 § 1; 1933 c 1 § 28; Rem. Supp. 1945 § 5114-28; prior: 1915 c 16 § 14; RRS § 5132. (ii) 1933 c 1 § 10, part; RRS § 5114-10, part; prior: 1919 c 163 § 11, part; 1915 c 16 § 13, part; 1905 c 171 § 4, part; 1889 p 417 § 13, part; RRS § 5131, part.]

29.07.050 Oaths administered to registration officers. The registration officers, including such clerks in their office as the county auditor may deputize to take registrations, shall take and subscribe to the following oath or affirmation before taking any registrations: "I, A.B., do swear (or affirm) that I will truly, faithfully and impartially perform my duties as registration officer, to the best of my judgment and abilities, and that I will register no person except upon his personal application before me." This oath shall be administered and certified to by an officer legally authorized to administer oaths, and shall be filed with the county auditor. [1971 ex.s. c 202 § 7; 1965 c 9 § 29.07.050. Prior: 1939 c 82 § 1, part; 1933 c 1 § 4, part; RRS § 5114-4, part.]

29.07.060 Oaths—Registration officers may administer, certify. The registration officers including deputized clerks, after they themselves have taken and subscribed to the oath prescribed for them, may administer such oaths and certify to the oath on such affidavits as are required in the procedure of registration of voters. [1973 1st ex.s. c 21 § 1; 1971 ex.s. c 202 § 8; 1965 c 9 § 29.07.060. Prior: (i) 1939 c 82 § 1, part; 1933 c 1 § 4, part; RRS § 5114-4, part. (ii) 1947 c 68 § 3, part; 1933 c 1 § 11, part; Rem. Supp. 1947 § 5114-11, part; prior: 1921 c 177 § 7, part; 1915 c 16 § 8, part; 1901 c 135 § 4, part; 1893 c 45 § 3, part; 1889 p 416 § 8, part; RRS § 5126, part.]

29.07.065 Identity of applicant for registration—Establishment—Voting age proof. In addition to other information required by this chapter, each applicant for registration shall establish his identity, unless personally known by the registration officer, by producing at least one of the following items:

(1) A social security card containing the applicant's signature. Whenever the social security record is so used, the registration officer shall enter the applicant's social security number upon the appropriate registration forms;

(2) A driver's license which contains the signature and/or a photograph of the applicant;

(3) A valid Washington state identicard;

(4) A nationally or regionally known credit card containing the signature and/or photograph of the applicant;

(5) An identification card issued by the United States, any state or any agency of either, of a kind commonly used to identify the members or employees of such government agencies (including military I.D. cards), and which contain the signature and/or the photograph of the applicant.

In addition, whenever the registration officer has a doubt as to whether the applicant is of legal voting age, such officer shall require the applicant to produce a record that establishes the applicant's date of birth.

Failure to produce such identification except when necessary to establish the applicant's date of birth at the time of registration as set forth in this section shall not deter the act of registration: PROVIDED, That registration officials shall indicate on the registration form by checking either "identification produced" or "identification not produced". [1986 c 167 § 4; 1973 1st ex.s. c 21 § 2.]

Severability—1986 c 167: See note following RCW 29.01.055.

29.07.070 Information from voter as to qualifications. Except as provided under RCW 29.07.260, an applicant for voter registration shall provide a voter registrar with the following information concerning his or her qualifications as a voter in this state:

- (1) The address of the last former registration of the applicant as a voter in the state;
- (2) The applicant's full name;
- (3) The applicant's date of birth;
- (4) The address of the applicant's residence for voting purposes;
- (5) The mailing address of the applicant if that address is not the same as the address in subsection (4) of this section;
- (6) The sex of the applicant;
- (7) A declaration that the applicant is a citizen of the United States; and
- (8) Any other information that the secretary of state determines is necessary to establish the identity of the applicant and prevent duplicate or fraudulent voter registrations.

This information shall be recorded on a single registration form to be prescribed by the secretary of state.

The following warning shall appear in a conspicuous place on the voter registration form:

"Knowingly providing false information on this voter registration form or knowingly making a false declaration about your qualifications for registration is a class C felony that is punishable by imprisonment for up to five years, or by a fine not to exceed ten thousand dollars, or by both such imprisonment and fine." [1990 c 143 § 7; 1973 1st ex.s. c 21 § 3; 1971 ex.s. c 202 § 9; 1965 c 9 § 29.07.070. Prior: 1947 c 68 § 3, part; 1933 c 1 § 11, part; Rem. Supp. 1947 § 5114-11, part; prior: 1921 c 177 § 7, part; 1915 c 16 § 8, part; 1901 c 135 § 4, part; 1893 c 45 § 3, part; 1889 p 416 § 8, part; RRS § 5126, part.]

Effective date—1990 c 143 §§ 1-8: See note following RCW 29.07.260.

Civil disabilities of wife abolished: RCW 26.16.160.

Copy of instrument restoring civil rights as evidence: RCW 5.44.090.

Qualifications of electors: State Constitution Art. 6 § 1 (Amendment 5).

Residence defined: RCW 29.01.140.

Restoration of civil rights: Chapter 9.96 RCW.

Subversive activities as disqualification for voting: RCW 9.81.040.

United States constitutional amendment conventions, delegates, qualifications of voters: RCW 29.74.090.

Who disqualified: State Constitution Art. 6 § 3.

29.07.080 Oath of applicant. For voter registrations executed under this section, the registrar shall require the applicant to sign the following oath:

"I declare that the facts relating to my qualifications as a voter recorded on this voter registration form are true. I am a citizen of the United States, I am not presently denied my civil rights as a result of being convicted of an infamous crime, I will have lived in this state, county, and precinct for thirty days immediately preceding the next election at which I offer to vote, and I will be at least eighteen years of age at the time of voting."

The registration officer shall attest and date this oath in the following form:

"Subscribed and sworn to before me this . . . day of . . . , 19. . . , . . . Registration Officer."

[1990 c 143 § 8; 1973 1st ex.s. c 21 § 4; 1971 ex.s. c 202 § 10; 1965 c 9 § 29.07.080. Prior: 1933 c 1 § 12; RRS § 5114-12.]

Effective date—1990 c 143 §§ 1-8: See note following RCW 29.07.260.

29.07.090 Signature upon card for secretary of state's file. At the time of registering any voter, each registration officer shall require him to sign his name upon a card containing spaces for his surname followed by his given name or names and the name of the county and city or town, with post office and street address, and the name or number of the precinct, in which the voter is registered. [1973 1st ex.s. c 21 § 5; 1971 ex.s. c 202 § 11; 1965 c 9 § 29.07.090. Prior: 1933 c 1 § 13, part; RRS § 5114-13, part.]

29.07.092 New voter registration or transfer—Acknowledgment. The county auditor shall acknowledge each new voter registration or transfer by providing or sending the voter a card identifying his current precinct and containing such other information as may be prescribed by the secretary of state. [1975 1st ex.s. c 184 § 1; 1973 c 153 § 2.]

Severability—1975 1st ex.s. c 184: "If any provision of this 1975 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 1st ex.s. c 184 § 5.]

29.07.095 Registration of person temporarily residing outside county of permanent residence. Any person temporarily residing outside of the county of his permanent residence, but within the state of Washington, may register with the registration officer of the place where he is temporarily residing in the usual manner as required in this chapter. The registration officer administering the oath and receiving the application and registration forms as provided in RCW 29.07.060 through 29.07.090 shall transmit the same to the county auditor of the county where the applicant permanently resides for processing in the same manner as though the applicant had personally applied directly to the registration officer of his residence.

Notwithstanding the provisions of RCW 29.07.160 the registration application shall be received and acted upon immediately by the registration officer of the place of permanent residence of the applicant if the application was received and oath administered by the registration officer at the place of temporary residence not less than thirty days preceding the next election. [1973 1st ex.s. c 21 § 6; 1971 ex.s. c 202 § 12; 1965 c 9 § 29.07.095. Prior: 1957 c 251 § 13.]

29.07.100 Time and places for registration—Cities and towns. Registration officers in incorporated cities and towns shall keep their respective offices open for registration of voters during the days and hours when the same are open for the transaction of public business: PROVIDED, That in cities of the first class, the county auditor shall establish on a permanent basis at least one registration office in each

legislative district that lies wholly or partially within the city limits by appointing persons as deputy registrars who may register any eligible elector of such city.

Each such deputy registrar, except for city and town clerks, shall hold office at the pleasure of the county auditor and shall maintain a fixed place, conveniently located, for the registration of voters but nothing in this section shall preclude door-to-door registration including registration from a portable office as in a trailer. [1971 ex.s. c 202 § 13; 1965 c 9 § 29.07.100. Prior: 1957 c 251 § 10; prior: 1947 c 68 § 1, part; 1945 c 95 § 1, part; 1933 c 1 § 6, part; Rem. Supp. 1947 § 5114-6, part; prior: 1919 c 163 § 6, part; 1915 c 16 § 6, part; 1901 c 35 § 5, part; 1893 c 45 § 1, part; 1889 p 415 § 6, part; RRS § 5124, part.]

29.07.105 Time and places for registration—Additional temporary facilities in first, second, third class cities. In all cities of the first, second and third class, the governing body shall by ordinance with the consent of the county auditor provide for additional temporary registration facilities during the fifteen day period, excepting Sundays, prior to the last day to register in order to be eligible to vote at a state primary election and during the fifteen day period, excepting Sundays, prior to the last day to register in order to be eligible to vote at a state general election by stationing deputy registrars at stores, public buildings or other temporary locations. The county auditor may deputize additional deputy registrars for the periods of temporary registration if so requested by the governing body of the city. The number of such temporary registration places to be so established and the hours to be maintained shall be, in the judgment of the governing body of the city concerned, adequate to afford ample opportunity for all qualified electors to register for voting, but in no event shall there be less than two such temporary registration places so established. Nothing in this section shall preclude door-to-door registration including registration from a portable office as in a trailer. [1971 ex.s. c 202 § 14; 1965 c 9 § 29.07.105. Prior: 1957 c 251 § 12.]

29.07.110 Time and places for registration—Deputy registrars located outside county courthouse. Every deputy registrar located outside the county courthouse shall keep registration supplies at his usual place of residence or usual place of business at reasonable hours and at the end of each week mail to the county auditor the cards of those who have registered during the week: PROVIDED, That with the written consent of the county auditor a deputy registrar may designate some centrally located place for registration in lieu of the usual place where registration supplies are kept by giving notice thereof in such manner as he may deem expedient stating therein the days and hours when the place will be open for registration: PROVIDED FURTHER, That such consent of the county auditor may include authorization for door-to-door registration including registration from a portable office as in a trailer and the person or persons so deputized may register all eligible electors residing in any precinct within the county concerned. [1971 ex.s. c 202 § 15; 1965 c 9 § 29.07.110. Prior: 1957 c 251 § 11; prior: 1947 c 68 § 1, part; 1945 c 95 § 1, part; 1933 c 1 § 6, part; Rem. Supp. 1947 § 5114-6, part; prior: 1919 c 163 § 6,

part; 1915 c 16 § 6, part; 1901 c 135 § 5, part; 1893 c 45 § 1, part; 1889 p 415 § 6, part; RRS § 5124, part.]

29.07.115 Registration records—Weekly transmittal. Once weekly, the deputy registrars shall transmit all registration records properly completed to the county auditor. [1971 ex.s. c 202 § 23.]

29.07.120 Registrar's cards—Weekly transmittal. On each Monday next following the registration of any voter each county auditor shall transmit all cards required by RCW 29.07.090 which have been executed and received in his office during the prior week to the secretary of state for filing in his office. Each lot must be accompanied by the certificate of the registrar that the cards so transmitted are the original cards, that they were signed by the voters whose names appear thereon and that the voters are registered in the precincts and from the addresses shown thereon. [1971 ex.s. c 202 § 16; 1965 c 9 § 29.07.120. Prior: 1933 c 1 § 13, part; RRS § 5114-13, part.]

29.07.130 Registration records—Originals and automated files—Public access. (1) The cards required by RCW 29.07.090 shall be kept on file in the office of the secretary of state in such manner as will be most convenient for, and for the sole purpose of, checking initiative and referendum petitions. The secretary may maintain an automated file of voter registration information for any county or counties in lieu of filing or maintaining these voter registration cards if the automated file includes all of the information from the cards including, but not limited to, a retrievable facsimile of the signature of each voter of that county or counties. Such an automated file may be used only for the purpose authorized for the use of the cards.

(2) The county auditor shall have custody of the voter registration records for each county. The original voter registration form, as established by RCW 29.07.070, shall be filed alphabetically without regard to precinct. An automated file of all registered voters shall be maintained pursuant to RCW 29.07.220. An auditor may maintain the automated file in lieu of filing or maintaining the original voter registration forms if the automated file includes all of the information from the original voter registration forms including, but not limited to, a retrievable facsimile of each voter's signature.

(3) The following information contained in voter registration records or files regarding a voter or a group of voters is available for public inspection and copying: The voter's name, gender, voting record, date of registration, and registration number. The address of a registered voter or addresses of a group of voters are available for public inspection and copying except to the extent that the address of a particular voter is not so available under RCW 42.17.310(1)(bb). The political jurisdictions within which a voter or group of voters reside are also available for public inspection and copying except that the political jurisdictions within which a particular voter resides are not available for such inspection and copying if the address of the voter is not so available under RCW 42.17.310(1)(bb). No other information from voter registration records or files is available for public inspection or copying. [1991 c 81 § 21;

1971 ex.s. c 202 § 17; 1965 c 9 § 29.07.130. Prior: 1933 c 1 § 13, part; RRS § 5114-13, part.]

Effective date—1991 c 81: See note following RCW 29.85.010.

29.07.140 Form of registration records—Single completion—Furnished by secretary of state. (1) The secretary of state shall specify by rule the form of the voter registration records required under RCW 29.07.070 and 29.07.260. These forms shall be compatible with existing voter registration records. An applicant for voter registration shall be required to complete only one form and to provide the required information other than his or her signature no more than one time.

These forms shall also contain information for the voter to transfer his or her registration.

(2) The secretary of state shall adopt by rule a uniform data format for transferring voter registration records on machine-readable media.

(3) All registration forms required under RCW 29.07.070 and 29.07.260 shall be produced and furnished by the secretary of state to the county auditors and the department of licensing.

(4) The secretary of state shall produce and distribute any instructional material and other supplies needed to implement RCW 29.07.260 through 29.07.300 and 46.20.155. [1990 c 143 § 9; 1973 1st ex.s. c 21 § 7; 1971 ex.s. c 202 § 18; 1965 c 9 § 29.07.140. Prior: (i) 1933 c 1 § 30; RRS § 5114-30. (ii) 1933 c 1 § 13, part; RRS § 5114-13, part.]

29.07.160 Closing registration files—Notice. The registration files of all precincts shall be closed against original registration or transfers for thirty days immediately preceding every election and primary to be held in such precincts, respectively.

The county auditor shall give notice of the closing of said files for original registration and transfer by one publication in a newspaper of general circulation in the county at least five days before such closing, except as provided for special elections in accordance with *section 3 of this 1980 act. [1980 c 3 § 4; 1974 ex.s. c 127 § 4; 1971 ex.s. c 202 § 20; 1965 c 9 § 29.07.160. Prior: 1947 c 68 § 2; 1933 c 1 § 9; Rem. Supp. 1947 § 5114-9.]

***Reviser's note:** Section 3 of this 1980 act [1980 c 3 § 3] was a temporary section, uncodified.

29.07.170 Delivery of certified registration records to polls. Immediately upon closing his registration files preceding an election, the county auditor shall insert therein his certificate as to the authenticity thereof. He shall then deliver the registration records for each precinct thus certified to the inspector or one of the judges thereof at the proper polling place before the polls open. [1971 ex.s. c 202 § 21; 1965 c 9 § 29.07.170. Prior: 1957 c 251 § 8; prior: 1933 c 1 § 10, part; RRS § 5114-10, part; prior: 1919 c 163 § 11, part; 1915 c 16 § 13, part; 1905 c 171 § 4, part; 1889 p 417 § 13, part; RRS § 5131, part.]

29.07.180 Return of registration records after election—Public records. The registration records of each precinct delivered to the precinct election officers for use on

the day of an election held in that precinct shall be returned by them to the county auditor upon the completion of the count of the votes cast in the precinct at that election. While in possession of the county auditor they shall be open to public inspection under such reasonable rules and regulations as may be prescribed therefor. [1971 ex.s. c 202 § 22; 1965 c 9 § 29.07.180. Prior: 1933 c 1 § 8, part; RRS § 5114-8, part; prior: 1919 c 163 § 7, part; 1915 c 16 § 7, part; 1905 c 171 § 3, part; 1901 c 135 § 3, part; 1893 c 45 § 2, part; 1889 p 415 § 7, part; RRS § 5125, part.]

29.07.220 Computer file of voter registration records—Establishment—Duties of county auditor. Each county auditor shall maintain a computer file on magnetic tape or disk, punched cards, or other form of data storage containing the records of all registered voters within the county. Where it is necessary or advisable, the auditor may provide for the establishment and maintenance of such files by private contract or through interlocal agreement as provided by chapter 39.34 RCW, as it now exists or is hereafter amended. The computer file shall include, but not be limited to, each voter's name, residence address, sex, date of registration, applicable taxing district and precinct codes and the last date on which the individual voted. The county auditor shall subsequently record each consecutive date upon which the individual has voted and retain at least the last five such consecutive dates: PROVIDED, That if the voter has not voted at least five times since establishing his or her current registration record, only the available dates shall be included. [1991 c 81 § 22; 1974 ex.s. c 127 § 12.]

Effective date—1991 c 81: See note following RCW 29.85.010.

29.07.230 Payment to counties for maintenance of voter registration records on electronic data processing systems. To compensate counties with fewer than ten thousand registered voters at the time of the most recent state general election for unrecoverable costs incident to the maintenance of voter registration records on electronic data processing systems, the secretary of state shall, in June of each year, pay such counties an amount equal to thirty cents for each registered voter in the county at the time of the most recent state general election. [1980 c 32 § 6; 1974 ex.s. c 127 § 13.]

29.07.240 Computer file of voter registration records—Rules and regulations—Assistance. The secretary of state, as chief election officer, shall adopt rules and regulations, not inconsistent with the provisions of this chapter to:

(1) Facilitate the establishment and maintenance of voter registration records by county auditors and the use of voter registration information in the conduct of elections; and

(2) Establish standards and procedures for the establishment and maintenance of voter registration records on electronic data processing systems.

He shall provide planning, coordination, training and other assistance in the conversion of voter registration files to maintenance by electronic data processing and he shall administer the voter registration assistance account. [1974 ex.s. c 127 § 14.]

29.07.250 Handling of reports filed under public disclosure law. See RCW 29.04.025.

29.07.260 Registration with driver's license application or renewal. (1) A person may register to vote or transfer a voter registration when he or she applies for or renews a driver's license or identification card under chapter 46.20 RCW.

(2) To register to vote or transfer a voter registration under this section, the applicant shall provide the following:

- (a) His or her full name;
- (b) Whether the address in the driver's license file is the same as his or her residence for voting purposes;
- (c) The address of the residence for voting purposes if it is different from the address in the driver's license file;
- (d) His or her mailing address if it is not the same as the address in (c) of this subsection;
- (e) Additional information on the physical location of that voting residence if it is only identified by route or box;
- (f) The last address at which he or she was registered to vote in this state;
- (g) A declaration that he or she is a citizen of the United States; and
- (h) Any other information that the secretary of state determines is necessary to establish the identity of the applicant and to prevent duplicate or fraudulent voter registrations.

(3) The following warning shall appear in a conspicuous place on the voter registration form:

"Knowingly providing false information on this voter registration form or knowingly making a false declaration about your qualifications for registration is a class C felony that is punishable by imprisonment for up to five years, or by a fine not to exceed ten thousand dollars, or by both such imprisonment and fine."

(4) The applicant shall sign a portion of the form that can be used as an initiative signature card for the verification of petition signatures by the secretary of state and shall sign and attest to the following oath:

"I declare that the facts relating to my qualifications as a voter recorded on this voter registration form are true. I am a citizen of the United States, I am not presently denied my civil rights as a result of being convicted of an infamous crime, I will have lived in this state, county, and precinct for thirty days immediately preceding the next election at which I offer to vote, and I will be at least eighteen years of age at the time of voting."

(5) The driver licensing agent shall record that the applicant has requested to register to vote or transfer a voter registration. [1990 c 143 § 1.]

Effective date—1990 c 143 §§ 1-8: "Sections 1 through 8 of this act shall take effect January 1, 1992." [1990 c 143 § 13.]

Driver licensing agents duties regarding voter registration: RCW 46.20.155.

29.07.270 Duties of secretary of state and department of licensing. (1) The secretary of state shall provide for the voter registration forms submitted under RCW 29.07.260 to be collected from each driver's licensing facility at least once each week.

(2) The department of licensing shall produce and transmit to the secretary of state a machine-readable file containing the following information from the records of each individual who requested a voter registration or transfer at a driver's license facility during each period for which forms are transmitted under subsection (1) of this section: The name, address, date of birth, and sex of the applicant and the driver's license number, the date on which the application for voter registration or transfer was submitted, and the location of the office at which the application was submitted. [1990 c 143 § 2.]

Effective date—1990 c 143 §§ 1-8: See note following RCW 29.07.260.

29.07.280 Forwarding of forms to voter's county. The voter registration forms from the driver's licensing facilities shall be forwarded to the county in which the applicant has registered to vote no later than ten days after the date on which the forms were to be collected under RCW 29.07.270(1). [1990 c 143 § 3.]

Effective date—1990 c 143: See note following RCW 29.07.260.

29.07.290 Records—Correction, sorting, transmittal. (1) For any voter registration application where the address for voting purposes is different from the address in the machine-readable file received from the department of licensing, the secretary of state shall amend the record of that application in the machine-readable file to reflect the county in which the applicant has registered to vote.

(2) The secretary of state shall sort the records in the machine-readable file according to the county in which the applicant registered to vote and produce a file of voter registration transactions for each county. The records of each county shall be transmitted on or through whatever medium the county auditor determines will best facilitate the incorporation of these records into the existing voter registration files of that county.

(3) The secretary of state shall produce a list of voter registration transactions for each county and transmit a copy of this list to that county with each file of voter registration transactions. [1990 c 143 § 4.]

Effective date—1990 c 143 §§ 1-8: See note following RCW 29.07.260.

29.07.300 Delivery of files to auditors. The secretary of state shall deliver the files and lists of voter registration information produced under RCW 29.07.290 to the county auditors no later than ten days after the date on which that information was to be transmitted under RCW 29.07.270(1). The county auditor shall process these records in the same manner as voter registrations executed under RCW 29.07.080. [1990 c 143 § 5.]

Effective date—1990 c 143: See note following RCW 29.07.260.

29.07.310 Driver licensing and voter registration—Duties of secretary of state. The secretary of state shall:

(1) Coordinate with the department of licensing and county auditors on the implementation of RCW 29.07.260 through 29.07.300 and 46.20.155;

(2) Adopt rules governing the delivery and processing of voter registrations submitted under RCW 29.07.260 and

insuring the integrity of the voter registration process and of the data on registered voters collected under RCW 29.07.260 through 29.07.300 and 46.20.155;

(3) Develop and enter into interlocal agreements with county auditors and with the department of licensing governing the systems development, testing, implementation, and other data processing services provided by the county auditors and the department of licensing in carrying out RCW 29.07.260 through 29.07.300 and 46.20.155 and providing for the reimbursement of all costs to county auditors and the department of licensing for these data processing services. [1990 c 143 § 10.]

29.07.320 Driver licensing and voter registration—Funding. The secretary of state shall include in his or her biennial budget requests sufficient funds to carry out the purposes of RCW 29.07.260 through 29.07.300 and 46.20.155, including the reimbursement of costs to county auditors and the department of licensing under RCW 29.07.310(3). [1990 c 143 § 11.]

29.07.400 Registration law—Registrar violations. If any registrar or deputy registrar:

(1) Willfully neglects or refuses to perform any duty required by law in connection with the registration of voters; or

(2) Willfully neglects or refuses to perform such duty in the manner required by voter registration law; or

(3) Enters or causes or permits to be entered on the voter registration records the name of any person in any other manner or at any other time than as prescribed by voter registration law or enters or causes or permits to be entered on such records the name of any person not entitled to be thereon; or

(4) Destroys, mutilates, conceals, changes, or alters any registration record in connection therewith except as authorized by voter registration law, he or she is guilty of a gross misdemeanor punishable to the same extent as a gross misdemeanor that is punishable under RCW 9A.20.021. [1991 c 81 § 11; 1965 c 9 § 29.85.190. Prior: 1933 c 1 § 26; RRS § 5114-26; prior: 1889 p 418 § 15; RRS § 5133. Formerly RCW 29.85.190.]

Effective date—1991 c 81: See note following RCW 29.85.010.

29.07.410 Registration law—Voter violations. Any person who:

(1) Knowingly provides false information on an application for voter registration under any provision of this title;

(2) Knowingly makes or attests to a false declaration as to his or her qualifications as a voter;

(3) Knowingly causes or permits himself or herself to be registered using the name of another person;

(4) Knowingly causes himself or herself to be registered under two or more different names; or

(5) Knowingly causes any person to be registered or causes any registration to be transferred or canceled except as authorized under this title,

is guilty of a class C felony punishable under RCW 9A.20.021. [1991 c 81 § 12; 1990 c 143 § 12; 1977 ex.s. c 361 § 110; 1965 c 9 § 29.85.200. Prior: 1933 c 1 § 27;

RRS § 5114-27; prior: 1893 c 45 § 5; 1889 p 418 § 16; RRS § 5136. Formerly RCW 29.85.200.]

Effective date—1991 c 81: See note following RCW 29.85.010.

Effective date—Severability—1977 ex.s. c 361: See notes following RCW 29.01.006.

Chapter 29.10

REGISTRATION TRANSFERS AND CANCELLATIONS

Sections

- 29.10.020 Transfer from one address to another in same county—Rules on transfer by telephone.
- 29.10.040 Reregistration on transfer to another county.
- 29.10.051 Voter name change.
- 29.10.060 Change of precinct boundaries—Transfer of registration.
- 29.10.080 Cancellation for failure to vote.
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- 29.10.130 Challenge of registration—Affidavit—Administration, notice of challenge.
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Registration

of person temporarily residing outside county of residence: RCW 29.07.095.

of voters: Chapter 29.07 RCW.

29.10.020 Transfer from one address to another in same county—Rules on transfer by telephone. A registered voter who changes his or her residence from one address to another within the same county shall, to maintain a valid voter registration, transfer his or her registration to the new address in one of the following ways: (1) Sending to the county auditor a signed request stating the voter's present address and precinct and the address and precinct from which the voter was last registered; (2) appearing in person before the auditor and signing such a request; (3) transferring the registration in the manner provided by RCW 29.10.170; or (4) telephoning the county auditor to transfer the registration. The telephone call transferring a registration by telephone must be received by the auditor before the precinct registration files are closed to new registrations for the next primary or special or general election in which the voter participates.

The secretary of state shall adopt rules facilitating the transfer of a registration by telephone authorized by this section. The rules shall include, but need not be limited to, those establishing the form which must be signed by a voter subsequent to transferring a registration by telephone. [1991 c 81 § 23; 1975 1st ex.s. c 184 § 2; 1971 ex.s. c 202 § 24; 1965 c 9 § 29.10.020. Prior: 1955 c 181 § 4; prior: 1933 c 1 § 14, part; RRS § 5114-14, part; prior: 1919 c 163 § 9, part; 1915 c 16 § 9, part; 1889 p 417 § 12, part; RRS § 5129, part.]

Effective date—1991 c 81: See note following RCW 29.85.010.

Severability—1975 1st ex.s. c 184: See note following RCW 29.07.092.

Rural precinct defined: RCW 29.01.150.

29.10.040 Reregistration on transfer to another county. Except as provided in RCW 29.10.170, a registered voter who changes his or her residence from one county to another county, shall be required to register anew. Before registering anew, the voter shall sign an authorization to cancel his or her present registration. The authorization shall be on a form prescribed by the secretary of state by rule. The authorization shall be forwarded promptly to the county auditor of the county in which the voter was previously registered. The county auditor of the county where the previous registration was made shall cancel the registration of the voter if it appears that the signatures in the registration record and on the cancellation authorization form were made by the same person. [1991 c 81 § 24; 1977 ex.s. c 361 § 26; 1971 ex.s. c 202 § 26; 1965 c 9 § 29.10.040. Prior: 1933 c 1 § 15; RRS § 5114-15.]

Effective date—1991 c 81: See note following RCW 29.85.010.

Effective date—Severability—1977 ex.s. c 361: See notes following RCW 29.01.006.

City precinct defined: RCW 29.01.030.

Precinct defined: RCW 29.01.120.

Residence defined: RCW 29.01.140.

Rural precinct defined: RCW 29.01.150.

29.10.051 Voter name change. To maintain a valid voter registration, a person who changes his or her name shall notify the county auditor regarding the name change in one of the following ways: (1) By sending the auditor a notice clearly identifying the name under which he or she is registered to vote, the voter's new name, and the voter's residence. Such a notice must be signed by the voter using both this former name and the voter's new name; (2) by appearing in person before the auditor or a deputy registrar and signing such a change-of-name notice; or (3) by signing such a change-of-name notice at the voter's precinct polling place on the day of a primary or special or general election.

A properly registered voter who files a change-of-name notice at the voter's precinct polling place during a primary or election and who desires to vote at that primary or election shall sign the poll book using the voter's former and new names in the same manner as is required for the change-of-name notice.

The secretary of state may adopt rules facilitating the implementation of this section. [1991 c 81 § 25.]

Effective date—1991 c 81: See note following RCW 29.85.010.

29.10.060 Change of precinct boundaries—Transfer of registration. If the boundaries of any city, township, or rural precinct are changed in the manner provided by law, the county auditor shall transfer the registration cards of every registered voter whose place of residence is affected thereby to the files of the proper precinct, noting thereon the name or number of the new precinct, or change the addresses, the precinct names or numbers, and the special district designations for those registered voters on the voter registration lists of the county. It shall not be necessary for any registered voter whose residence has been changed from one

precinct to another, by a change of boundary, to apply to the registration officer for a transfer of registration. The county auditor shall mail to each registrant in the new precinct a notice that his precinct has been changed from to, and that thereafter he will be entitled to vote in the new precinct, giving the name or number. [1971 ex.s. c 202 § 27; 1965 c 9 § 29.10.060. Prior: 1933 c 1 § 17; RRS § 5114-17.]

29.10.080 Cancellation for failure to vote. (1) After each state general election and prior to January 1st of the next calendar year, the county auditor shall cancel the voter registration record of any registered voter who fails to meet the requirements of subsection (2) of this section for retaining registered status. He shall notify the voter whose registration has been canceled, by mail, at his last registration address, of the fact that his registration has been canceled, and that he will not be entitled to vote at any election until he has registered anew. No voter's registration shall be canceled if his original registration was made less than twenty-four months prior to the cancellation date. The secretary of state shall be notified immediately of all such cancellations.

(2) A registered voter shall retain such status by either having voted at (a) any election, general or special, or at any primary within the past twenty-four months, or (b) the most recent presidential election. [1977 ex.s. c 361 § 27; 1971 ex.s. c 202 § 28; 1967 ex.s. c 109 § 3; 1965 c 9 § 29.10.080. Prior: 1945 c 30 § 1; 1933 c 1 § 19; Rem. Supp. 1945 § 5114-19.]

Effective date—Severability—1977 ex.s. c 361: See notes following RCW 29.01.006.

29.10.090 Cancellation for death. The local registrar of vital statistics in cities of the first class shall submit monthly to the county auditor a list of the names and addresses, if known, of all persons over eighteen years of age who have died.

The registrar of vital statistics of the state shall supply such monthly lists for each county of the state, exclusive of cities of the first class, to the county auditor thereof. The county auditors shall compare such lists with the registration records and cancel the registrations of deceased voters.

In addition to the above manner of canceling registration records of deceased voters, any registered voter may sign a statement, subject to the penalties of perjury, to the effect that to his personal knowledge or belief another registered voter is deceased. This statement may be filed with any registration officer and the deputy registrar shall promptly forward such statement to the county auditor. Upon the receipt of such signed statement, the county auditor shall cancel the registration records concerned and so notify the secretary of state. Upon receipt of such notice, the secretary of state shall in turn cancel his copy of said registration record.

The secretary of state as chief elections officer shall cause such form to be designed to carry out the provisions of this section. The county auditors shall have such forms available for public use. Further, each such public officer having jurisdiction of an election shall make available a reasonable supply of such forms for the use of the precinct

election officers at each polling place on the day of an election. [1983 c 110 § 1; 1971 ex.s. c 202 § 29; 1965 c 9 § 29.10.090. Prior: 1961 c 32 § 1; 1933 c 1 § 20; RRS § 5114-20.]

29.10.095 Report of deaths to secretary of state. On or before the fifteenth day of July and quarterly thereafter, the local registrar of vital statistics in cities of the first class and the registrar of vital statistics of the state shall file a sworn statement with the secretary of state. The form of said statement shall be furnished by the secretary and shall recite the number of deaths that have occurred during the three months' period immediately preceding the date of said report and the fact that the county auditor has been notified. The number of deaths shall be further segregated as to city, town or rural areas. [1971 ex.s. c 202 § 30; 1965 c 9 § 29.10.095. Prior: 1951 c 250 § 1.]

29.10.100 Weekly report of transfers and cancellations. On the Monday next following the transfer or cancellation of the registration of any voter, each county auditor must certify to all transfers or cancellations made during the prior week to the secretary of state. The certificate shall set forth the name of each voter whose registration has been transferred or canceled, the county, city or town, and precinct in which he was registered and, in case of a transfer, also the name of the county and city or town, the name or number of the precinct and the post office address (including street and number) to which the registration of the voter was transferred. [1971 ex.s. c 202 § 31; 1965 c 9 § 29.10.100. Prior: 1933 c 1 § 13, part; RRS § 5114-13, part.]

29.10.110 Record of cancellations. Every county auditor shall carefully preserve in a separate file or list the registration records of persons whose voter registrations have been canceled as authorized under this title. The files or lists shall be kept in the manner prescribed by rule by the secretary of state. Information from such canceled registration records is available for public inspection and copying to the same extent established by RCW 29.07.130 for other voter registration information.

The county auditor may destroy the voter registration information and records of any person whose voter registration has been canceled for a period of two years or more. [1991 c 81 § 26; 1971 ex.s. c 202 § 32; 1965 ex.s. c 156 § 1; 1965 c 9 § 29.10.110. Prior: 1961 c 32 § 2; 1947 c 85 § 5; 1933 c 1 § 21; Rem. Supp. 1947 § 5114-21.]

Effective date—1991 c 81: See note following RCW 29.85.010.

29.10.125 Challenge of registration—Initiation. Registration of a person as a voter is presumptive evidence of his or her right to vote at any primary or election, general or special. A person's right to vote may be challenged at the polls only by a precinct election officer. A challenge may be made only upon the belief or knowledge of the challenging officer that the voter is unqualified. The challenge must be supported by evidence or testimony given to the county canvassing board under RCW 29.10.127 and may not be based on unsupported allegations or allegations by anonymous third parties. The identity of the challenger,

and any third person involved in the challenge, shall be public record and shall be announced at the time the challenge is made.

Challenges initiated by a registered voter must be filed not later than the day before any primary or election, general or special, at the office of the appropriate county auditor. A challenged voter may properly transfer or reregister until three days before the primary or election, general or special, by applying personally to the county auditor. [1987 c 288 § 1; 1983 1st ex.s. c 30 § 2.]

29.10.127 Challenge of registration—Voting by person challenged—Burden of proof, procedures. When the right of a person has been challenged under RCW 29.10.125 or 29.10.130(2), the challenged person shall be permitted to vote a ballot which shall be placed in a sealed envelope separate from other voted ballots. In precincts where voting machines are used, any person whose right to vote is challenged under RCW 29.10.125 or 29.10.130(2) shall be furnished a paper ballot, which shall be placed in a sealed envelope after being marked. Included with the challenged ballot shall be (1) an affidavit filed under RCW 29.10.130 challenging the person's right to vote or (2) an affidavit signed by the precinct election officer and any third party involved in the officer's challenge and stating the reasons the voter is being challenged. The sealed ballots of challenged voters shall be transmitted at the close of the election to the canvassing board or other authority charged by law with canvassing the returns of the particular primary or election. The county auditor shall notify the challenger and the challenged voter, by certified mail, of the time and place at which the county canvassing board will meet to rule on challenged ballots. If the challenge is made by a precinct election officer under RCW 29.10.125, the officer must appear in person before the board unless he or she has received written authorization from the canvassing board to submit an affidavit supporting the challenge. If the challenging officer has based his or her challenge upon evidence provided by a third party, that third party must appear with the challenging officer before the canvassing board, unless he or she has received written authorization from the canvassing board to submit an affidavit supporting the challenge. If the challenge is filed under RCW 29.10.130, the challenger must either appear in person before the board or submit an affidavit supporting the challenge. The challenging party must prove to the canvassing board by clear and convincing evidence that the challenged voter's registration is improper. If the challenging party fails to meet this burden, the challenged ballot shall be accepted as valid and counted. The canvassing board shall give the challenged voter the opportunity to present testimony, either in person or by affidavit, and evidence to the canvassing board before making their determination. All challenged ballots must be determined no later than the time of canvassing for the particular primary or election. The decision of the canvassing board or other authority charged by law with canvassing the returns shall be final. Challenges of absentee ballots shall be determined according to RCW 29.36.100. [1987 c 288 § 2; 1983 1st ex.s. c 30 § 3.]

29.10.130 Challenge of registration—Affidavit—Administration, notice of challenge. (1) Any registered voter may request that the registration of another voter be canceled if he or she believes that the voter does not meet the requirements of Article VI, section 1 of the state Constitution or that voter no longer maintains a legal voting residence at the address shown on his or her registration record. The challenger shall file with the county auditor a signed affidavit subject to the penalties of perjury, to the effect that to his or her personal knowledge and belief another registered voter does not actually reside at the address as given on his or her registration record or is otherwise not a qualified voter and that the voter in question is not protected by the provisions of Article VI, section 4, of the Constitution of the state of Washington. The person filing the challenge must furnish the address at which the challenged voter actually resides.

(2) Any such challenge of a voter's registration and right to vote made less than thirty days before a primary or election, special or general, shall be administered under RCW 29.10.127. The county auditor shall notify the challenged voter and the precinct election officers in the voter's precinct that a challenge has been filed, provide the name of the challenger, and instruct both the precinct election officers and the voter that, in the event the challenged voter desires to vote at the ensuing primary or election, a challenged ballot will be provided. The voter shall also be informed that the status of his or her registration and the disposition of any challenged ballot will be determined by the county canvassing board in the manner provided by RCW 29.10.127. If the challenged voter does not vote at the ensuing primary or election, the challenge shall be processed in the same manner as challenges made more than thirty days prior to the primary or election under RCW 29.10.140. [1987 c 288 § 3; 1983 1st ex.s. c 30 § 4; 1967 c 225 § 2; 1965 ex.s. c 156 § 2.]

29.10.140 Challenge of registration—Procedural steps before cancellation. All challenges of voter registration under RCW 29.10.130 made thirty days or more before a primary or election, general or special, shall be delivered to the appropriate county auditor who shall notify the challenged voter, by certified mail, that his or her voter registration has been challenged.

The notification shall be mailed to the address at which the challenged voter is registered, any address provided by the challenger under RCW 29.10.130, and to any other address at which the individual whose registration is being challenged is alleged to reside or at which the county auditor would reasonably expect that individual to receive notice of the challenge of his or her voter registration. Included in the notification shall be a request that the challenged voter appear at a hearing to be held within ten days of the mailing of the request, at the place, day, and hour stated, in order to determine the validity of his or her registration. The challenger shall be provided with a copy of this notification and request. If either the challenger or the challenged voter is unable to appear in person, he or she may file a reply by means of an affidavit stating under oath the reasons he or she believes the registration to be invalid or valid.

If both the challenger and the challenged voter file affidavits instead of appearing in person, an evaluation of the affidavits by the county auditor constitutes a hearing for the purposes of this section.

The county auditor shall hold a hearing at which time both parties may present their facts and arguments. After reviewing the facts and arguments, including any evidence submitted by either side, the county auditor shall rule as to the validity or invalidity of the challenged registration. His or her ruling is final subject only to a petition for judicial review by the superior court under chapter 34.05 RCW. If either party, or both parties, fail to appear at the meeting or fail to file an affidavit, the county auditor shall determine the status of the registration based on his or her evaluation of the available facts. [1987 c 288 § 4; 1983 1st ex.s. c 30 § 5; 1971 ex.s. c 202 § 34; 1967 c 225 § 3; 1965 ex.s. c 156 § 3.]

29.10.150 Challenge of registration—Forms, availability. The secretary of state as chief elections officer shall cause appropriate forms to be designed to carry out the provisions of RCW 29.10.130 through *29.10.160. The county auditors and registrars shall have such forms available. Further, a reasonable supply of such forms shall be at each polling place on the day of a primary or election, general or special. [1991 c 81 § 27; 1971 ex.s. c 202 § 35; 1965 ex.s. c 156 § 4.]

*Reviser's note: RCW 29.10.160 was repealed by 1991 c 81 § 41, effective July 1, 1992; the reference should be to RCW 29.10.140.

Effective date—1991 c 81: See note following RCW 29.85.010.

29.10.170 Transfer on election day. (1) A person who is registered to vote in this state may transfer his or her voter registration on the day of a special or general election or primary under the following procedures:

(a) The voter may complete, at the polling place, a registration transfer form designed by the secretary of state and supplied by the county auditor; or

(b) The voter may write in his or her new residential address in the precinct list of registered voters.

The county auditor shall determine which of these two procedures are to be used in the county or may determine that both procedures are to be available to voters for use in the county.

(2) A voter who transfers his or her registration in the manner authorized by this section shall vote in the precinct in which he or she was previously registered.

(3) The auditor shall, within ninety days, mail to each voter who has transferred a registration under this section a notice of his or her current precinct and polling place. [1991 c 81 § 28; 1979 c 96 § 1.]

Effective date—1991 c 81: See note following RCW 29.85.010.

29.10.180 Voter change-of-address—Inquiries of registration validity—Corrections and cancellations. (1) The county auditor may enter one or more contracts with the United States postal service, or its licensee, which permit the auditor to use postal service change-of-address information. If the auditor finds that information received under such a contract gives the appearance that a voter has changed his or her residence address, the auditor shall notify the voter

concerning the requirements of state and federal laws governing voter registration and residence.

(2) Whenever any vote-by-mail ballot, notification to voters following reprecincting of the county, notification to voters of selection to serve on jury duty, notification under subsection (1) of this section, or initial voter identification card is returned by the postal service as undeliverable, the county auditor shall, in every instance, inquire into the validity of the registration of that voter.

(3) The county auditor shall initiate his or her inquiry by sending, by first-class mail, a written notice to the challenged voter at the address indicated on the voter's permanent registration record and to any other address at which the county auditor could reasonably expect mail to be received by the voter. The county auditor shall not request any restriction on the forwarding of such notice by the postal service. The notice shall contain the nature of the inquiry and provide a suitable form for reply. The notice shall also contain a warning that the county auditor must receive a response within forty-five days from the date of mailing or the individual's voter registration will be canceled.

(4) The voter, in person or in writing, may state that the information on the permanent voter registration record is correct or may request a change in the address information on the permanent registration record no later than the forty-fifth day after the date of mailing the inquiry.

(5) Upon the timely receipt of a response signed by the voter, the county auditor shall consider the inquiry satisfied and will make any address corrections requested by the voter on the permanent registration record. The county auditor shall cancel the registration of a voter who fails to respond to the notice of inquiry within forty-five days after the date of mailing.

(6) The county auditor shall notify any voter whose registration has been canceled by sending, by first class mail, a written notice to the address indicated on the voter's permanent registration record and to any other address to which the original inquiry was sent. Upon receipt of a satisfactory voter response, the auditor shall reinstate the voter.

(7) A voter whose registration has been canceled under this section and who offers to vote at the next ensuing election shall be issued a questioned ballot. Upon receipt of such a questioned ballot the auditor shall investigate the circumstances surrounding the original cancellation. If he or she determines that the cancellation was in error, the voter's registration shall be immediately reinstated, and the voter's questioned ballot shall be counted. If the original cancellation was not in error, the voter shall be afforded the opportunity to reregister at his or her correct address, and the voter's questioned ballot shall not be counted. [1991 c 363 § 31; 1989 c 261 § 1; 1987 c 359 § 1.]

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

Chapter 29.13

TIMES FOR HOLDING ELECTIONS AND PRIMARIES

Sections

29.13.010	State and local general elections—State-wide general election—Exceptions—Special county elections.
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County officers, generally, time of election: RCW 36.16.010.

District elections, time of holding, see under particular district.

Elections, time of holding: State Constitution Art. 6 § 8.

School elections conducted according to Title 29 RCW: RCW 28A.320.410.

Special primary for United States senate vacancy in 1983: Chapter 3, Laws of 1983 3rd ex. sess. (uncodified).

29.13.010 State and local general elections—State-wide general election—Exceptions—Special county elections. (1) All state, county, city, town, and district general elections for the election of federal, state, legislative, judicial, county, city, town, district, and precinct officers, and for the submission to the voters of the state, county, city, town, or district of any measure for their adoption and approval or rejection, shall be held on the first Tuesday after the first Monday of November, in the year in which they may be called. A state-wide general election shall be held on the first Tuesday after the first Monday of November of each year: PROVIDED, That the state-wide general election held in odd-numbered years shall be limited to (a) city, town, and district general elections as provided for in RCW 29.13.020, or as otherwise provided by law; (b) the election of federal officers for the remainder of any unexpired terms in the membership of either branch of the congress of the United States; (c) the election of state and county officers for the remainder of any unexpired terms of offices created by or whose duties are described in Article II, section 15, Article III, sections 16, 17, 19, 20, 21, 22, and 23, and Article IV, sections 3 and 5 of the state Constitution and RCW 2.06.080; (d) the election of county officers in any county governed by a charter containing provisions calling for general county elections at this time; and (e) the approval or rejection of state measures, including proposed constitutional amendments, matters pertaining to any proposed constitutional convention, initiative measures and referendum measures proposed by the electorate, referendum bills, and any other matter provided by the legislature for submission to the electorate.

(2) A county legislative authority may, if it deems an emergency to exist, call a special county election by presenting a resolution to the county auditor at least forty-five days

prior to the proposed election date. Except as provided in subsection (4) of this section, a special election called by the county legislative authority shall be held on one of the following dates as decided by such governing body:

- (a) The first Tuesday after the first Monday in February;
- (b) The second Tuesday in March;
- (c) The first Tuesday after the first Monday in April;
- (d) The third Tuesday in May;
- (e) The day of the primary as specified by RCW 29.13.070; or
- (f) The first Tuesday after the first Monday in November.

(3) In addition to the dates set forth in subsection (2) (a) through (f) of this section, a special election to validate an excess levy or bond issue may be called at any time to meet the needs resulting from failure of a county to pass a special levy for the first time or from fire, flood, earthquake, or other act of God. Such county special election shall be noticed and conducted in the manner provided by law.

(4) In a presidential election year, if a presidential preference primary is conducted in February, March, April, or May under chapter 29.19 RCW, the date on which a special election may be called by the county legislative authority under subsection (2) of this section during the month of that primary is the date of the presidential primary.

(5) This section shall supersede the provisions of any and all other statutes, whether general or special in nature, having different dates for such city, town, and district elections, the purpose of this section being to establish mandatory dates for holding elections except for those elections held pursuant to a home-rule charter adopted under Article XI, section 4 of the state Constitution. This section shall not be construed as fixing the time for holding primary elections, or elections for the recall of any elective public officer. [1992 c 37 § 1; 1989 c 4 § 9 (Initiative Measure No. 99); 1980 c 3 § 1; 1975-'76 2nd ex.s. c 111 § 1; 1975-'76 2nd ex.s. c 3 § 1; 1973 2nd ex.s. c 36 § 1; 1973 c 4 § 1; 1965 c 123 § 2; 1965 c 9 § 29.13.010. Prior: 1955 c 151 § 1; prior: (i) 1923 c 53 § 1; 1921 c 61 § 1; RRS § 5143. (ii) 1921 c 61 § 3; RRS § 5145.]

Severability—1989 c 4: See RCW 29.19.900.

Severability—1975-'76 2nd ex.s. c 111: "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 111 § 3.]

29.13.020 City, town, and district general and special elections—Exceptions. (1) All city, town, and district general elections shall be held throughout the state of Washington on the first Tuesday following the first Monday in November in the odd-numbered years.

This section shall not apply to:

- (a) Elections for the recall of any elective public officer;
- (b) Public utility districts or district elections at which the ownership of property within those districts is a prerequisite to voting, all of which elections shall be held at the times prescribed in the laws specifically applicable thereto;
- (c) Consolidation proposals as provided for in RCW 28A.315.280 and nonhigh capital fund aid proposals as provided for in chapter 28A.540 RCW.

(2) The county auditor, as ex officio supervisor of elections, upon request in the form of a resolution of the governing body of a city, town, or district, presented to the auditor at least forty-five days prior to the proposed election date, may, if the county auditor deems an emergency to exist, call a special election in such city, town, or district, and for the purpose of such special election he or she may combine, unite, or divide precincts. Except as provided in subsection (3) of this section, such a special election shall be held on one of the following dates as decided by the governing body:

- (a) The first Tuesday after the first Monday in February;
- (b) The second Tuesday in March;
- (c) The first Tuesday after the first Monday in April;
- (d) The third Tuesday in May;
- (e) The day of the primary election as specified by RCW 29.13.070; or
- (f) The first Tuesday after the first Monday in November.

(3) In a presidential election year, if a presidential preference primary is conducted in February, March, April, or May under chapter 29.19 RCW, the date on which a special election may be called under subsection (2) of this section during the month of that primary is the date of the presidential primary.

(4) In addition to subsection (2) (a) through (f) of this section, a special election to validate an excess levy or bond issue may be called at any time to meet the needs resulting from failure of a school or junior taxing district to pass a special levy or bond issue for the first time or from fire, flood, earthquake, or other act of God, except that no special election may be held between the first day for candidates to file for public office and the last day to certify the returns of the general election other than as provided in subsection (2) (e) and (f) of this section. Such special election shall be conducted and notice thereof given in the manner provided by law.

(5) This section shall supersede the provisions of any and all other statutes, whether general or special in nature, having different dates for such city, town, and district elections, the purpose of this section being to establish mandatory dates for holding elections. [1992 c 37 § 2; 1990 c 33 § 562; 1989 c 4 § 10 (Initiative Measure No. 99); 1986 c 167 § 6; 1980 c 3 § 2; 1975-'76 2nd ex.s. c 111 § 2; 1965 c 123 § 3; 1965 c 9 § 29.13.020. Prior: 1963 c 200 § 1; 1955 c 55 § 1; 1951 c 101 § 1; 1949 c 161 § 1; 1927 c 182 § 1; 1923 c 53 § 2; 1921 c 61 § 2; Rem. Supp. 1949 § 5144.]

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

Severability—1989 c 4: See RCW 29.19.900.

Severability—1986 c 167: See note following RCW 29.01.055.

Severability—1975-'76 2nd ex.s. c 111: See note following RCW 29.13.010.

29.13.021 First class commission cities with charters providing triennial elections. All regular elections in cities of the first class under a commission form of government whose charters provide that elections shall be held triennially, shall hereafter be held quadrennially and shall be held on the Tuesday following the first Monday in November in the odd-numbered years. All city officials shall be elected for

terms of four years and until their successors are elected and qualified and then assume office in accordance with RCW 29.04.170. [1983 c 3 § 43; 1979 ex.s. c 126 § 10; 1965 c 9 § 29.13.021. Prior: 1963 c 200 § 4.]

Purpose—1979 ex.s. c 126: See RCW 29.04.170(1).

29.13.023 First class mayor-council cities—Twelve councilmembers. All regular elections in first class cities having a mayor-council form of government whose charters provide for twelve councilmembers elected for a term of two years, two being elected from each of six wards, and for the election of a mayor, treasurer, and comptroller for terms of two years, shall be held biennially as provided in RCW 29.13.020. The term of each councilmember, mayor, treasurer, and comptroller shall be four years and until his or her successor is elected and qualified and assumes office in accordance with RCW 29.04.170. The terms of the councilmembers shall be so staggered that six councilmembers shall be elected to office at each regular election. [1981 c 213 § 3; 1979 ex.s. c 126 § 11; 1965 c 9 § 29.13.023. Prior: 1963 c 200 § 2; 1957 c 168 § 1.]

Purpose—1979 ex.s. c 126: See RCW 29.04.170(1).

29.13.024 First class mayor-council cities—Seven councilmembers. All regular elections in first class cities having a mayor-council form of government whose charters provide for seven councilmembers, one to be elected from each of six wards and one at large, for a term of two years, and for the election of a mayor, comptroller, treasurer and attorney for two year terms, shall be held biennially as provided in RCW 29.13.020. The terms of the six councilmembers to be elected by wards shall be four years and until their successors are elected and qualified and the term of the councilmember to be elected at large shall be two years and until their successors are elected and qualified. The terms of the councilmembers shall be so staggered that three ward councilmembers and the councilmember at large shall be elected at each regular election. The term of the mayor, attorney, treasurer, and comptroller shall be four years and until their successors are elected and qualified and assume office in accordance with RCW 29.04.170. [1981 c 213 § 4; 1979 ex.s. c 126 § 12; 1965 c 9 § 29.13.024. Prior: 1963 c 200 § 3; 1957 c 168 § 2.]

Purpose—1979 ex.s. c 126: See RCW 29.04.170(1).

29.13.040 Conduct of elections—Canvass. All elections, whether special or general, held under RCW 29.13.010 and 29.13.020 as now or hereafter amended, shall be conducted by the county auditor as ex officio county supervisor of elections and except as provided in RCW 29.62.100 the returns thereof shall be canvassed by the county canvassing board. [1965 c 123 § 4; 1965 c 9 § 29.13.040. Prior: 1963 c 200 § 6; 1955 c 55 § 3; 1951 c 257 § 4; 1951 c 101 § 4; 1949 c 161 § 5; Rem. Supp. 1949 § 5153-1.]

County auditor designated as supervisor of certain elections: RCW 29.04.020.

29.13.045 Election costs borne by constituencies. Every city, town, and district shall be liable for its proportionate share of the costs when such elections are held in

conjunction with other elections held under RCW 29.13.010 and 29.13.020.

Whenever any city, town, or district shall hold any primary or election, general or special, on an isolated date, all costs of such elections shall be borne by the city, town, or district concerned.

The purpose of this section is to clearly establish that the county is not responsible for any costs involved in the holding of any city, town, or district election.

In recovering such election expenses, including a reasonable pro-ration of administrative costs, the county auditor shall certify the cost to the county treasurer with a copy to the clerk or auditor of the city, town, or district concerned. Upon receipt of such certification, the county treasurer shall make the transfer from any available and appropriate city, town, or district funds to the county current expense fund or to the county election reserve fund if such a fund is established. Each city, town, or district shall be promptly notified by the county treasurer whenever such transfer has been completed: PROVIDED, HOWEVER, That in those districts wherein a treasurer, other than the county treasurer, has been appointed such transfer procedure shall not apply but the district shall promptly issue its warrant for payment of election costs. [1965 c 123 § 5; 1965 c 9 § 29.13.045. Prior: 1963 c 200 § 7; 1951 c 257 § 5.]

County, municipality, or special district facilities as polling places, payment for: RCW 29.48.007.

Diking districts, election to authorize, costs: RCW 85.38.060.

Diking or drainage district, reorganization into improvement district 1917 act, election to authorize: RCW 85.38.060.

1933 act, election to authorize: RCW 85.38.060.

Expense of printing and distributing ballot materials: RCW 29.30.130.

Expense of recount—Charges: RCW 29.64.060.

Port districts, formation of, election on, expense of: RCW 53.04.070.

Public utility district elections, expense of: RCW 54.12.010.

Reclamation districts of one million acres, election to form, expense: RCW 89.30.115.

Sewer districts, formation of, expense: RCW 56.04.080.

Soil and water conservation district, election to form, expense: RCW 89.08.140.

Water districts, annexation of territory by, election on, expense: RCW 57.24.050.

29.13.047 State share of election costs. (1) Whenever state officers or measures are voted upon at a state primary or general election held in an odd-numbered year under RCW 29.13.010, the state of Washington shall assume a prorated share of the costs of that state primary or general election.

(2) Whenever a primary or vacancy election is held to fill a vacancy in the position of United States senator or United States representative under chapter 29.68 RCW, the state of Washington shall assume a prorated share of the costs of that primary or vacancy election.

(3) The county auditor shall apportion the state's share of these expenses when prorating election costs under RCW 29.13.045 and shall file such expense claims with the secretary of state.

(4) The secretary of state shall include in his or her biennial budget requests sufficient funds to carry out this section. Reimbursements for election costs shall be from

appropriations specifically provided by law for that purpose. [1985 c 45 § 2; 1977 ex.s. c 144 § 4; 1975-'76 2nd ex.s. c 4 § 1; 1973 c 4 § 2.]

Legislative intent—1985 c 45: "It is the intention of the legislature that sections 2 through 7 of this act shall provide an orderly and predictable election procedure for filling vacancies in the offices of United States representative and United States senator." [1985 c 45 § 1.] Sections 2 through 7 of this act consisted of the 1985 c 45 amendments to RCW 29.13.047, 29.68.070, 29.68.080, 29.68.100, 29.68.120, and 29.68.130.

29.13.048 Interest on reimbursement of costs. For any reimbursement of election costs under RCW 29.13.047, the secretary of state shall pay interest at an annual rate equal to two percentage points in excess of the discount rate on ninety-day commercial paper in effect at the federal reserve bank in San Francisco on the fifteenth day of the month immediately preceding the payment for any period of time in excess of thirty days after the receipt of a properly executed and documented voucher for such expenses and the entry of an allotment from specifically appropriated funds for this purpose under *RCW 43.88.111. The secretary of state shall promptly notify any county that submits an incomplete or inaccurate voucher for reimbursement under RCW 29.13.047. [1986 c 167 § 7.]

*Reviser's note: RCW 43.88.111 was repealed by 1986 c 215 § 7.
Severability—1986 c 167: See note following RCW 29.01.055.

29.13.050 Local officers, beginning of terms—Organization of district boards of directors. The term of every city, town, and district officer elected to office on the first Tuesday following the first Monday in November of the odd-numbered years shall begin in accordance with RCW 29.04.170: PROVIDED, That any person elected to less than a full term shall assume office as soon as the election returns have been certified and he or she is qualified in accordance with RCW 29.01.135.

Each board of directors of every district shall be organized at the first meeting held after one or more newly elected directors take office. [1979 ex.s. c 126 § 14; 1965 c 123 § 6; 1965 c 9 § 29.13.050. Prior: 1963 c 200 § 8; 1959 c 86 § 1; prior: 1951 c 257 § 6. (i) 1949 c 161 § 9; Rem. Supp. 1949 § 5146-1. (ii) 1949 c 163 § 1; 1921 c 61 § 4; Rem. Supp. 1949 § 5146.]

Purpose—1979 ex.s. c 126: See RCW 29.04.170(1).

29.13.060 Elections in certain first class school districts. In each county with a population of two hundred ten thousand or more, first class school districts containing a city of the first class shall hold their elections biennially as provided in RCW 29.13.020.

Except as provided in RCW 28A.315.460, the directors to be elected shall be elected for terms of six years and until their successors are elected and qualified and assume office in accordance with RCW 29.04.170. [1991 c 363 § 32; 1990 c 33 § 563; 1989 c 10 § 7. Prior: 1979 ex.s. c 183 § 11; 1979 ex.s. c 126 § 15; 1965 c 9 § 29.13.060; prior: 1963 c 200 § 9; 1943 c 10 § 1; Rem. Supp. 1943 § 4810-1.]

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.

Purpose—1979 ex.s. c 126: See RCW 29.04.170(1).

Effective date—Severability—1979 ex.s. c 183: See notes following RCW 28A.315.580.

Directors—Number and terms of in new first class district having city with population of 400,000 people or more: RCW 28A.315.630.

29.13.070 Primaries. Nominating primaries for general elections to be held in November shall be held at the regular polling places in each precinct on the third Tuesday of the preceding September or on the seventh Tuesday immediately preceding such general election, whichever occurs first. [1977 ex.s. c 361 § 29; 1965 ex.s. c 103 § 6; 1965 c 9 § 29.13.070. Prior: 1963 c 200 § 25; 1907 c 209 § 3; RRS § 5179.]

Effective date—Severability—1977 ex.s. c 361: See notes following RCW 29.01.006.

29.13.080 Opening and closing polls. At all primaries and elections, general or special, in all counties the polls must be kept open from seven o'clock a.m. to eight o'clock p.m. All qualified electors who are at the polling place at eight o'clock p.m., shall be allowed to cast their votes. [1973 c 78 § 1; 1965 ex.s. c 101 § 13; 1965 c 9 § 29.13.080. Prior: (i) 1921 c 61 § 7; RRS § 5149. (ii) 1921 c 170 § 5; RRS § 5154. (iii) 1921 c 178 § 7; 1907 c 235 § 1; 1889 p 413 § 35; RRS § 5319. (iv) 1919 c 163 § 16, part; 1907 c 209 § 17, part; RRS § 5194, part.]

Closing the polls: RCW 29.51.250.

District elections, hours, see particular districts.

Employer's duty to provide time to vote: RCW 49.28.120.

Polls open continuously—Announcement of closing: RCW 29.51.240.

Proclamation opening the polls: RCW 29.48.100.

29.13.100 United States Constitutional amendment conventions—Election of convention delegates. See RCW 29.74.030.

Chapter 29.15 FILING FOR OFFICE

Sections

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- 29.15.020 Declaration of candidacy—Certain offices, when filed.
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- 29.15.800 Rules by secretary of state.
- 29.15.900 Intent—1990 c 59.
- 29.15.901 Effective date—1990 c 59.

29.15.010 Declaration and affidavit of candidacy.

A candidate who desires to have his or her name printed on the ballot for election to an office other than president of the United States, vice-president of the United States, or an office for which ownership of property is a prerequisite to voting shall complete and file a declaration and affidavit of candidacy. The secretary of state shall adopt, by rule, a declaration of candidacy form for the office of precinct committee officer and a separate standard form for candidates for all other offices filing under this chapter. Included on the standard form shall be:

(1) A place for the candidate to declare that he or she is a registered voter within the jurisdiction of the office for which he or she is filing, and the address at which he or she is registered;

(2) A place for the candidate to indicate the position for which he or she is filing;

(3) A place for the candidate to indicate a party designation, if applicable;

(4) A place for the candidate to indicate the amount of the filing fee accompanying the declaration of candidacy or for the candidate to indicate that he or she is filing a nominating petition in lieu of the filing fee under RCW 29.15.050;

(5) A place for the candidate to sign the declaration of candidacy, stating that the information provided on the form is true and swearing or affirming that he or she will support the Constitution and laws of the United States and the Constitution and laws of the state of Washington.

The secretary of state may require any other information on the form he or she deems appropriate to facilitate the filing process. [1990 c 59 § 82.]

29.15.020 Declaration of candidacy—Certain offices, when filed. Except where otherwise provided by this title, declarations of candidacy for the following offices shall be filed during regular business hours with the filing officer no earlier than the fourth Monday in July and no later than the following Friday in the year in which the office is scheduled to be voted upon:

(1) Offices that are scheduled to be voted upon for full terms or both full terms and short terms at, or in conjunction with, a state general election; and

(2) Offices where a vacancy, other than a short term, exists that has not been filled by election and for which an election to fill the vacancy is required in conjunction with the next state general election.

This section supersedes all other statutes that provide for a different filing period for these offices. [1990 c 59 § 81;

1986 c 167 § 8; 1984 c 142 § 2. Formerly RCW 29.18.025.]

Severability—1986 c 167: See note following RCW 29.01.055.

Intent—1984 c 142: "It is the intention of the legislature that this act shall provide an equitable qualifying procedure for candidates who, at the time of filing, lack sufficient assets or income to pay the filing fees otherwise required of candidates for public office." [1984 c 142 § 1.] For codification of 1984 c 142, see Codification Tables, Volume 0.

29.15.025 Qualifications for filing, appearance on ballot. (1) A person filing a declaration and affidavit of candidacy for an office shall, at the time of filing, possess the qualifications specified by law for persons who may be elected to the office.

(2) The name of a candidate for an office shall not appear on a ballot for that office unless the candidate is, at the time the candidate's declaration and affidavit of candidacy is filed, properly registered to vote in the geographic area represented by the office. For the purposes of this section, each geographic area in which registered voters may cast ballots for an office is represented by that office. If a person elected to an office must be nominated from a district or similar division of the geographic area represented by the office, the name of a candidate for the office shall not appear on a primary ballot for that office unless the candidate is, at the time the candidate's declaration and affidavit of candidacy is filed, properly registered to vote in that district or division. The officer with whom declarations and affidavits of candidacy must be filed under this title shall review each such declaration filed regarding compliance with this subsection.

(3) This section does not apply to the office of a member of the United States congress. [1991 c 178 § 1. Formerly RCW 29.18.021.]

29.15.026 Information on geographical boundaries.

(1) The legislative authority of each county and each city, town, and special purpose district which lies entirely within the county shall provide the county auditor accurate information describing its geographical boundaries and the boundaries of its director, council, or commissioner districts and shall ensure that the information provided to the auditor is kept current.

(2) A city, town, or special purpose district that lies in more than one county shall provide the secretary of state accurate information describing its geographical boundaries and the boundaries of its director, council, or commissioner districts and shall ensure that the information provided to the secretary is kept current. The secretary of state shall promptly transmit to each county in which a city, town, or special purpose district is located information regarding the boundaries of that jurisdiction which is provided to the secretary. [1991 c 178 § 2. Formerly RCW 29.04.220.]

29.15.030 Declaration of candidacy—Where filed—Copy to public disclosure commission. Declarations of candidacy shall be filed with the following filing officers:

(1) The secretary of state for declarations of candidacy for state-wide offices, United States senate, and United States house of representatives;

(2) The secretary of state for declarations of candidacy for the state legislature, the court of appeals, and the superior

court when voters from a district comprising more than one county vote upon the candidates;

(3) The county auditor for all other offices. For any nonpartisan office, other than judicial offices, where voters from a district comprising more than one county vote upon the candidates, a declaration of candidacy shall be filed with the county auditor of the county in which a majority of the registered voters of the district reside.

Each official with whom declarations of candidacy are filed under this section, within one business day following the closing of the applicable filing period, shall forward to the public disclosure commission a copy of each declaration of candidacy filed in his office during such filing period or a list containing the name of each candidate who files such a declaration in his office during such filing period together with a precise identification of the position sought by each such candidate and the date on which each such declaration was filed. Such official, within three days following his receipt of any letter withdrawing a person's name as a candidate, shall also forward a copy of such withdrawal letter to the public disclosure commission. [1990 c 59 § 84; 1977 ex.s. c 361 § 30; 1975-'76 2nd ex.s. c 112 § 1; 1965 c 9 § 29.18.040. Prior: 1907 c 209 § 7; RRS § 5184. Formerly RCW 29.18.040.]

Effective date—Severability—1977 ex.s. c 361: See notes following RCW 29.01.006.

Construction—1975-'76 2nd ex.s. c 112: RCW 42.17.945.

Severability—1975-'76 2nd ex.s. c 112: RCW 42.17.912.

Precinct committee officer, filing of declaration of candidacy with county auditor: RCW 29.42.040.

Public disclosure—Campaign finances, lobbying, records: Chapter 42.17 RCW.

29.15.040 Declaration of candidacy—Filing by mail.

Any candidate may mail his or her declaration of candidacy for an office to the filing officer. Such declarations of candidacy shall be processed by the filing officer in the following manner:

(1) Any declaration received by the filing officer by mail before the tenth business day immediately preceding the first day for candidates to file for office shall be returned to the candidate submitting it, together with a notification that the declaration of candidacy was received too early to be processed. The candidate shall then be permitted to resubmit his or her declaration of candidacy during the filing period.

(2) Any properly executed declaration of candidacy received by mail on or after the tenth business day immediately preceding the first day for candidates to file for office and before the close of business on the last day of the filing period shall be included with filings made in person during the filing period. In partisan and judicial elections the filing officer shall determine by lot the order in which the names of those candidates shall appear upon sample and absentee primary ballots.

(3) Any declaration of candidacy received by the filing officer after the close of business on the last day for candidates to file for office shall be rejected and returned to the candidate attempting to file it. [1987 c 110 § 2; 1986 c 120 § 2. Formerly RCW 29.18.045.]

Precinct committee officer, declaration of candidacy, fee: RCW 29.42.040, 29.42.050.

29.15.050 Declaration of candidacy—Fees and petitions. A filing fee of one dollar shall accompany each declaration of candidacy for precinct committee officer; a filing fee of ten dollars shall accompany the declaration of candidacy for any office with a fixed annual salary of one thousand dollars or less; a filing fee equal to one percent of the annual salary of the office at the time of filing shall accompany the declaration of candidacy for any office with a fixed annual salary of more than one thousand dollars per annum. No filing fee need accompany a declaration of candidacy for any office for which compensation is on a per diem or per meeting attended basis, nor for the filing of any declaration of candidacy by a write-in candidate.

A candidate who lacks sufficient assets or income at the time of filing to pay the filing fee required by this section shall submit with his or her declaration of candidacy a nominating petition. The petition shall contain not less than a number of signatures of registered voters equal to the number of dollars of the filing fee. The signatures shall be of voters registered to vote within the jurisdiction of the office for which the candidate is filing.

When the candidacy is for:

(1) A legislative or judicial office that includes territory from more than one county, the fee shall be paid to the secretary of state for equal division between the treasuries of the counties comprising the district.

(2) A city or town office, the fee shall be paid to the county auditor who shall transmit it to the city or town clerk for deposit in the city or town treasury. [1990 c 59 § 85; 1987 c 295 § 2; 1984 c 142 § 4; 1965 c 9 § 29.18.050. Prior: 1909 c 82 § 2; 1907 c 209 § 5; RRS § 5182. Formerly RCW 29.18.050.]

Intent—1984 c 142: See note following RCW 29.15.020.

Precinct committee officer, declaration of candidacy, fee: RCW 29.42.040, 29.42.050.

29.15.060 Nominating petition—Form. The nominating petition authorized by RCW 29.15.050 shall be printed on sheets of uniform color and size, shall contain no more than twenty numbered lines, and shall be in substantially the following form:

WARNING

Any person who signs this petition with any other than his or her true name, or who knowingly (1) signs more than one petition for any single candidate, (2) signs the petition when he or she is not a legal voter, or (3) makes any false statement may be subject to fine, or imprisonment, or both.

We, the undersigned registered voters of (the state of Washington or the political subdivision for which the nomination is made), hereby petition that the name of (candidate's name) be printed on the official primary ballot for the office of (insert name of office).

Signature	Printed Name	Residence Address	City	County
1 - - - -	- - - - -	- - - - -	- - - - -	- - - - -
2 - - - -	- - - - -	- - - - -	- - - - -	- - - - -
3 - - - -	- - - - -	- - - - -	- - - - -	- - - - -
etc.				

[1984 c 142 § 5. Formerly RCW 29.18.053.]

Intent—1984 c 142: See note following RCW 29.15.020.

29.15.070 Nominating petitions—Rejection—Acceptance, canvass of signatures—Judicial review. Nominating petitions may be rejected for the following reasons:

- (1) The petition is not in the proper form;
- (2) The petition clearly bears insufficient signatures;
- (3) The petition is not accompanied by a declaration of candidacy;
- (4) The time within which the petition and the declaration of candidacy could have been filed has expired.

If the petition is accepted, the officer with whom it is filed shall canvass the signatures contained on it and shall reject the signatures of those persons who are not registered voters and the signatures of those persons who are not registered to vote within the jurisdiction of the office for which the nominating petition is filed. He or she shall additionally reject any signature that appears on the nominating petitions of two or more candidates for the same office and shall also reject, each time it appears, the name of any person who signs the same petition more than once.

If the officer with whom the petition is filed refuses to accept the petition or refuses to certify the petition as bearing sufficient valid signatures, the person filing the petition may appeal that action to the superior court. The application for judicial review shall take precedence over other cases and matters and shall be speedily heard and determined. [1984 c 142 § 6. Formerly RCW 29.18.055.]

Intent—1984 c 142: See note following RCW 29.15.020.

29.15.080 Nominating petitions—Penalties for improperly signing. The following apply to persons signing nominating petitions prescribed by RCW 29.15.060:

- (1) A person who signs a petition with any other than his or her name shall be guilty of a misdemeanor.
- (2) A person shall be guilty of a misdemeanor if the person knowingly: Signs more than one petition for any single candidacy of any single candidate; signs the petition when he or she is not a legal voter; or makes a false statement as to his or her residence. [1984 c 142 § 8. Formerly RCW 29.18.057.]

Intent—1984 c 142: See note following RCW 29.15.020.

29.15.090 Candidates' names—Nicknames. When filing for office, a candidate may indicate the manner in which he or she desires his or her name to be printed on the ballot. For filing purposes, a candidate may use a nickname by which he or she is commonly known as his or her first name, but the last name shall be the name under which he or she is registered to vote.

(1992 Ed.)

- No candidate may:
- (1) Use a nickname that denotes present or past occupation, including military rank;
 - (2) Use a nickname that denotes the candidate's position on issues or political affiliation;
 - (3) Use a nickname designed intentionally to mislead voters.

The secretary of state shall adopt rules to resolve those instances when candidates have filed for the same office whose last names are so similar in sound or spelling as to be confusing to the voter. [1990 c 59 § 83.]

29.15.100 Duplication of, use of nonexistent or untrue names, as felony. A person is guilty of a felony who files a declaration of candidacy for any public office of:

- (1) A nonexistent or fictitious person; or
- (2) The name of any person not his true name; or
- (3) A name similar to that of an incumbent seeking reelection to the same office with intent to confuse and mislead the electors by taking advantage of the public reputation of the incumbent; or
- (4) A surname similar to one who has already filed for the same office, and whose political reputation is widely known, with intent to confuse and mislead the electors by capitalizing on the public reputation of the candidate who had previously filed. [1965 c 9 § 29.18.070. Prior: (i) 1943 c 198 § 2; Rem. Supp. 1943 § 5213-11. (ii) 1943 c 198 § 3; Rem. Supp. 1943 § 5213-12. Formerly RCW 29.18.070.]

29.15.110 Duplication of names—Conspiracy—Criminal and civil liability. Any person who with intent to mislead or confuse the electors conspires with another person who has a surname similar to an incumbent seeking reelection to the same office, or to an opponent for the same office whose political reputation has been well established, by persuading such other person to file for such office with no intention of being elected, but to defeat the incumbent or the well known opponent, shall be guilty of a felony. In addition thereto such person or persons shall be subject to a suit for civil damages the amount of which shall not exceed the salary which the injured person would have received had he been elected or reelected. [1965 c 9 § 29.18.080. Prior: 1943 c 198 § 6; Rem. Supp. 1943 § 5213-15. Formerly RCW 29.18.080.]

29.15.120 Withdrawal of candidacy. A candidate may withdraw his or her declaration of candidacy at any time before the close of business on the Thursday following the last day for candidates to file under RCW 29.15.020 by filing, with the officer with whom the declaration of candidacy was filed, a signed request that his or her name not be printed on the ballot. There shall be no withdrawal period for declarations of candidacy filed during special filing periods held under this title. The filing officer may permit the withdrawal of a filing for the office of precinct committee officer at the request of the candidate at any time if no absentee ballots have been issued for that office and the general election ballots for that precinct have not been printed. No filing fee may be refunded to any candidate who withdraws under this section. Notice of the deadline for

withdrawal of candidacy and that the filing fee is not refundable shall be given to each candidate at the time he or she files. [1990 c 59 § 86; 1984 c 142 § 7. Formerly RCW 29.18.105.]

Intent—1984 c 142: See note following RCW 29.15.020.

29.15.130 Officials to designate position numbers, when—Effect. Not less than thirty days before the first day for filing declarations of candidacy under RCW 29.15.020 for legislative, judicial, county, city, town, or district office, where more than one position with the same name, district number, or title will be voted upon at the succeeding election, the filing officer shall designate the positions to be filled by number.

The positions so designated shall be dealt with as separate offices for all election purposes. With the exception of the office of justice of the supreme court, the position numbers shall be assigned, whenever possible, to reflect the position numbers that were used to designate the same positions at the last full-term election for those offices. [1990 c 59 § 79; 1965 c 52 § 1. Formerly RCW 29.18.015.]

29.15.140 Designation of short terms, full terms, and unexpired terms—Filing declarations—Election to both short and full terms. If at the same election there are short terms or full terms and unexpired terms of office to be filled, the filing officer shall distinguish them and designate the short term, the full term, and the unexpired term, as such, or by use of the words "short term," "unexpired two year term," or "four year term," as the case may be.

In filing the declaration of candidacy in such cases the candidate shall specify that the candidacy is for the short term, the full term, or the unexpired term. When both a short term and a full term for the same position are scheduled to be voted upon, or when a short term is created after the close of the filing period, a single declaration of candidacy accompanied by a single filing fee shall be construed as a filing for both the short term and the full term and the name of such candidate shall appear upon the ballot for the position sought with the designation "short term and full term." The candidate elected to both such terms shall be sworn into and assume office for the short term as soon as the election returns have been certified and shall again be sworn into office on the second Monday in January following the election to assume office for the full term. [1990 c 59 § 92; 1975-'76 2nd ex.s. c 120 § 4; 1965 c 9 § 29.21.140. Prior: (i) 1927 c 155 § 1, part; 1925 ex.s. c 68 § 1, part; 1921 c 116 § 1, part; 1919 c 85 § 1, part; 1911 c 101 § 1, part; 1909 c 82 § 11, part; 1907 c 209 § 38, part; RRS § 5212, part. (ii) 1933 c 85 § 1, part; RRS § 5213-1, part. Formerly RCW 29.21.140.]

Severability—1975-'76 2nd ex.s. c 120: See note following RCW 29.21.010.

Term of person elected to fill vacancy: RCW 42.12.030.

Vacancies in public office, how filled: RCW 42.12.010.

29.15.150 Elections to fill unexpired term—No primary, when. Whenever it shall be necessary to hold a special election in an odd-numbered year to fill an unexpired term of any office which is scheduled to be voted upon for a full term in an even-numbered year, no September primary

election shall be held in the odd-numbered year if, after the last day allowed for candidates to withdraw, either of the following circumstances exist:

(1) No more than one candidate of each qualified political party has filed a declaration of candidacy for the same partisan office to be filled; or

(2) No more than two candidates have filed a declaration of candidacy for a single nonpartisan office to be filled.

In either event, the officer with whom the declarations of candidacy were filed shall immediately notify all candidates concerned and the names of the candidates that would have been printed upon the September primary ballot, but for the provisions of this section, shall be printed as nominees for the positions sought upon the November general election ballot. [1973 c 4 § 3. Formerly RCW 29.13.075.]

29.15.160 Void in candidacy—Exception. A void in candidacy for a nonpartisan office occurs when an election for such office, except for the short term, has been scheduled and no valid declaration of candidacy has been filed for the position or all persons filing such valid declarations of candidacy have died or been disqualified. [1975-'76 2nd ex.s. c 120 § 9; 1972 ex.s. c 61 § 1. Formerly RCW 29.21.350.]

Severability—1975-'76 2nd ex.s. c 120: See note following RCW 29.21.010.

Severability—1972 ex.s. c 61: "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." [1972 ex.s. c 61 § 8.]

29.15.170 Reopening of filing—Occurrences before fourth Tuesday before primary. Filings for a nonpartisan office shall be reopened for a period of three normal business days, such three day period to be fixed by the election officer with whom such declarations of candidacy are filed and notice thereof given by notifying press, radio, and television in the county and by such other means as may now or hereafter be provided by law whenever before the fourth Tuesday prior to a primary:

(1) A void in candidacy occurs;

(2) A vacancy occurs in any nonpartisan office leaving an unexpired term to be filled by an election for which filings have not been held; or

(3) A nominee for judge of the superior court entitled to a certificate of election pursuant to Article 4, section 29, Amendment 41 of the state Constitution, dies or is disqualified.

Candidacies validly filed within said three-day period shall appear on the ballot as if made during the earlier filing period. [1975-'76 2nd ex.s. c 120 § 10; 1972 ex.s. c 61 § 2. Formerly RCW 29.21.360.]

Severability—1975-'76 2nd ex.s. c 120: See note following RCW 29.21.010.

Severability—1972 ex.s. c 61: See note following RCW 29.15.160.

29.15.180 Reopening of filing—Occurrences after fourth Tuesday before primary. Filings for a nonpartisan office (other than judge of the supreme court or superintendent of public instruction) shall be reopened for a period of three normal business days, such three day period to be fixed by the election officer with whom such declarations of

candidacy are filed and notice thereof given by notifying press, radio, and television in the county and by such other means as may now or hereafter be provided by law, when:

(1) A void in candidacy for such nonpartisan office occurs on or after the fourth Tuesday prior to a primary but prior to the fourth Tuesday before an election; or

(2) A nominee for judge of the superior court eligible after a contested primary for a certificate of election by Article 4, section 29, Amendment 41 of the state Constitution, dies or is disqualified within the ten day period when a petition for write-in candidacy may be received; or

(3) A vacancy occurs in any nonpartisan office on or after the fourth Tuesday prior to a primary but prior to the fourth Tuesday before an election leaving an unexpired term to be filled by an election for which filings have not been held.

The candidate receiving a plurality of the votes cast for that office in the general election shall be deemed elected. [1975-'76 2nd ex.s. c 120 § 11; 1972 ex.s. c 61 § 3. Formerly RCW 29.21.370.]

Severability—1975-'76 2nd ex.s. c 120: See note following RCW 29.15.160.

Severability—1972 ex.s. c 61: See note following RCW 29.15.160.

29.15.190 Scheduled election lapses, when. A scheduled election shall be lapsed, the office deemed stricken from the ballot, no purported write-in votes counted, and no candidate certified as elected, when:

(1) In an election for judge of the supreme court or superintendent of public instruction, a void in candidacy occurs on or after the fourth Tuesday prior to a primary, public filings and the primary being an indispensable phase of the election process for such offices;

(2) Except as otherwise specified in RCW 29.15.180, as now or hereafter amended, a nominee for judge of the superior court entitled to a certificate of election pursuant to Article 4, section 29, Amendment 41 of the state Constitution dies or is disqualified on or after the fourth Tuesday prior to a primary;

(3) In other elections for nonpartisan office a void in candidacy occurs or a vacancy occurs involving an unexpired term to be filled on or after the fourth Tuesday prior to an election. [1975-'76 2nd ex.s. c 120 § 12; 1972 ex.s. c 61 § 4. Formerly RCW 29.21.380.]

Severability—1975-'76 2nd ex.s. c 120: See note following RCW 29.21.010.

Severability—1972 ex.s. c 61: See note following RCW 29.15.160.

29.15.200 Lapse of election when no filing for single positions—Effect. If after both the normal filing period and special three day filing period as provided by RCW 29.15.170 and 29.15.180, as now or hereafter amended, have passed and still no candidate has filed for any single city, town, or district position to be filled, the election for such position shall be deemed lapsed, the office deemed stricken from the ballot and no write-in votes counted. In such instance, the incumbent occupying such position shall remain in office and continue to serve until his successor is elected at the next election when such positions are voted upon as provided by RCW 29.21.410, as now or hereafter amended. [1975-'76 2nd ex.s. c 120 § 13. Formerly RCW 29.21.385.]

Severability—1975-'76 2nd ex.s. c 120: See note following RCW 29.21.010.

29.15.210 Notice of void in candidacy. The election officer with whom declarations of candidacy are filed shall give notice of a void in candidacy for a nonpartisan office, by notifying press, radio, and television in the county and by such other means as may now or hereafter be provided by law. The notice shall state the office, and the time and place for filing declarations of candidacy. [1972 ex.s. c 61 § 5. Formerly RCW 29.21.390.]

Severability—1972 ex.s. c 61: See note following RCW 29.15.160.

29.15.220 Filings to fill void in candidacy—How made. Filings to fill a void in candidacy for nonpartisan office shall be made in the same manner and with the same official as required during the regular filing period for such office: PROVIDED, That nominating signature petitions which may be required of candidates filing for certain district offices during the normal filing period shall not be required of candidates filing during the special three day filing period. [1972 ex.s. c 61 § 6. Formerly RCW 29.21.400.]

Severability—1972 ex.s. c 61: See note following RCW 29.15.160.

29.15.230 Vacancy in partisan elective office—Special filing period. Filings for a partisan elective office shall be opened for a period of three normal business days whenever, on or after the first day of the regular filing period and before the fourth Tuesday prior to a primary, a vacancy occurs in that office, leaving an unexpired term to be filled by an election for which filings have not been held.

Any such special three-day filing period shall be fixed by the election officer with whom declarations of candidacy for that office are filed. The election officer shall give notice of the special three-day filing period by notifying the press, radio, and television in the county or counties involved, and by such other means as may be required by law.

Candidacies validly filed within the special three-day filing period shall appear on the primary ballot as if filed during the regular filing period. [1981 c 180 § 2. Formerly RCW 29.18.032.]

Severability—1981 c 180: See note following RCW 42.12.040.

Vacancy in partisan elective office, successor elected, when: RCW 42.12.040.

Vacancy in United States senate, special filing period in 1983: Chapter 1, Laws of 1983 3rd ex. sess. (uncodified).

29.15.800 Rules by secretary of state. The secretary of state shall adopt rules consistent with the provisions of this chapter to facilitate its implementation. The secretary shall publish proposed rules implementing this section not later than December 15, 1991. [1990 c 59 § 97.]

29.15.900 Intent—1990 c 59. See note following RCW 29.01.006.

29.15.901 Effective date—1990 c 59. See note following RCW 29.01.006.

Chapter 29.18
PARTISAN PRIMARIES

Sections

- 29.18.010 Application of chapter.
 29.18.120 General election laws govern primary.
 29.18.150 Vacancies on major party ticket caused by no filing—How filled.
 29.18.160 Vacancies caused by death or disqualification—How filled—Correcting ballots and labels—Counting votes already cast for person named to vacancy, when.
 29.18.200 Blanket primary authorized.

Contest, ineligibility to hold office at time declared elected as ground for: RCW 29.65.010.

Notice of primary election: RCW 29.27.030.

Political party conventions not to nominate candidates to be voted on in primary: RCW 29.42.010.

29.18.010 Application of chapter. Candidates for the following offices shall be nominated at partisan primaries held pursuant to the provisions of this chapter:

- (1) Congressional offices;
- (2) All state offices except (a) judicial offices and (b) the office of superintendent of public instruction;
- (3) All county offices except (a) judicial offices and (b) those offices where a county home rule charter provides otherwise. [1990 c 59 § 78; 1965 c 9 § 29.18.010. Prior: 1911 c 101 § 2; 1909 c 82 § 1; 1907 c 209 § 2; RRS § 5178.]

Intent—Effective date—1990 c 59: See notes following RCW 29.01.006.

29.18.120 General election laws govern primary. So far as applicable, the provisions of this title relating to conducting general elections shall govern the conduct of primaries. [1990 c 59 § 87; 1971 ex.s. c 112 § 1; 1965 c 9 § 29.18.120. Prior: (i) 1907 c 209 § 14; RRS § 5191. (ii) 1921 c 178 § 5; 1907 c 209 § 21; RRS § 5197. (iii) 1909 c 82 § 10; 1907 c 209 § 33; RRS § 5208.]

Intent—Effective date—1990 c 59: See notes following RCW 29.01.006.

29.18.150 Vacancies on major party ticket caused by no filing—How filled. Should a place on the ticket of a major political party be vacant because no person has filed for nomination as the candidate of that major political party, after the last day allowed for candidates to withdraw as provided by RCW 29.15.120, and if the vacancy is for a state or county office to be voted on solely by the electors of a single county, the county central committee of the major political party may select and certify a candidate to fill the vacancy; if the vacancy is for any other office the state central committee of the major political party may select and certify a candidate to fill the vacancy; the certificate must set forth the cause of the vacancy, the name of the person nominated, the office for which he is nominated and other pertinent information required in an ordinary certificate of nomination and be filed in the proper office no later than the first Friday after the last day allowed for candidates to withdraw, together with the candidate's fee applicable to that office and a declaration of candidacy. [1990 c 59 § 102; 1977 ex.s. c 329 § 12; 1965 c 9 § 29.18.150. Prior: 1961

c 130 § 17; prior: (i) 1933 c 21 § 1, part; 1919 c 163 § 24, part; RRS § 5200, part. (ii) 1889 p 404 § 12; RRS § 5176.]

Intent—Effective date—1990 c 59: See notes following RCW 29.01.006.

29.18.160 Vacancies caused by death or disqualification—How filled—Correcting ballots and labels—Counting votes already cast for person named to vacancy, when. A vacancy caused by the death or disqualification of any candidate or nominee of a major or minor political party may be filled at any time up to and including the day prior to the election for that position. For state partisan offices in any political subdivision voted on solely by electors of a single county, an individual shall be appointed to fill such vacancy by the county central committee in the case of a major political party or by the state central committee or comparable governing body in the case of a minor political party. For other partisan offices, including federal or state-wide offices, an individual shall be appointed to fill such vacancy by the state central committee or comparable governing body of the appropriate political party.

Should such vacancy occur no later than the third Tuesday prior to the state primary or general election concerned and the ballots and voting machine labels have been printed, it shall be mandatory that they be corrected by the appropriate election officers. In making such correction, it shall not be necessary to reprint complete ballots if any other less expensive technique can be used and the resulting correction is reasonably clear.

Should such vacancy occur after the third Tuesday prior to said state primary or general election and time does not exist in which to correct paper ballots (including absentee ballots) or voting machine labels, either in total or in part, then the votes cast or recorded for the person who has died or become disqualified shall be counted for the person who has been named to fill such vacancy.

When the secretary of state is the person with whom the appointment by the major or minor political party is filed, he shall, in certifying candidates or nominations to the various county officers insert the name of the person appointed to fill a vacancy.

In the event that the secretary of state has already sent forth his certificate when the appointment to fill a vacancy is filed with him, he shall forthwith certify to the county auditors of the proper counties the name and place of residence of the person appointed to fill a vacancy, the office for which he is a candidate or nominee, the party he represents and all other pertinent facts pertaining to the vacancy. [1977 ex.s. c 329 § 13.]

29.18.200 Blanket primary authorized. Except as provided otherwise in chapter 29.19 RCW, all properly registered voters may vote for their choice at any primary held under this title, for any candidate for each office, regardless of political affiliation and without a declaration of political faith or adherence on the part of the voter. [1990 c 59 § 88; 1965 c 9 § 29.18.200. Prior: 1935 c 26 § 5, part; No RRS.]

Intent—Effective date—1990 c 59: See notes following RCW 29.01.006.

Chapter 29.19

PRESIDENTIAL PREFERENCE PRIMARY

Sections

29.19.010	Intent.
29.19.020	Date of primary.
29.19.030	Ballot—Names included.
29.19.040	Ballot—Arrangement and form.
29.19.050	Primary procedures—Ballot requests.
29.19.060	Allocation of delegates—Commitment—Vacancies.
29.19.070	Rules—Secretary of state.
29.19.080	Allocation of costs.
29.19.900	Severability—1989 c 4.

29.19.010 Intent. The people of the state of Washington declare that:

(1) The current presidential nominating caucus system in Washington state is unnecessarily restrictive of voter participation in that it discriminates against the elderly, the infirm, women, the handicapped, evening workers, and others who are unable to attend caucuses and therefore unable to fully participate in this most important quadrennial event that occurs in our democratic system of government.

(2) It is the intent of this chapter to make the presidential selection process more open and representative of the will of the people of our state.

(3) A presidential primary will afford the maximum opportunity for voter access at regular polling places during the daytime and evening hours convenient to the most people.

(4) This state's participation in the selection of presidential candidates shall be in accordance with the will of the people as expressed in a presidential preference primary.

(5) It is the intent of this chapter, to the maximum extent practicable, to continue to reserve to the political parties the right to conduct their delegate selection as prescribed by party rules insofar as it reflects the will of the people as expressed in a presidential primary election conducted every four years in the manner described by this chapter. [1989 c 4 § 1 (Initiative Measure No. 99).]

29.19.020 Date of primary. On the fourth Tuesday in May of each year when a president of the United States is to be nominated and elected, or such other date as may be selected by the secretary of state to advance the concept of a regional primary, a presidential preference primary shall be held at which voters may express their preferences as to who should be the nominee of a major political party for the office of president. [1989 c 4 § 2 (Initiative Measure No. 99).]

29.19.030 Ballot—Names included. The name of any candidate for a major political party nomination for president of the United States shall be printed on the presidential preference primary ballot of a major political party only:

(1) By direction of the secretary of state, who in the secretary's sole discretion has determined that the candidate's candidacy is generally advocated or is recognized in national news media; or

(2) If members of the political party of the candidate have presented a petition for nomination of the candidate that has attached to the petition a sheet or sheets containing

the signatures of at least one thousand registered voters who declare themselves in the petition as being affiliated with the same political party as the presidential candidate. The petition shall be filed with the secretary of state not later than the thirty-ninth day before the presidential preference primary. The signature sheets shall also contain the residence address and name or number of the precinct of each registered voter whose signature appears thereon and shall be certified in the manner prescribed in RCW 29.79.200 and 29.79.210.

The secretary of state shall place the name of the candidate on the ballot unless the candidate, at least thirty-five days before the presidential preference primary, executes and files with the secretary of state an affidavit stating without qualification that he or she is not now and will not become a candidate for the office of president of the United States at the forthcoming presidential election. The secretary of state shall certify the names of all candidates who will appear on the presidential preference primary ballot to the respective county auditors on or before the fourth Tuesday in April of each presidential election year. [1989 c 4 § 3 (Initiative Measure No. 99).]

29.19.040 Ballot—Arrangement and form. The arrangement and form of presidential primary ballots shall be substantially as provided for any primary election within the state except as may be modified by this chapter or by rule of the secretary of state as provided for in RCW 29.19.070 to adequately reflect the intent of this chapter.

A separate ballot shall be prepared for each major political party that has candidates whose names have been authorized for placement on presidential preference primary ballots under RCW 29.19.030. The names of all candidates for a party's nomination for the office of president shall be listed alphabetically in a column on that party's ballot. There shall be a printed box adjacent to the name of each candidate. A blank space to allow the voter to write in the name of another candidate shall also be included on each ballot.

The ballot, in providing for a choice of candidates for the office of president, shall set forth only those candidates, with their political party affiliation, who have qualified for a place on the ballot under RCW 29.19.030. [1989 c 4 § 4 (Initiative Measure No. 99).]

29.19.050 Primary procedures—Ballot requests. Insofar as is practicable, and where the provisions of this chapter do not specifically indicate otherwise, the presidential preference primary shall be conducted in the same manner as a state partisan primary, including the certification of the election returns by the secretary of state. The requirement of rotation of names on the ballot does not apply to the candidates listed on the presidential preference primary ballot. County auditors may combine and consolidate two or more precincts for the purpose of conducting the presidential preference primary only if precinct vote totals for the primary can still be made available and the consolidation does not require a voter to go to a location different from that of the last regular election.

Each person desiring to vote in the presidential preference primary shall receive a ballot request form on which

the voter shall sign his or her name and address and declare the party primary in which he or she wishes to participate.

The secretary shall prescribe rules for providing each party central committee a list of the voters who participated in the presidential primary of that party.

The signed ballot request forms shall be maintained in the centralized containers by the county auditor for a period of time as specified by rule of the secretary of state, after which time they shall be destroyed, unless otherwise directed by federal law.

At a presidential preference primary, a voter may cast no more than one vote on a ballot. Any presidential preference primary ballot with more than one vote is void, and notice to this effect, couched in clear, simple language, and printed in large type, shall appear on the face of each presidential preference primary ballot. Where voting machines or electronic voting devices are in use, the notice shall be displayed on or about each machine or device. [1989 c 4 § 5 (Initiative Measure No. 99).]

29.19.060 Allocation of delegates—Commitment—Vacancies. (1) The results of the presidential preference primary shall determine the percentage of delegate positions to be allocated to each presidential candidate. Selection of individuals to delegate positions shall be in compliance with applicable state party rules, and to the extent practicable, delegates shall be apportioned among the state's congressional districts. Delegate positions shall be allocated to presidential candidates in the manner specified in subsection (3) of this section except as otherwise provided by national party rules.

(2) All votes cast for a particular presidential candidate in a party's primary shall be considered votes for delegate positions committed to that candidate.

Each candidate for a delegate position who is committed to a particular presidential candidate, before the selection of delegates, shall sign and submit to the appropriate party's state committee the following pledge:

Delegate Pledge

I,, do hereby swear that I am a supporter of for the office of President of the United States; and that if elected as a delegate to the Party National Convention I pledge to cast my ballot as a delegate to the convention for that candidate on the first two ballots unless released by the candidate, and I pledge furthermore to do all that I can to advance the cause of that candidate at the national convention.

(3) Except as otherwise provided by national party rules, delegate positions shall be allocated from the state at-large among presidential candidates who receive at least fifteen percent of the total votes cast for candidates of the same political party, or such other percentage as national party rules may provide. Each candidate so qualified shall be allocated a percentage of delegate positions equal to as nearly as practicable that candidate's percentage of the total votes cast for candidates of the same political party in the presidential preference primary. The votes of candidates who do not receive at least fifteen percent of the total votes cast in their parties' presidential preference primary shall be

proportionately allocated to those candidates who did receive fifteen percent or more of the total votes cast in their parties' presidential preference primary.

(4) If any presidential candidate, at any time after the presidential preference primary, formally releases the delegates holding positions committed to him or her under the formula established by subsection (3) of this section, the delegates shall be considered uncommitted. The delegates holding positions committed to a candidate shall be considered formally released when the candidate so notifies, in writing, the chair of his or her party's delegation.

(5) In the event of the death of a candidate to whom delegate positions have been committed, all such positions shall be considered uncommitted.

(6) If no ballot choice on a political party ballot receives fifteen percent or more of the total votes cast, the state committee of the political party shall determine how delegate positions allotted to the state by the national committee shall be committed.

(7) If a vacancy occurs in the position of delegate, the remaining delegates committed to the same preference as the vacating person shall name a person to fill the vacancy. [1989 c 4 § 6 (Initiative Measure No. 99).]

29.19.070 Rules—Secretary of state. The secretary of state as chief election officer may make rules in accordance with chapter 34.05 RCW or its statutory successor to facilitate the operation, accomplishment, and purpose of this chapter. [1989 c 4 § 7 (Initiative Measure No. 99).]

29.19.080 Allocation of costs. Whenever a presidential preference primary election is held as provided by this chapter, the state of Washington shall assume all costs of holding the election if it is held alone. If any other election or elections are held at the same time, the state is liable only for its prorated share. The county auditor shall determine the election costs, including the state's prorated share, if applicable, and shall file a certified claim therefore with the secretary of state. The secretary of state shall compile such claims for presentation to the next succeeding legislature in the same manner as other legislative relief claims. [1989 c 4 § 8 (Initiative Measure No. 99).]

29.19.900 Severability—1989 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. [1989 c 4 § 12 (Initiative Measure No. 99).]

Chapter 29.21

NONPARTISAN PRIMARIES AND ELECTIONS

Sections

- 29.21.010 Primaries in cities, towns, and certain districts.
- 29.21.015 When no city, town, or district primary required—
Procedure.
- 29.21.070 Nonpartisan offices specified.
- 29.21.410 Special election to fill unexpired term.

Candidates' pamphlet: Chapter 29.80 RCW.

Contest, ineligibility to hold office at time declared elected as ground for: RCW 29.65.010.

Notice of primary: RCW 29.27.030.

29.21.010 Primaries in cities, towns, and certain districts. All city and town primaries shall be nonpartisan. Primaries for special purpose districts, except those districts that require ownership of property within the district as a prerequisite to voting, shall be nonpartisan. City, town, and district primaries shall be held as provided in RCW 29.13.070.

The purpose of this section is to establish the holding of a primary, subject to the exemptions in RCW 29.21.015, as a uniform procedural requirement to the holding of city, town, and district elections. These provisions supersede any and all other statutes, whether general or special in nature, having different election requirements. [1990 c 59 § 89; 1977 c 53 § 3; 1975-'76 2nd ex.s. c 120 § 1; 1965 c 123 § 7; 1965 c 9 § 29.21.010. Prior: 1951 c 257 § 7; 1949 c 161 § 3; Rem. Supp. 1949 § 5179-1.]

Intent—Effective date—1990 c 59: See notes following RCW 29.01.006.

Severability—1975-'76 2nd ex.s. c 120: "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 120 § 16.]

29.21.015 When no city, town, or district primary required—Procedure. No primary may be held for any single position in any city, town, or district, as required by RCW 29.21.010, if, after the last day allowed for candidates to withdraw, there are no more than two candidates filed for the position. The county auditor shall, as soon as possible, notify all the candidates so affected that the office for which they filed will not appear on the primary ballot. Names of candidates so notified shall be printed upon the general election ballot in the manner specified by RCW 29.30.025. [1990 c 59 § 90; 1975-'76 2nd ex.s. c 120 § 2; 1965 c 9 § 29.21.015. Prior: 1955 c 101 § 2; 1955 c 4 § 1.]

Intent—Effective date—1990 c 59: See notes following RCW 29.01.006.

Severability—1975-'76 2nd ex.s. c 120: See note following RCW 29.21.010.

29.21.070 Nonpartisan offices specified. The offices of superintendent of public instruction, justice of the supreme court, judge of the court of appeals, judge of the superior court, and judge of the district court shall be nonpartisan and the candidates therefor shall be nominated and elected as such.

All city, town, and special purpose district elective offices shall be nonpartisan and the candidates therefor shall be nominated and elected as such. [1990 c 59 § 91; 1987 c 202 § 193; 1971 c 81 § 75; 1965 c 9 § 29.21.070. Prior: (i) 1927 c 155 § 1, part; 1925 ex.s. c 68 § 1, part; 1921 c 116 § 1, part; 1919 c 85 § 1, part; 1911 c 101 § 1, part; 1909 c 82 § 11, part; 1907 c 209 § 38, part; RRS § 5212, part. (ii) 1933 c 85 § 1, part; RRS § 5213-1, part.]

Intent—Effective date—1990 c 59: See notes following RCW 29.01.006.

Intent—1987 c 202: See note following RCW 2.04.190.

Eligibility of judges: State Constitution Art. 4 § 17.

29.21.410 Special election to fill unexpired term. Whenever it shall be necessary to hold a special election to fill an unexpired term of an elective office of any city, town, or district, such special election shall be held in concert with the next general election which is to be held by the respective city, town, or district concerned for the purpose of electing officers to full terms: PROVIDED, That this section shall not apply to any city of the first class whose charter provision relating to elections to fill unexpired terms are inconsistent herewith. [1972 ex.s. c 61 § 7.]

Severability—1972 ex.s. c 61: See note following RCW 29.15.160.

Chapter 29.24

NOMINATIONS OTHER THAN BY PRIMARY

Sections

- 29.24.010 Definitions—"Convention" and "election jurisdiction."
- 29.24.020 Nomination by convention or write-in—Date for convention—Multiple conventions by single party.
- 29.24.025 Notice of convention.
- 29.24.030 Requirements for validity of convention.
- 29.24.035 Nominating petition—Name—Registered voters.
- 29.24.040 Certificate of nomination—Requisites.
- 29.24.055 Presidential electors—Selection at convention.
- 29.24.060 Certificate of nomination—Checking signatures—Appeal of determination.
- 29.24.070 Declarations of candidacy required, exceptions—Payment of fees.

Special procedures for United States senate vacancy in 1983: Chapter 1, Laws of 1983 3rd ex. sess. (unmodified).

29.24.010 Definitions—"Convention" and "election jurisdiction." A "convention" for the purposes of this chapter, is an organized assemblage of registered voters representing an independent candidate or candidates or a new or minor political party, organization, or principle. As used in this chapter, the term "election jurisdiction" shall mean the state or any political subdivision or jurisdiction of the state from which partisan officials are elected. This term shall include county commissioner districts or council districts for members of a county legislative authority, counties for county officials who are nominated and elected on a county-wide basis, legislative districts for members of the legislature, congressional districts for members of congress, and the state for president and vice president, members of the United States senate, and state officials who are elected on a state-wide basis. [1977 ex.s. c 329 § 1; 1965 c 9 § 29.24.010. Prior: 1955 c 102 § 2; prior: 1937 c 94 § 2, part; RRS § 5168, part.]

Minor political party defined: RCW 29.01.100.

Registration of voters: Chapter 29.07 RCW.

29.24.020 Nomination by convention or write-in—Date for convention—Multiple conventions by single party. Any nomination of a candidate for partisan public office by other than a major political party shall only be made either: (1) In a convention held not earlier than the last Saturday in June and not later than the first Saturday in July or during any of the seven days immediately preceding the first day for filing declarations of candidacy as fixed in accordance with RCW 29.68.080; or (2) as provided by RCW 29.51.170. A minor political party may hold more than one convention but in no case shall any such party

nominate more than one candidate for any one partisan public office or position. For the purpose of nominating candidates for the offices of president and vice-president, United States senator, or a state-wide office, a minor party or independent candidate holding multiple conventions may add together the number of signatures of different individuals from each convention obtained in support of the candidate or candidates in order to obtain the number required by RCW 29.24.030. For all other offices for which nominations are made, signatures of the requisite number of registered voters must be obtained at a single convention. [1989 c 215 § 2; 1977 ex.s. c 329 § 2; 1965 c 9 § 29.24.020. Prior: 1955 c 102 § 3; prior: (i) 1937 c 94 § 1; RRS § 5167. (ii) 1937 c 94 § 4; RRS § 5170. (iii) 1937 c 94 § 10; RRS § 5170-6. (iv) 1907 c 209 § 26, part; RRS § 5203, part.]

Primaries, when held: RCW 29.13.070.

29.24.025 Notice of convention. Each minor party or independent candidate must publish a notice in a newspaper of general circulation within the county in which the party or the candidate intends to hold a convention. The notice must appear at least ten days before the convention is to be held, and shall state the date, time, and place of the convention. Additionally, it shall include the mailing address of the person or organization sponsoring the convention. [1989 c 215 § 1.]

29.24.030 Requirements for validity of convention.

(1) To be valid, a convention must be attended by at least twenty-five registered voters.

(2) In order to nominate candidates for the offices of president and vice-president of the United States, United States senator, or any state-wide office, a nominating convention shall obtain and submit to the filing officer the signatures of at least two hundred registered voters of the state of Washington. In order to nominate candidates for any other office, a nominating convention shall obtain and submit to the filing officer the signatures of twenty-five persons who are registered to vote in the jurisdiction of the office for which the nominations are made. [1989 c 215 § 3; 1977 ex.s. c 329 § 3; 1965 c 9 § 29.24.030. Prior: 1955 c 102 § 4; prior: (i) 1937 c 94 § 2, part; RRS § 5168, part. (ii) 1937 c 94 § 3; RRS § 5169.]

29.24.035 Nominating petition—Name—Registered voters. A nominating petition submitted under this chapter shall clearly identify the name of the minor party or independent candidate convention as it appears on the certificate of nomination as required by *RCW 29.24.030(3). The petition shall also contain a statement that the person signing the petition is a registered voter of the state of Washington and shall have a space for the voter to sign his or her name and to print his or her name and address. No person may sign more than one nominating petition under this chapter for an office for a primary or election. [1989 c 215 § 5.]

***Reviser's note:** The reference to RCW 29.24.030(3) appears to be erroneous. The section governing the certificate of nomination is RCW 29.24.040(3).

29.24.040 Certificate of nomination—Requisites. A certificate evidencing nominations made at a convention must:

- (1) Be in writing;
- (2) Contain the name of each person nominated, his residence, and the office for which he is named, and if the nomination is for the offices of president and vice-president of the United States, a sworn statement from both nominees giving their consent to the nomination;
- (3) Identify the minor political party or the independent candidate on whose behalf the convention was held;
- (4) Be verified by the oath of the presiding officer and secretary;
- (5) Be accompanied by a nominating petition or petitions bearing the signatures and addresses of registered voters equal in number to that required by RCW 29.24.030;
- (6) Contain proof of publication of the notice of calling the convention; and
- (7) Be submitted to the appropriate filing officer not later than one week following the adjournment of the convention at which the nominations were made. If the nominations are made only for offices whose jurisdiction is entirely within one county, the certificate and nominating petitions must be filed with the county auditor. If a minor party or independent candidate convention nominates any candidates for offices whose jurisdiction encompasses more than one county, all nominating petitions and the convention certificates must be filed with the secretary of state. [1989 c 215 § 4; 1977 ex.s. c 329 § 4; 1965 c 9 § 29.24.040. Prior: 1955 c 102 § 5; prior: 1937 c 94 § 5, part; RRS § 5170-1, part.]

Requirements of candidates for public office under subversive activities act: Chapter 9.81 RCW.

29.24.055 Presidential electors—Selection at convention. A minor political party or independent candidate convention nominating candidates for the offices of president and vice-president of the United States shall, not later than ten days after the adjournment of the convention, submit a list of presidential electors to the office of the secretary of state. The list shall contain the names and the mailing addresses of the persons selected and shall be verified by the presiding officer of the convention. [1989 c 215 § 6.]

29.24.060 Certificate of nomination—Checking signatures—Appeal of determination. Upon the receipt of the certificate of nomination, the officer with whom it is filed shall check the certificate and canvass the signatures on the accompanying nominating petitions to determine if the requirements of RCW 29.24.030 have been met. Once the determination has been made, the filing officer shall notify the presiding officer of the convention and any other persons requesting the notification, of his or her decision regarding the sufficiency of the certificate or the nominating petitions. Any appeal regarding the filing officer's determination must be filed with the superior court of the county in which the certificate or petitions were filed not later than five days from the date the determination is made, and shall be heard and finally disposed of by the court within five days of the filing. Nominating petitions shall not be available for public inspection or copying. [1989 c 215 § 7; 1977 ex.s. c 329 §

6; 1965 c 9 § 29.24.060. Prior: 1937 c 94 § 6; RRS § 5170-2.]

29.24.070 Declarations of candidacy required, exceptions—Payment of fees. Not later than the Friday immediately preceding the first day for candidates to file, the secretary of state shall notify the county auditors of the names and designations of all minor party and independent candidates who have filed valid convention certificates and nominating petitions with that office. Except for the offices of president and vice-president, persons nominated under this chapter shall file declarations of candidacy as provided by RCW 29.15.010 and 29.15.030. The name of a candidate nominated at a convention shall not be printed upon the primary ballot unless he pays the fee required by law to be paid by candidates for the same office to be nominated at a primary. [1990 c 59 § 103; 1989 c 215 § 8; 1977 ex.s. c 329 § 7; 1965 c 9 § 29.24.070. Prior: 1955 c 102 § 7; prior: (i) 1937 c 94 § 7, part; RRS § 5170-3, part. (ii) 1907 c 209 § 26, part; RRS § 5203, part.]

Intent—Effective date—1990 c 59: See notes following RCW 29.01.006.

Chapter 29.27

CERTIFICATES AND NOTICES

Sections

- 29.27.020 Certifying primary candidates.
- 29.27.030 Notice of primary.
- 29.27.050 Certification of nominees.
- 29.27.060 Certification of measures—Ballot titles.
- 29.27.065 Certification of measures—Notice of ballot title.
- 29.27.067 Certification of measures—Ballot title—Appeal to superior court.
- 29.27.072 Notice of constitutional amendments and state debts—Method.
- 29.27.074 Notice of constitutional amendments and state debts—Contents.
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- 29.27.080 Notice of election—Certification of measures.
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- 29.27.100 Certificates of election to officers elected in single county or less.
- 29.27.110 Certificates of election to other officers.
- 29.27.120 Certificate not withheld for informality in returns.
- 29.27.130 Certificates of nomination and ballots—Fraud.

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 - petitions to legislature, secretary of state's certificate of facts relating to filing and canvass thereof: RCW 29.79.200.*
 - referendum bills by legislature, serial number, ballot title certified: RCW 29.79.260.*
 - rejected initiative to legislature certified for referendum to people: RCW 29.79.270.*
 - review of proposed initiatives by code reviser: RCW 29.79.015.*
 - substitute for rejected initiative certified for referendum to people: RCW 29.79.280.*

- to voters, certificate of sufficiency: RCW 29.79.230.*
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- recall, certification of election results: RCW 29.82.140.*
- recount of votes, certificate of abstract of votes cast: RCW 29.64.040.*
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 when no city primary, notice of: RCW 29.21.015.

29.27.020 Certifying primary candidates. On or before the day following the last day for political parties to fill vacancies in the ticket as provided by RCW 29.18.150, the secretary of state shall certify to each county auditor a list of the candidates who have filed declarations of candidacy in his or her office for the primary. For each office, the certificate shall include the name of each candidate, his or her address, and his or her party designation, if any. [1990

c 59 § 8; 1965 ex.s. c 103 § 4; 1965 c 9 § 29.27.020. Prior: 1949 c 161 § 10, part; 1947 c 234 § 2, part; 1935 c 26 § 1, part; 1921 c 178 § 4, part; 1907 c 209 § 8, part; Rem. Supp. 1949 § 5185, part.]

Intent—Effective date—1990 c 59: See notes following RCW 29.01.006.

Special procedures for primary for United States senate vacancy in 1983: Chapter 1, Laws of 1983 3rd ex. sess. (uncodified).

29.27.030 Notice of primary. Not more than ten nor less than three days prior to the primary election the county auditor shall publish notice of such primary in one or more newspapers of general circulation within the county. Said notice shall contain the proper party designations, the names and addresses of all persons who have filed a declaration of candidacy to be voted upon at that primary election, the hours during which the polls will be open, and that the election will be held in the regular polling place in each precinct, giving the address of each polling place: PROVIDED, That the names of all candidates for nonpartisan offices shall be published separately with designation of the offices for which they are candidates but without party designation. This shall be the only notice required for the holding of any primary election. [1965 c 9 § 29.27.030. Prior: 1949 c 161 § 10, part; 1947 c 234 § 2, part; 1935 c 26 § 1, part; 1921 c 178 § 4, part; 1907 c 209 § 8, part; Rem. Supp. 1949 § 5185, part.]

29.27.050 Certification of nominees. No later than the day following the certification of the returns of any primary, the secretary of state shall certify to the appropriate county auditors, the names of all persons nominated for offices, the returns of which have been canvassed by the secretary of state. [1990 c 59 § 9; 1965 ex.s. c 103 § 7; 1965 c 9 § 29.27.050. Prior: 1961 c 130 § 19; 1889 p 403 § 9; RRS § 5173.]

Intent—Effective date—1990 c 59: See notes following RCW 29.01.006.

29.27.060 Certification of measures—Ballot titles. When a proposed constitution or constitutional amendment or other question is to be submitted to the people of the state for state-wide popular vote, the attorney general shall prepare a concise statement posed as a question and not exceeding twenty words containing the essential features thereof expressed in such a manner as to clearly identify the proposition to be voted upon.

Questions to be submitted to the people of a county or municipality shall also be advertised as provided for nominees for office, and in such cases there shall also be printed on the ballot a concise statement posed as a question and not exceeding seventy-five words containing the essential features thereof expressed in such a manner as to clearly identify the proposition to be voted upon, which statement shall be prepared by the city attorney for the city, and by the prosecuting attorney for the county or any other political subdivision of the state, other than cities, situated in the county.

The concise statement constitutes the ballot title. The secretary of state shall certify to the county auditors the ballot title for a proposed constitution, constitutional amend-

ment or other state-wide question at the same time and in the same manner as the ballot titles to initiatives and referendums. [1985 c 252 § 1; 1977 c 4 § 3; 1973 1st ex.s. c 118 § 1; 1965 c 9 § 29.27.060. Prior: 1953 c 242 § 1; 1913 c 135 § 1; 1889 p 405 § 14; RRS § 5271.]

Severability—1977 c 4: See note following RCW 84.52.052.

Ballot titles to initiatives and referendums: RCW 29.79.040 through 29.79.070.

Review of proposed initiatives by code reviser: RCW 29.79.015.

29.27.065 Certification of measures—Notice of ballot title. Upon the filing of a ballot title as defined in RCW 29.27.060, the secretary of state, in event it is a state question, or the county auditor in the event it is a county or other local question, shall forthwith notify the persons proposing the measure of the exact language of the ballot title. [1965 c 9 § 29.27.065. Prior: 1953 c 242 § 3.]

29.27.067 Certification of measures—Ballot title—Appeal to superior court. If the persons filing any state or local question covered by RCW 29.27.060 are dissatisfied with the ballot title formulated by the attorney general, city attorney, or prosecuting attorney preparing the same, they may at any time within ten days from the time of the filing of the ballot title appeal to the superior court of Thurston county if it is a state-wide question, or to the superior court of the county where the question is to appear on the ballot, if it is a county or local question, by petition setting forth the measure, the ballot title objected to, their objections to the ballot title and praying for amendment thereof. The time of the filing of the ballot title, as used herein in determining the time for appeal, is the time the ballot title is first filed with the secretary of state, if concerning a state-wide question, or the county auditor, if a local question, the secretary of state or the county officer being herein called the "filing officer."

A copy of the petition on appeal together with a notice that an appeal has been taken shall be served upon the filing officer and the official preparing the ballot title. Upon the filing of the petition on appeal, the court shall forthwith, or at the time to which a hearing may be adjourned by consent of the appellants, examine the proposed measure, the ballot title filed and the objections thereto and may hear arguments thereon, and shall as soon as possible render its decision and certify to and file with the filing officer such ballot title as it determines will meet the requirements of this chapter. The decision of the superior court shall be final, and the title so certified shall be the established ballot title. Such appeal shall be heard without cost to either party. [1965 c 9 § 29.27.067. Prior: 1953 c 242 § 4.]

29.27.072 Notice of constitutional amendments and state debts—Method. The secretary of state shall cause notice of the proposed constitutional amendments and laws authorizing state debts that are to be submitted to the people to be published at least four times during the four weeks next preceding the election in every legal newspaper in the state and shall supplement publication thereof by radio and television broadcast as provided in RCW 65.16.130, 65.16.140, and 65.16.150. [1967 c 96 § 1; 1965 c 9 § 29.27.072. Prior: 1961 c 176 § 1.]

29.27.074 Notice of constitutional amendments and state debts—Contents. The notice provided for in RCW 29.27.072 shall set forth the following information:

(1) A legal identification of the state measure to be voted upon.

(2) The official ballot title of such state measure.

(3) A brief statement explaining the constitutional provision or state law as it presently exists.

(4) A brief statement explaining the effect of the state measure should it be approved.

(5) The total number of votes cast for and against the measure in both the state senate and house of representatives. [1967 c 96 § 2; 1965 c 9 § 29.27.074. Prior: 1961 c 176 § 2.]

29.27.076 Notice of constitutional amendments and state debts—Explanatory statement. The attorney general shall, by the first day of July preceding each general election, prepare the explanatory statements required in RCW 29.27.074. Such statements shall be prepared in clear and concise language and shall avoid the use of legal and other technical terms insofar as possible. Any person dissatisfied with the explanatory statement so prepared may at any time within ten days from the filing thereof in the office of the secretary of state appeal to the superior court of Thurston county by petition setting forth the proposed state measure, the explanatory statement prepared by the attorney general, and his objection thereto and praying for the amendment thereof. A copy of the petition and a notice of such appeal shall be served on the secretary of state and the attorney general. The court shall, upon filing of the petition, examine the proposed state measure, the explanatory statement, and the objections thereto and may hear argument thereon and shall, as soon as possible, render its decision and certify to and file with the secretary of state such explanatory statement as it determines will meet the requirement of RCW 29.27.072 through 29.27.076. The decision of the superior court shall be final and its explanatory statement shall be the established explanatory statement. Such appeal shall be heard without costs to either party. [1967 c 96 § 3; 1965 c 9 § 29.27.076. Prior: 1961 c 176 § 3.]

29.27.080 Notice of election—Certification of measures. (1) Except as provided in RCW 29.81A.060, notice for any state, county, district, or municipal election, whether special or general, shall be given by at least one publication not more than ten nor less than three days prior to the election by the county auditor or the officer conducting the election as the case may be, in one or more newspapers of general circulation within the county. Said legal notice shall contain the title of each office under the proper party designation, the names and addresses of all officers who have been nominated for an office to be voted upon at that election, together with the ballot titles of all measures, the hours during which the polls will be open, and that the election will be held in the regular polling places in each precinct, giving the address of each polling place: PROVIDED, That the names of all candidates for nonpartisan offices shall be published separately with designation of the offices for which they are candidates but without party designation. This shall be the only notice required for a state, county,

district, or municipal general or special election and shall supersede the provisions of any and all other statutes, whether general or special in nature, having different requirements for the giving of notice of any general or special elections.

(2) All school district elections held on February 5, 1980, at which the number and proportion of persons required by law voted to authorize bonds or tax levies, are hereby validated regardless of any failure to publish notice of such election. No action challenging the validity of any such election may be brought later than April 15, 1980, or thirty days from June 12, 1980, whichever is later. Notice of provisions of this subsection shall be published within five days after February 28, 1980, in a newspaper of general circulation within each county where a school district election was held on February 5, 1980, and where notice of such election was not published as provided in subsection (1) of this section. [1984 c 106 § 12; 1980 c 35 § 8; 1965 c 9 § 29.27.080. Prior: 1955 c 153 § 1; 1951 c 101 § 7; 1949 c 161 § 11; Rem. Supp. 1949 § 5148-3a.]

Effective date—Severability—1984 c 106: See RCW 29.81A.900 and 29.81A.901.

Severability—1980 c 35: See note following RCW 28A.315.450.

29.27.090 Preservation of nominating certificates.

The secretary of state, county auditor of each county, and clerks of the several municipal corporations shall preserve all certificates of nomination filed in their respective offices for six months. All certificates shall be open to public inspection under proper regulations made by the officer with whom they are filed. [1965 c 9 § 29.27.090. Prior: 1921 c 178 § 1, part; 1915 c 11 § 1, part; 1907 c 130 § 1, part; 1889 p 402 § 7, part; Code 1881 § 3067, part; 1865 p 30 § 1, part; RRS § 5171, part.]

29.27.100 Certificates of election to officers elected in single county or less. Immediately after the ascertainment of the result of an election for an office to be filled by the voters of a single county, or of a precinct, or of a constituency within a county for which he serves as supervisor of elections, the county auditor shall notify the person elected, and upon his demand issue to him a certificate of his election. [1965 c 9 § 29.27.100. Prior: 1961 c 130 § 8; prior: Code 1881 § 3096, part; 1866 p 6 § 2, part; 1865 p 39 § 7, part; RRS § 5343, part.]

Tie votes in final election: RCW 29.62.080.

29.27.110 Certificates of election to other officers.

Except as provided in the state Constitution, the governor shall issue certificates of election to those elected as senator or representative in the congress of the United States and to state offices. The secretary of state shall issue certificates of election to those elected to the office of judge of the superior court in judicial districts comprising more than one county and to those elected to either branch of the state legislature in legislative districts comprising more than one county. [1965 c 9 § 29.27.110. Prior: (i) 1933 c 92 § 1; RRS § 5343-1. (ii) Code 1881 § 3100, part; No RRS.]

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Tie votes in final election: RCW 29.62.080.

29.27.120 Certificate not withheld for informality in returns. No certificate shall be withheld on account of any defect or informality in the returns of any election, if it can with reasonable certainty be ascertained from such return what office is intended, and who is entitled to such certificate, nor shall any commission be withheld by the governor on account of any defect or informality of any return made to the office of the secretary of state. [1965 c 9 § 29.27.120. Prior: Code 1881 § 3102; 1865 p 41 § 13; RRS § 5347.]

29.27.130 Certificates of nomination and ballots—Fraud. See RCW 29.85.100.

Chapter 29.30

BALLOTS

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29.30.005 Names on primary ballot. Except for the candidates for the positions of president and vice-president or for a partisan or nonpartisan office for which no primary is required, the names of all candidates who have filed for nomination under chapter 29.18 RCW and those independent candidates and candidates of minor political parties who have been nominated under chapter 29.24 RCW shall appear on the appropriate ballot at the primary throughout the jurisdiction in which they are to be nominated. [1990 c 59 § 93.]

Intent—Effective date—1990 c 59: See notes following RCW 29.01.006.

29.30.010 Uniformity, arrangement, contents required. Every ballot for a single combination of issues and offices shall be uniform within a precinct and shall identify the type of primary or election, the county, and the date of the primary or election, and the ballot or voting device shall contain instructions on the proper method of recording a vote, including write-in votes. Each position, together with the names of the candidates for that office, shall be clearly separated from other offices or positions in the same jurisdiction. The offices in each jurisdiction shall be clearly separated from each other. No paper ballot or ballot card may be marked in any way that would permit the identification of the person who voted that ballot. [1990 c 59 § 10; 1986 c 167 § 10; 1977 ex.s. c 361 § 51; 1965 c 9 § 29.30.010. Prior: (i) 1935 c 26 § 2, part; 1933 c 95 § 2, part; 1917 c 71 § 1, part; 1909 c 82 § 3, part; 1907 c 209 § 10, part; RRS § 5187, part. (ii) 1909 c 82 § 5, part; 1907 c 209 § 13, part; RRS § 5190, part.]

Intent—Effective date—1990 c 59: See notes following RCW 29.01.006.

Severability—1986 c 167: See note following RCW 29.01.055.

Effective date—Severability—1977 ex.s. c 361: See notes following RCW 29.01.006.

29.30.020 Order of offices and issues—Party indication. The positions or offices on a primary ballot shall be arranged in substantially the following order: United States senator; United States representative; governor; lieutenant governor; secretary of state; state treasurer; state auditor; attorney general; commissioner of public lands; superintendent of public instruction; insurance commissioner; state senator; state representative; county officers; justices of the supreme court; judges of the court of appeals; judges of the superior court; and judges of the district court. For all other jurisdictions on the primary ballot, the offices in each

jurisdiction shall be grouped together and be in the order of the position numbers assigned to those offices, if any.

The order of the positions or offices on an election ballot shall be substantially the same as on a primary ballot except that the offices of president and vice-president of the United States shall precede all other offices on a presidential election ballot. State ballot issues shall be placed before all offices on an election ballot. The positions on a ballot to be assigned to ballot measures regarding local units of government shall be established by the secretary of state by rule.

The political party or independent candidacy of each candidate for partisan office shall be indicated next to the name of the candidate on the primary and election ballot. [1990 c 59 § 11; 1977 ex.s. c 361 § 52; 1971 c 81 § 76; 1965 c 9 § 29.30.020. Prior: 1935 c 26 § 2, part; 1933 c 95 § 2, part; 1917 c 71 § 1, part; 1909 c 82 § 3, part; 1907 c 209 § 10, part; RRS § 5187, part.]

Intent—Effective date—1990 c 59: See notes following RCW 29.01.006.

Effective date—Severability—1977 ex.s. c 361: See notes following RCW 29.01.006.

29.30.025 Order of candidates on ballots. After the close of business on the last day for candidates to file for office, the filing officer shall, from among those filings made in person and by mail, determine by lot the order in which the names of those candidates will appear on all sample and absentee ballots. In the case of candidates for city, town, and district office, this procedure shall also determine the order for candidate names on the official primary ballot used at the polling place. The determination shall be done publicly and may be witnessed by the media and by any candidate. If no primary is required for any nonpartisan office under RCW 29.15.150 or 29.21.015, the names shall appear on the general election ballot in the order determined by lot. [1990 c 59 § 80.]

Intent—Effective date—1990 c 59: See notes following RCW 29.01.006.

29.30.040 Primaries—Rotating names of candidates. At primaries, the names of candidates for federal, state, and county partisan offices, for the office of superintendent of public instruction, and for judicial offices shall, for each office or position, be arranged initially in the order determined under RCW 29.30.025. Additional sets of ballots shall be prepared in which the positions of the names of all candidates for each office or position shall be changed as many times as there are candidates in the office or position in which there are the greatest number of names. As nearly as possible an equal number of ballots shall be prepared after each change. In making the changes of position between each set of ballots, the candidates for each such office in the first position under the office heading shall be moved to the last position under that office heading, and each other name shall be moved up to the position immediately above its previous position under that office heading. The effect of this rotation of the order of the names shall be that the name of each candidate for an office or position shall appear first, second, and so forth for that office or position on the ballots of a nearly equal number of registered voters in that jurisdiction. In a precinct using voting devices, the names of the candidates for each office shall appear in only one sequence

in that precinct. The names of candidates for city, town, and district office on the ballot at the primary shall not be rotated. [1990 c 59 § 94; 1977 ex.s. c 361 § 54; 1965 c 9 § 29.30.040. Prior: 1909 c 82 § 5, part; 1907 c 209 § 13, part; RRS § 5190, part.]

Intent—Effective date—1990 c 59: See notes following RCW 29.01.006.

Effective date—Severability—1977 ex.s. c 361: See notes following RCW 29.01.006.

29.30.060 Sample ballots. Except in each county with a population of one million or more, on or before the fifteenth day before a primary or election, the county auditor shall prepare a sample ballot which shall be made readily available to members of the public. The secretary of state shall adopt rules governing the preparation of sample ballots in counties with a population of one million or more. The rules shall permit, among other alternatives, the preparation of more than one sample ballot by a county with a population of one million or more for a primary or election, each of which lists a portion of the offices and issues to be voted on in that county. The position of precinct committee officer shall be shown on the sample ballot for the general election, but the names of candidates for the individual positions need not be shown. [1991 c 363 § 33; 1990 c 59 § 12; 1987 c 295 § 3; 1986 c 120 § 3; 1977 ex.s. c 361 § 55; 1965 c 9 § 29.30.060. Prior: (i) 1935 c 26 § 2, part; 1933 c 95 § 2, part; 1917 c 71 § 1, part; 1909 c 82 § 3, part; 1907 c 209 § 10, part; RRS § 5187, part. (ii) 1909 c 82 § 5, part; 1907 c 209 § 13, part; RRS § 5190, part.]

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.

Effective date—Severability—1977 ex.s. c 361: See notes following RCW 29.01.006.

29.30.075 Primary ballots for absentee voters, date ready. Except where a recount or litigation under RCW 29.04.030 is pending, the county auditor shall have sufficient absentee ballots ready to mail to absentee voters of that county at least twenty days before any primary, general election, or special election. [1987 c 54 § 1; 1977 ex.s. c 361 § 56; 1965 ex.s. c 103 § 5; 1965 c 9 § 29.30.075. Prior: 1949 c 161 § 10, part; 1947 c 234 § 2, part; 1935 c 26 § 1, part; 1921 c 178 § 4, part; 1907 c 209 § 8, part; Rem. Supp. 1949 § 5185, part.]

Effective date—Severability—1977 ex.s. c 361: See notes following RCW 29.01.006.

29.30.081 Arrangement of instructions, measures, offices—Order of candidates—Numbering of ballots. (1) On the top of each ballot there shall be printed instructions directing the voters how to mark the ballot, including write-in votes. After the instructions and before the offices shall be placed the questions of adopting constitutional amendments or any other state measure authorized by law to be submitted to the voters at that election.

(2) The candidate or candidates of the major political party which received the highest number of votes from the

electors of this state for the office of president of the United States at the last presidential election shall appear first following the appropriate office heading, the candidate or candidates of the other major political parties shall follow according to the votes cast for their nominees for president at the last presidential election, and independent candidates and the candidate or candidates of all other parties shall follow in the order of their qualification with the secretary of state.

(3) The names of candidates for president and vice-president for each political party shall be grouped together with a single response position for a voter to indicate his or her choice.

(4) All paper ballots and ballot cards shall be sequentially numbered in such a way to permit removal of such numbers without leaving any identifying marks on the ballot. [1990 c 59 § 13; 1986 c 167 § 11; 1982 c 121 § 1; 1977 ex.s. c 361 § 60.]

Intent—Effective date—1990 c 59: See notes following RCW 29.01.006.

Severability—1986 c 167: See note following RCW 29.01.055.

Effective date—Severability—1977 ex.s. c 361: See notes following RCW 29.01.006.

29.30.085 Nonpartisan candidates qualified for general election. (1) Except as provided in RCW 29.30.086 and in subsection (2) of this section, on the ballot at the general election for a nonpartisan office for which a primary was held, only the names of the candidate who received the greatest number of votes and the candidate who received the next greatest number of votes for that office shall appear under the title of that office, and the names shall appear in that order. If a primary was conducted, no candidate's name may be printed on the subsequent general election ballot unless he or she receives at least one percent of the total votes cast for that office at the preceding primary. On the ballot at the general election for any other nonpartisan office for which no primary was held, the names of the candidates shall be listed in the order determined under RCW 29.30.025.

(2) On the ballot at the general election for the office of justice of the supreme court, judge of the court of appeals, judge of the superior court, or state superintendent of public instruction, if a candidate in a contested primary receives a majority of all the votes cast for that office or position, only the name of that candidate may be printed under the title of the office for that position. [1992 c 181 § 2; 1990 c 59 § 95.]

Effective date—1992 c 181: See note following RCW 29.30.086.

Intent—Effective date—1990 c 59: See notes following RCW 29.01.006.

29.30.086 Disqualified candidates in nonpartisan elections—Special procedures for conduct of election. This section applies if a candidate for an elective office of a city, town, or special purpose district would, under this chapter, otherwise qualify to have his or her name printed on the general election ballot for the office, but the candidate has been declared to be unqualified to hold the office by a court of competent jurisdiction.

(1) In a case in which a primary is conducted for the office:

(a) If ballots for the general election for the office have not been ordered by the county auditor, the candidate who received the third greatest number of votes for the office at the primary shall qualify as a candidate for general election and that candidate's name shall be printed on the ballot for the office in lieu of the name of the disqualified candidate.

(b) If general election ballots for the office have been so ordered, votes cast for the disqualified candidate at the general election for the office shall not be counted for that office.

(2) In a case in which a primary is not conducted for the office:

(a) If ballots for the general election for the office have not been ordered by the county auditor, the name of the disqualified candidate shall not appear on the general election ballot for the office.

(b) If general election ballots for the office have been so ordered, votes cast for the disqualified candidate at the general election for the office shall not be counted for that office.

(3) If the disqualified candidate is the only candidate to have filed for the office during a regular or special filing period for the office, a void in candidacy for the office exists. [1992 c 181 § 1.]

Effective date—1992 c 181: "This act shall take effect July 1, 1992." [1992 c 181 § 3.]

29.30.095 Partisan candidates qualified for general election. The name of a candidate for a partisan office for which a primary was conducted shall not be printed on the ballot for that office at the subsequent general election unless the candidate receives a number of votes equal to at least one percent of the total number cast for all candidates for that position sought and a plurality of the votes cast for the candidates of his or her party for that office at the preceding primary. [1990 c 59 § 96.]

Intent—Effective date—1990 c 59: See notes following RCW 29.01.006.

29.30.101 Names qualified to appear on election ballot. The names of the persons certified as nominees by the secretary of state or the county canvassing board shall be printed on the ballot at the ensuing election.

No name of any candidate whose nomination at a primary is required by law shall be placed upon the ballot at a general or special election unless it appears upon the certificate of either (1) the secretary of state, or (2) the county canvassing board, or (3) a minor party convention or the state or county central committee of a major political party to fill a vacancy on its ticket under RCW 29.18.160.

Excluding the office of precinct committee officer, a candidate's name shall not appear more than once upon a ballot. [1990 c 59 § 14; 1987 c 295 § 4; 1977 ex.s. c 361 § 58.]

Intent—Effective date—1990 c 59: See notes following RCW 29.01.006.

Effective date—Severability—1977 ex.s. c 361: See notes following RCW 29.01.006.

29.30.111 Ballot proposition for certain regular property tax levies—Form. The ballot proposition authorizing a taxing district to impose the regular property tax levies authorized in RCW 36.69.145, 67.38.130, or 84.52.069 shall contain in substance the following:

"Shall the (insert the name of the taxing district) be authorized to impose regular property tax levies of (insert the maximum rate) or less per thousand dollars of assessed valuation for each of (insert the maximum number of years allowable) consecutive years?

Yes
No

Each voter shall indicate either "Yes" or "No" on his or her ballot in accordance with the procedures established under this title. [1984 c 131 § 3.]

Purpose—1984 c 131 §§ 3-9: "The purpose of sections 3 through 6 of this act is to clarify requirements necessary for voters to authorize certain local governments to impose regular property tax levies for a series of years. Sections 3 through 9 of this act only clarify the existing law to avoid credence being given to an erroneous opinion that has been rendered by the attorney general. As cogently expressed in Attorney General Opinion, Number 14, Addendum, opinions rendered by the attorney general are advisory only and are merely a "prediction of the outcome if the matter were to be litigated." Nevertheless, confusion has arisen from this erroneous opinion." [1984 c 131 § 2.] "Sections 3 through 9 of this act" consist of the enactment of RCW 29.30.111 and 36.68.525 and the 1984 c 131 amendments to RCW 67.38.130, 84.52.069, 36.69.145, 36.68.480, and 36.68.520.

29.30.130 Expense of printing and distributing ballot materials. The cost of printing ballots, ballot cards, and instructions and the delivery of this material to the precinct election officers shall be an election cost that shall be borne as determined under RCW 29.13.045 and 29.13.047, as appropriate. [1990 c 59 § 16; 1965 c 9 § 29.30.130. Prior: 1889 p 400 § 1; RRS § 5269.]

Intent—Effective date—1990 c 59: See notes following RCW 29.01.006.

Constituencies to bear all or share of election costs—Procedure to recover: RCW 29.13.045.

29.30.160 Certification of measures—Ballot titles. See RCW 29.27.060.

29.30.165 Certification of measures—Notice of ballot title to persons proposing measure. See RCW 29.27.065.

29.30.167 Certification of measures—Ballot title—Appeal to superior court. See RCW 29.27.067.

29.30.170 Destroying surplus ballots. See RCW 29.54.010.

29.30.180 United States presidential electors—Nomination—What names on ballots—How counted. See RCW 29.71.020.

29.30.190 United States constitutional amendment conventions—Delegates—Ballots. See RCW 29.74.080.

29.30.200 Initiative, referendum—Ballot title—Formulation by attorney general. See RCW 29.79.040.

29.30.201 Initiative, referendum—Ballot title—Notice to proponents. See RCW 29.79.050.

29.30.203 Initiative, referendum—Ballot title—Appeal to superior court. See RCW 29.79.060.

29.30.205 Initiative, referendum—Ballot title—Mailed to proponents. See RCW 29.79.070.

29.30.207 Initiative, referendum—Referendum bills by legislature—Ballot title. See RCW 29.79.260.

29.30.209 Initiative, referendum—Substitute for rejected initiative—Ballot title. See RCW 29.79.290.

29.30.211 Initiative, referendum—Printing ballot titles on ballots—Order and form. See RCW 29.79.300.

29.30.213 Initiative, referendum—Printing provisions on ballots for voting except on alternative measures. See RCW 29.79.310.

29.30.215 Initiative, referendum—Printing provisions on ballots for voting on alternative measures. See RCW 29.79.320.

29.30.221 Recall—Conduct of election—Form of ballot. See RCW 29.82.130.

29.30.230 Ballots—Counterfeiting or unlawful possession. See RCW 29.85.010.

29.30.231 Ballots—Officer tampering with. See RCW 29.85.020.

29.30.235 Ballots—Unlawful printing or distribution. See RCW 29.85.040.

29.30.239 Certificates of nomination and ballots—Fraud as to. See RCW 29.85.100.

29.30.240 Divulging ballot count—Penalty. See RCW 29.85.225.

Chapter 29.33

VOTING SYSTEMS

(Formerly: Voting machines)

Sections

29.33.020	Authority for use.
29.33.041	Inspection and test by secretary of state—Report.
29.33.051	Submitting system or component for examination.
29.33.061	Independent evaluation.
29.33.081	Approval required for use in primary or election—Modification.
29.33.130	Responsibility for maintenance and operation.

- 29.33.145 Acceptance test.
- 29.33.300 Requirements of voting devices for approval.
- 29.33.310 Single district and precinct on voting devices.
- 29.33.320 Requirements of vote tallying systems for approval.
- 29.33.330 Record of ballot format—Devices sealed.
- 29.33.340 Election officials—Instruction, compensation, requirements.
- 29.33.350 Vote tallying systems—Programming tests.
- 29.33.360 Procedure manuals.

29.33.020 Authority for use. At any primary or election in any county, votes may be cast, registered, recorded, or counted by means of voting systems that have been approved under RCW 29.33.041. [1990 c 59 § 17; 1967 ex.s. c 109 § 12; 1965 c 9 § 29.33.020. Prior: (i) 1913 c 58 § 1, part; RRS § 5300, part. (ii) 1913 c 58 § 18; RRS § 5318.]

Intent—Effective date—1990 c 59: See notes following RCW 29.01.006.

Voting devices and vote tallying systems: Chapter 29.34 RCW.

29.33.041 Inspection and test by secretary of state—Report. The secretary of state shall inspect, evaluate, and publicly test all voting systems or components of voting systems that are submitted for review under RCW 29.33.051. The secretary of state shall determine whether the voting systems conform with all of the requirements of this title, the applicable rules adopted in accordance with this title, and with generally accepted safety requirements. The secretary of state shall transmit a copy of the report of any examination under this section, within thirty days after completing the examination, to the county auditor of each county. [1990 c 59 § 18; 1982 c 40 § 1.]

Intent—Effective date—1990 c 59: See notes following RCW 29.01.006.

Severability—1982 c 40: "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 c 40 § 11.]

29.33.051 Submitting system or component for examination. The manufacturer or distributor of a voting system or component of a voting system may submit that system or component to the secretary of state for examination under RCW 29.33.041. [1990 c 59 § 19; 1982 c 40 § 2.]

Intent—Effective date—1990 c 59: See notes following RCW 29.01.006.

Severability—1982 c 40: See note following RCW 29.33.041.

29.33.061 Independent evaluation. (1) The secretary of state may rely on the results of independent design, engineering, and performance evaluations in the examination under RCW 29.33.041 if the source and scope of these independent evaluations are specified by rule.

(2) The secretary of state may contract with experts in mechanical or electrical engineering or data processing to assist in examining a voting system or component. The manufacturer or distributor who has submitted a voting system for testing under RCW 29.33.051 shall pay the secretary of state a deposit to reimburse the cost of any contract for consultation under this section and for any other unrecoverable costs associated with the examination of a voting system or component by the manufacturer or distribu-

tor who submitted the voting system or component for examination. [1990 c 59 § 20; 1982 c 40 § 3.]

Intent—Effective date—1990 c 59: See notes following RCW 29.01.006.

Severability—1982 c 40: See note following RCW 29.33.041.

29.33.081 Approval required for use in primary or election—Modification. If voting systems or devices or vote tallying systems are to be used for conducting a primary or election, only those that have the approval of the secretary of state or had been approved under this chapter or *chapter 29.34 RCW before March 22, 1982, may be used. Any modification, change, or improvement to any voting system or component of a system that does not impair its accuracy, efficiency, or capacity or extend its function, may be made without reexamination or reapproval by the secretary of state under RCW 29.33.041. [1990 c 59 § 21; 1982 c 40 § 4.]

***Reviser's note:** Chapter 29.34 RCW was repealed or recodified in its entirety by 1990 c 59.

Intent—Effective date—1990 c 59: See notes following RCW 29.01.006.

Severability—1982 c 40: See note following RCW 29.33.041.

29.33.130 Responsibility for maintenance and operation. The county auditor of a county in which voting systems are used is responsible for the preparation, maintenance, and operation of those systems and may employ and direct persons to perform some or all of these functions. [1990 c 59 s 22; 1965 c 9 § 29.33.130. Prior: 1955 c 323 § 2; prior: 1935 c 85 § 1, part; 1919 c 163 § 23, part; 1915 c 114 § 5, part; 1913 c 58 § 10, part; RRS § 5309, part.]

Intent—Effective date—1990 c 59: See notes following RCW 29.01.006.

Recanvass of machine votes—Procedure to test counting mechanism—Statement: RCW 29.62.070.

29.33.145 Acceptance test. An agreement to purchase or lease a voting system or a component of a voting system is subject to that system or component passing an acceptance test prescribed by the secretary of state sufficient to demonstrate that the equipment is identical to that certified by the secretary of state and that the equipment is operating correctly as delivered to the county. [1990 c 59 § 23.]

Intent—Effective date—1990 c 59: See notes following RCW 29.01.006.

29.33.300 Requirements of voting devices for approval. No voting device shall be approved by the secretary of state unless it:

- (1) Secures to the voter secrecy in the act of voting;
- (2) Permits the voter to vote for any person for any office and upon any measure that he or she has the right to vote for;
- (3) Permits the voter to vote for all the candidates of one party or in part for the candidates of one or more other parties;
- (4) Correctly registers all votes cast for any and all persons and for or against any and all measures;
- (5) Provides that a vote for more than one candidate cannot be cast by one single operation of the voting device

or vote tally system except when voting for president and vice-president of the United States; and

(6) Except for functions or capabilities unique to this state, has been tested, certified, and used in at least one other state or election jurisdiction. [1990 c 59 § 26; 1982 c 40 § 6; 1977 ex.s. c 361 § 66; 1971 ex.s. c 6 § 1; 1967 ex.s. c 109 § 18. Formerly RCW 29.34.080.]

Intent—Effective date—1990 c 59: See notes following RCW 29.01.006.

Severability—1982 c 40: See note following RCW 29.33.041.

Effective date—Severability—1977 ex.s. c 361: See notes following RCW 29.01.006.

Severability—1971 ex.s. c 6: "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 6 § 3.]

29.33.310 Single district and precinct on voting devices. The ballot on a single voting device shall not contain the names of candidates for the offices of United States representative, state senator, state representative, county council, or county commissioner in more than one district. In all general elections, primaries, and special elections, in each polling place the voting devices containing ballots for candidates from each congressional, legislative, or county council or commissioner district shall be grouped together and physically separated from those devices containing ballots for other districts. Each voter shall be directed by the precinct election officers to the correct group of voting devices. [1990 c 59 § 27; 1989 c 155 § 1; 1987 c 295 § 8; 1983 c 143 § 1. Formerly RCW 29.34.085.]

Intent—Effective date—1990 c 59: See notes following RCW 29.01.006.

29.33.320 Requirements of vote tallying systems for approval. The secretary of state shall not approve a vote tallying system unless it:

(1) Correctly counts votes on ballots on which the proper number of votes have been marked for any office or issue;

(2) Ignores votes marked for any office or issue where more than the allowable number of votes have been marked, but correctly counts the properly voted portions of the ballot;

(3) Accumulates a count of the specific number of ballots tallied for each precinct, total votes by candidate for each office, and total votes for and against each issue of the ballot in that precinct;

(4) Accommodates rotation of candidates' names on the ballot under RCW 29.30.040;

(5) Produces precinct and cumulative totals in printed form; and

(6) Except for functions or capabilities unique to this state, has been tested, certified, and used in at least one other state or election jurisdiction. [1990 c 59 § 28; 1982 c 40 § 7; 1967 ex.s. c 109 § 19. Formerly RCW 29.34.090.]

Intent—Effective date—1990 c 59: See notes following RCW 29.01.006.

Severability—1982 c 40: See note following RCW 29.33.041.

29.33.330 Record of ballot format—Devices sealed. In preparing a voting device for a primary or election, a record shall be made of the ballot format installed in each

device and the precinct or portion of a precinct for which that device has been prepared. Except where provided by a rule adopted under RCW 29.04.210, after being prepared for a primary or election, each device shall be sealed with a uniquely numbered seal and provided to the inspector of the appropriate polling place. [1990 c 59 § 25.]

Intent—Effective date—1990 c 59: See notes following RCW 29.01.006.

29.33.340 Election officials—Instruction, compensation, requirements. (1) Before each state primary or general election at which voting systems are to be used, the county auditor shall instruct all precinct election officers appointed under RCW 29.45.010, counting center personnel, and political party observers designated under RCW 29.54.025 in the proper conduct of their duties.

(2) The county auditor may waive instructional requirements for precinct election officers, counting center personnel, and political party observers who have previously received instruction and who have served for a sufficient length of time to be fully qualified to perform their duties. The county auditor shall keep a record of each person who has received instruction and is qualified to serve at the subsequent primary or election.

(3) As compensation for the time spent in receiving instruction, each precinct election officer who qualifies and serves at the subsequent primary or election shall receive an additional two hours compensation, to be paid at the same time and in the same manner as compensation is paid for services on the day of the primary or election.

(4) Except for the appointment of a precinct election officer to fill a vacancy under RCW 29.45.040, no inspector or judge may serve at any primary or election at which voting systems are used unless he or she has received the required instruction and is qualified to perform his or her duties in connection with the voting devices. No person may work in a counting center at a primary or election at which a vote tallying system is used unless that person has received the required instruction and is qualified to perform his or her duties in connection with the handling and tallying of ballots for that primary or election. No person may serve as a political party observer unless that person has received the required instruction and is familiar with the operation of the counting center and the vote tallying system and the procedures to be employed to verify the accuracy of the programming for that vote tallying system. [1990 c 59 § 29; 1977 ex.s. c 361 § 69. Formerly RCW 29.34.143.]

Intent—Effective date—1990 c 59: See notes following RCW 29.01.006.

Effective date—Severability—1977 ex.s. c 361: See notes following RCW 29.01.006.

29.33.350 Vote tallying systems—Programming tests. At least three days before each state primary or general election, the programming for each vote tallying system to be used at that primary or general election shall be tested by the office of the secretary of state to verify that the system will correctly count the vote cast for all candidates and on all measures appearing on the ballot at that primary or general election. The tests shall be conducted by processing a preaudited group of ballots marked with a predetermined number of ballot votes for each candidate and for and

against each measure. For each office for which there are two or more candidates and for each issue, the group of test ballots shall include one or more ballots which have votes in excess of the number allowed by law, in order to verify the ability of the vote tallying system to reject such votes. The test shall verify the capability of the vote tallying system to perform all of the functions that can reasonably be expected to occur during conduct of that particular primary or election. If any error is detected, the cause shall be determined and corrected, and an errorless total shall be produced before the primary or election.

Such tests shall be observed by at least one representative from each major political party, if representatives have been appointed by the respective major political parties and are present at the test, and shall be open to candidates, the press, and the public. The secretary of state, the county auditor, and any political party observers shall certify that the test has been conducted in accordance with this section. Copies of this certification shall be retained by the secretary of state and the county auditor. All programming materials, test results, and test ballots shall be securely sealed until the day of the primary or general election. [1990 c 59 § 32; 1977 ex.s. c 361 § 73. Formerly RCW 29.34.163.]

Intent—Effective date—1990 c 59: See notes following RCW 29.01.006.

Effective date—Severability—1977 ex.s. c 361: See notes following RCW 29.01.006.

29.33.360 Procedure manuals. The secretary of state shall publish manuals of recommended procedures for the operation of the various vote tallying systems that have been approved. These manuals shall contain any applicable rules and statutes relating to the printing of ballots and preparation and testing of the various vote tallying systems, the duties and functions of the precinct election officers, and the duties and functions of the counting center personnel and operators of vote tallying systems at counting centers. [1990 c 59 § 34; 1977 ex.s. c 361 § 75; 1967 ex.s. c 109 § 32. Formerly RCW 29.34.170.]

Intent—Effective date—1990 c 59: See notes following RCW 29.01.006.

Effective date—Severability—1977 ex.s. c 361: See notes following RCW 29.01.006.

Chapter 29.36 ABSENTEE VOTING

Sections

29.36.010	When permitted—Request for absentee ballot.
29.36.013	Ongoing absentee status—Request for—Termination.
29.36.016	Ongoing absentee voters—Notice of termination of status—Renewal.
29.36.030	Acceptance or rejection of request—Issuance of ballots and other materials.
29.36.035	Qualifications for delivery of ballot.
29.36.045	Envelopes and instructions.
29.36.050	Prohibition against voting in home precinct.
29.36.060	Processing incoming absentee ballots.
29.36.070	Grouping of absentee ballots.
29.36.075	Uncontested offices—Ballots not tabulated, exception—Voter credited with voting—Retention of ballots.
29.36.097	Record of requests for absentee ballots—Public access.
29.36.100	Challenges.

29.36.120	Election by mail—Small precincts, nonpartisan special elections—Notice and application form.
29.36.122	Special election by mail—Sending ballots to voters.
29.36.124	Election by mail—Replacement ballots—Deposit of ballots.
29.36.126	Election by mail—Return of marked ballots.
29.36.130	Election by mail—Small precincts, nonpartisan special elections—Ballot contents, counting, secrecy, authorized observers.
29.36.139	Mail ballots—Requirements for counting—Challenge.
29.36.150	Rules for accuracy, secrecy, and uniformity—Out-of-state, overseas, service voters.
29.36.160	Penalty.
29.36.170	Special absentee ballots.

Absentee ballots, county auditor to prepare, time for: RCW 29.30.075.

Irrigation district elections, absentee voting provisions: RCW 87.03.020 through 87.03.110.

Recount of absentee ballots: RCW 29.64.010.

29.36.010 When permitted—Request for absentee ballot. Any registered voter of the state or any out-of-state voter, overseas voter, or service voter may vote by absentee ballot in any general election, special election, or primary in the manner provided in this chapter. Out-of-state voters, overseas voters, and service voters are authorized to cast the same ballots, including those for special elections, as a registered voter of the state would receive under this chapter.

(1) Except as provided in subsections (2) and (3) of this section, in RCW 29.36.013, and in RCW 29.36.170, a registered voter or elector desiring to cast an absentee ballot must request the absentee ballot from his or her county auditor no earlier than forty-five days nor later than the day before any election or primary. Except as provided in subsection (3) of this section and in RCW 29.36.170, the request may be made orally in person, by telephone, or in writing. An application or request for an absentee ballot made under the authority of any federal statute or regulation shall be considered and given the same effect as a request for an absentee ballot under this chapter.

(2) For any registered voter, a request for an absentee ballot for a primary shall be honored as a request for an absentee ballot for the following general election if the voter so indicates in his or her request. For any out-of-state voter, overseas voter, or service voter, a request for an absentee ballot for a primary election shall also be honored as a request for an absentee ballot for the following general election.

(3) A voter admitted to a hospital no earlier than five days before a primary or election and confined to the hospital on election day may apply by messenger for an absentee ballot on the day of the primary or election if a signed statement from the hospital administrator, or designee, verifying the voter's date of admission and status as a patient in the hospital on the day of the primary or election is attached to the voter's written application for an absentee ballot.

(4) In a voter's request for an absentee ballot, the voter shall state the address to which the absentee ballot should be sent. A request for an absentee ballot from an out-of-state voter, overseas voter, or service voter shall state the address of that elector's last residence for voting purposes in the state of Washington and either a written application or the oath on the return envelope shall include a declaration of the other qualifications of the applicant as an elector of this state. A request for an absentee ballot from any other voter

shall state the address at which that voter is currently registered to vote in the state of Washington or the county auditor shall verify such information from the voter registration records of the county.

(5) A request for an absentee ballot from a registered voter who is within this state shall be made directly to the auditor of the county in which the voter is registered. An absentee ballot request from a registered voter who is temporarily outside this state or from an out-of-state voter, overseas voter, or service voter may be made either to the appropriate county auditor or to the secretary of state, who shall promptly forward the request to the appropriate county auditor. No person, organization, or association may distribute absentee ballot applications within this state that contain any return address other than that of the appropriate county auditor.

(6) A person may request an absentee ballot for use by the person as a registered voter and may request an absentee ballot on behalf of any member of that person's immediate family who is a registered voter for use by the family member. As a means of ensuring that a person who requests an absentee ballot is requesting the ballot for only that person or a member of the person's immediate family, the secretary of state shall adopt rules prescribing the circumstances under which an auditor: May require a person who requests an absentee ballot to identify the date of birth of the voter for whom the ballot is requested; and may deny a request which is not accompanied by this information. [1991 c 81 § 29; 1987 c 346 § 9; 1986 c 167 § 14; 1985 c 273 § 1; 1984 c 27 § 1; 1977 ex.s. c 361 § 76; 1974 ex.s. c 35 § 1; 1971 ex.s. c 202 § 37; 1965 c 9 § 29.36.010. Prior: 1963 ex.s. c 23 § 1; 1955 c 167 § 2; prior: (i) 1950 ex.s. c 8 § 1; 1943 c 72 § 1; 1933 ex.s. c 41 § 1; 1923 c 58 § 1; 1921 c 143 § 1; 1917 c 159 § 1; 1915 c 189 § 1; Rem. Supp. 1943 § 5280. (ii) 1933 ex.s. c 41 § 2, part; 1923 c 58 § 2, part; 1921 c 143 § 2, part; 1917 c 159 § 2, part; 1915 c 189 § 2, part; RRS § 5281, part.]

Effective date—1991 c 81: See note following RCW 29.85.010.

Legislative intent—1987 c 346: "By this act the legislature intends to combine and unify the laws and procedures governing absentee voting. These amendments are intended: (1) To clarify and incorporate into a single chapter of the Revised Code of Washington the preexisting statutes under which electors of this state qualify for absentee ballots under state law, federal law, or a combination of both state and federal law, and (2) to insure uniformity in the application, issuance, receipt, and canvassing of these absentee ballots. Nothing in this act is intended to impose any new requirement on the ability of the registered voters or electors of this state to qualify for, receive, or cast absentee ballots in any primary or election." [1987 c 346 § 1.]

Effective date—1987 c 346: "This act shall take effect on January 1, 1988." [1987 c 346 § 25.]

The above two annotations apply to 1987 c 346. For codification of that act, see Codification Tables, Volume 0.

Severability—1986 c 167: See note following RCW 29.01.055.

Effective date—Severability—1977 ex.s. c 361: See notes following RCW 29.01.006.

29.36.013 Ongoing absentee status—Request for—Termination. Any disabled voter or any voter over the age of sixty-five may apply, in writing, for status as an ongoing absentee voter. Each such voter shall be granted that status by his or her county auditor and shall automatically receive an absentee ballot for each ensuing election for which he or she is entitled to vote and need not submit a separate request

for each election. Ballots received from ongoing absentee voters shall be validated, processed, and tabulated in the same manner as other absentee ballots.

Status as an ongoing absentee voter shall be terminated upon any of the following events:

- (1) The written request of the voter;
- (2) The death or disqualification of the voter;
- (3) The cancellation of the voter's registration record;
- (4) The return of an ongoing absentee ballot as undeliverable; or

(5) January 1st of each odd-numbered year. [1991 c 81 § 30; 1987 c 346 § 10; 1986 c 22 § 1; 1985 c 273 § 2.]

Effective date—1991 c 81: See note following RCW 29.85.010.

Legislative intent—Effective date—1987 c 346: See notes following RCW 29.36.010.

29.36.016 Ongoing absentee voters—Notice of termination of status—Renewal. As soon as practical following the first day of January of each odd-numbered year, the county auditor shall notify each ongoing absentee voter of the termination of his or her status as such a voter under RCW 29.36.013(5). Included with this notice shall be a postage prepaid return form permitting any such voter to renew his or her status as an ongoing absentee voter. Upon receipt and signature verification of the renewal form, the county auditor shall continue to provide absentee ballots to such voters, subject to the provisions of RCW 29.36.013. [1985 c 273 § 3.]

29.36.030 Acceptance or rejection of request—Issuance of ballots and other materials. If the information contained in a request for an absentee ballot received by the county auditor is complete and correct and the applicant is qualified to vote under federal or state law, the county auditor shall issue an absentee ballot for the primary or election for which the absentee ballot was requested. Otherwise, the county auditor shall notify the applicant of the reason or reasons why the request cannot be accepted.

At each general election in an even-numbered year, each absentee voter shall also be given a separate ballot containing the names of the candidates that have filed for the office of precinct committee officer unless fewer than two candidates have filed for the same political party in the absentee voter's precinct. The ballot shall provide space for writing in the name of additional candidates.

When mailing an absentee ballot to a registered voter temporarily outside the state or to an out-of-state voter, overseas voter, or service voter, the county auditor shall send a copy of the state voters' and candidates' pamphlet with the absentee ballot. The county auditor shall mail all absentee ballots and related material to voters outside the territorial limits of the United States and the District of Columbia under 39 U.S.C. 3406. [1991 c 81 § 31. Prior: 1987 c 346 § 11; 1987 c 295 § 9; 1977 ex.s. c 361 § 77; 1974 ex.s. c 73 § 1; 1965 c 9 § 29.36.030; prior: 1963 ex.s. c 23 § 3; 1955 c 167 § 4; prior: (i) 1933 ex.s. c 41 § 2, part; 1923 c 58 § 2, part; 1921 c 143 § 2, part; 1917 c 159 § 2, part; 1915 c 189 § 2, part; RRS § 5281, part. (ii) 1933 ex.s. c 41 § 3, part; 1923 c 58 § 3, part; 1921 c 143 § 3, part; 1917 c 159 § 3, part; 1915 c 189 § 3, part; RRS § 5282, part.]

Effective date—1991 c 81: See note following RCW 29.85.010.

Legislative intent—Effective date—1987 c 346: See notes following RCW 29.36.010.

Effective date—Severability—1977 ex.s. c 361: See notes following RCW 29.01.006.

29.36.035 Qualifications for delivery of ballot. The delivery of an absentee ballot for any primary or election shall be subject to the following qualifications:

(1) Only the voter, himself, or a member of his family may pick up an absentee ballot at the office of the issuing officer unless the voter is hospitalized on election day and applies by messenger in accordance with RCW 29.36.010 for an absentee ballot on the day of the primary or election. In this latter case, the messenger may pick up the hospitalized voter's absentee ballot.

(2) Except as noted in subsection (1) above, the issuing officer shall mail the absentee ballot directly to each applicant.

(3) No absentee ballot shall be issued on the day of the primary or election concerned, except as provided by RCW 29.36.010, for a voter confined to a hospital on the day of a primary or election. [1984 c 27 § 2; 1965 c 9 § 29.36.035. Prior: 1963 ex.s. c 23 § 4.]

29.36.045 Envelopes and instructions. The county auditor shall send each absentee voter a ballot, a security envelope in which to seal the ballot after voting, a larger envelope in which to return the security envelope, and instructions on how to mark the ballot and how to return it to the county auditor. The larger return envelope shall contain a declaration by the absentee voter reciting his or her qualifications and stating that he or she has not voted in any other jurisdiction at this election, together with a summary of the penalties for any violation of any of the provisions of this chapter. The return envelope shall provide space for the voter to indicate the date on which the ballot was voted and for the voter to sign the oath. A summary of the applicable penalty provisions of this chapter shall be printed on the return envelope immediately adjacent to the space for the voter's signature. The signature of the voter on the return envelope shall affirm and attest to the statements regarding the qualifications of that voter and to the validity of the ballot. For out-of-state voters, overseas voters, and service voters, the signed declaration on the return envelope constitutes the equivalent of a voter registration for the election or primary for which the ballot has been issued. The voter shall be instructed to either return the ballot to the county auditor by whom it was issued or attach sufficient first class postage, if applicable, and mail the ballot to the appropriate county auditor no later than the day of the election or primary for which the ballot was issued. [1987 c 346 § 12.]

Legislative intent—Effective date—1987 c 346: See notes following RCW 29.36.010.

29.36.050 Prohibition against voting in home precinct. A registered voter shall not be allowed to vote in the precinct in which he or she is registered at any election or primary for which that voter has cast an absentee ballot. A registered voter who has requested an absentee ballot for a primary or special or general election but chooses to vote at the voter's precinct polling place in that primary or election shall cast a ballot in the manner prescribed by RCW

29.10.127 for challenged ballots. The canvassing board shall not count the ballot if it finds that the voter has also voted by absentee ballot in that primary or election. [1987 c 346 § 13; 1965 c 9 § 29.36.050. Prior: 1955 c 167 § 6; prior: 1933 ex.s. c 41 § 4; 1921 c 143 § 5; RRS § 5284.]

Legislative intent—Effective date—1987 c 346: See notes following RCW 29.36.010.

29.36.060 Processing incoming absentee ballots. The opening and subsequent processing of return envelopes for any primary or election may begin on or after the tenth day prior to such primary or election. The opening of the security envelopes and tabulation of absentee ballots shall not commence until after 8:00 o'clock p.m. on the day of the primary or election.

After opening the return envelopes, the county canvassing board shall place all of the ballot envelopes in containers that can be secured with numbered seals. These sealed containers shall be stored in a secure location until after 8:00 o'clock p.m. of the day of the primary or election. Absentee ballots that are to be tabulated on an electronic vote tallying system may be taken from the inner envelopes and all the normal procedural steps may be performed to prepare these ballots for tabulation before sealing the containers.

The canvassing board shall examine the postmark, statement, and signature on each return envelope containing the security envelope and absentee ballot. They shall verify that the voter's signature is the same as that in the registration files for that voter. For absentee voters other than out-of-state voters, overseas voters, and service voters, if the postmark is illegible, the date on the return envelope to which the voter attests shall determine the validity, as to the time of voting, of that absentee ballot under this chapter. For any absentee voter, a variation between the signature of the voter on the return envelope and that in the registration files due to the substitution of initials or the use of common nicknames is permitted so long as the surname and handwriting are clearly the same. [1991 c 81 § 32; 1987 c 346 § 14; 1977 ex.s. c 361 § 78; 1973 c 140 § 1; 1965 c 9 § 29.36.060. Prior: 1963 ex.s. c 23 § 5; 1955 c 167 § 7; 1955 c 50 § 2; prior: 1933 ex.s. c 41 § 5, part; 1921 c 143 § 6, part; 1917 c 159 § 4, part; 1915 c 189 § 4, part; RRS § 5285, part.]

Effective date—1991 c 81: See note following RCW 29.85.010.

Legislative intent—Effective date—1987 c 346: See notes following RCW 29.36.010.

Effective date—Severability—1977 ex.s. c 361: See notes following RCW 29.01.006.

County canvassing board, meeting to process absentee ballots, canvass returns: RCW 29.62.020.

29.36.070 Grouping of absentee ballots. The absentee ballots shall be grouped and counted by congressional and legislative district without regard to precinct, except as required under RCW 29.62.090(2).

These returns shall be added to the total of the votes cast at the polling places. [1990 c 262 § 2; 1987 c 346 § 15; 1974 ex.s. c 73 § 2; 1965 c 9 § 29.36.070. Prior: 1955 c 50 § 3; prior: 1933 ex.s. c 41 § 5, part; 1921 c 143 § 6, part; 1917 c 159 § 4, part; 1915 c 189 § 4, part; RRS § 5285, part.]

Legislative intent—Effective date—1987 c 346: See notes following RCW 29.36.010.

29.36.075 Uncontested offices—Ballots not tabulated, exception—Voter credited with voting—Retention of ballots. In counties that do not tabulate absentee ballots on electronic vote tallying systems, canvassing boards may not tabulate or record votes cast by absentee ballots on any uncontested office except write-in votes for candidates for the office of precinct committee person who have filed valid declarations of candidacy under RCW 29.04.180. "Uncontested office" means an office where only one candidate has filed a valid declaration of candidacy either during the regular filing period or as a write-in candidate under RCW 29.04.180.

Each registered voter casting an absentee ballot shall be credited with voting on his or her voter registration record.

Absentee ballots shall be retained for the same length of time and in the same manner as ballots cast at the precinct polling places. [1988 c 181 § 3; 1987 c 346 § 16; 1983 c 136 § 1; 1965 c 9 § 29.36.075. Prior: 1961 c 78 § 1.]

Legislative intent—Effective date—1987 c 346: See notes following RCW 29.36.010.

29.36.097 Record of requests for absentee ballots—Public access. Each county auditor shall maintain in his or her office, open for public inspection, a record of the requests he or she has received for absentee ballots under this chapter.

The information from the requests shall be recorded and lists of this information shall be available no later than twenty-four hours after their receipt.

This information about absentee voters shall be available according to the date of the requests and by legislative district. It shall include the name of each applicant, the address and precinct in which the voter maintains a voting residence, the date on which an absentee ballot was issued to this voter, if applicable, the type of absentee ballot, and the address to which the ballot was or is to be mailed, if applicable.

The auditor shall make copies of these records available to the public for the actual cost of production or copying. [1991 c 81 § 33; 1987 c 346 § 17; 1973 1st ex.s. c 61 § 1.]

Effective date—1991 c 81: See note following RCW 29.85.010.

Legislative intent—Effective date—1987 c 346: See notes following RCW 29.36.010.

29.36.100 Challenges. The qualifications of any absentee voter may be challenged at the time the signature on the return envelope is verified and the ballot is processed by the canvassing board. The board has the authority to determine the legality of any absentee ballot challenged under this section. [1987 c 346 § 18; 1965 c 9 § 29.36.100. Prior: 1917 c 159 § 5; 1915 c 189 § 5; RRS § 5286.]

Legislative intent—Effective date—1987 c 346: See notes following RCW 29.36.010.

29.36.120 Election by mail—Small precincts, nonpartisan special elections—Notice and application form. At any primary or election, general or special, the county auditor may, in any precinct having fewer than one

hundred registered voters at the time of closing of voter registration as provided in RCW 29.07.160, conduct the voting in that precinct by mail ballot. For any precinct having fewer than one hundred registered voters where voting at a primary or a general election is conducted by mail ballot, the county auditor shall, not less than fifteen days prior to the date of that primary or general election, mail or deliver to each registered voter within that precinct a notice that the voting in that precinct will be by mail ballot, an application form for a mail ballot, and a postage prepaid envelope, preaddressed to the issuing officer. A mail ballot shall be issued to each voter who returns a properly executed application to the county auditor no later than the day of that primary or general election. Such application is valid for all subsequent mail ballot elections in that precinct so long as the voter remains qualified to vote.

At any nonpartisan special election not being held in conjunction with a state primary or general election, the county, city, town, or district requesting the election pursuant to RCW 29.13.010 or 29.13.020 may also request that the election be conducted by mail ballot. The county auditor may honor the request or may determine that the election is not to be conducted by mail ballot. The decision of the county auditor in this regard is final.

In no instance shall any special election be conducted by mail ballot in any precinct with more than one hundred registered voters if candidates for partisan office are to be voted upon.

For all special elections not being held in conjunction with a state primary or state general election where voting is conducted by mail ballot, the county auditor shall, not less than fifteen days prior to the date of such election, mail or deliver to each registered voter a mail ballot and an envelope, preaddressed to the issuing officer. [1983 1st ex.s. c 71 § 1; 1974 ex.s. c 35 § 2; 1967 ex.s. c 109 § 6.]

29.36.122 Special election by mail—Sending ballots to voters. For any special election conducted by mail, the county auditor shall send a mail ballot with a return identification envelope to each registered voter of the district in which the special election is being conducted not sooner than the twenty-fifth day before the date of the election and not later than the fifteenth day before the date of the election. The envelope in which the ballot is mailed shall be clearly marked "Do Not Forward - Return to Sender - Return Postage Guaranteed." [1983 1st ex.s. c 71 § 2.]

29.36.124 Election by mail—Replacement ballots—Deposit of ballots. (1) If a county auditor conducts an election by mail, the county auditor shall designate the county auditor's office or a central location in the district in which the election is conducted as the single place to obtain a replacement ballot. The county auditor also shall designate one or more places for the deposit of ballots not returned by mail. The places designated under this section shall be open on the date of the election for a period of thirteen hours, beginning at 7:00 a.m. and ending at 8:00 p.m.

(2) A registered voter may obtain a replacement ballot as provided in this subsection if the ballot is destroyed, spoiled, lost, or not received by the voter. A registered voter seeking a replacement ballot shall sign a sworn statement

that the ballot was destroyed, spoiled, lost, or not received and shall present the statement to the county auditor no later than the day of the election. Each spoiled ballot must be returned to the county auditor before a new one is issued. The county auditor shall keep a record of each replacement ballot provided under this subsection. [1983 1st ex.s. c 71 § 3.]

29.36.126 Election by mail—Return of marked ballots. Upon receipt of the mail ballot, the voter shall mark it, sign the return identification envelope supplied with the ballot, and comply with the instructions provided with the ballot. The voter may return the marked ballot to the county auditor by United States mail or to any other place of deposit designated by the county auditor. The ballot must be returned in the return identification envelope. If mailed, a ballot must be postmarked not later than the date of the election. Otherwise, the ballot must be deposited at the office of the county auditor or the designated place of deposit not later than 8:00 p.m. on the date of the election. [1983 1st ex.s. c 71 § 4.]

29.36.130 Election by mail—Small precincts, nonpartisan special elections—Ballot contents, counting, secrecy, authorized observers. All mail ballots authorized by RCW 29.36.120 shall contain the same offices, names of candidates, and propositions to be voted upon, including precinct offices, as if the ballot had been voted in person at the polling place. Except as otherwise provided in RCW 29.36.120 and 29.36.122 through 29.36.126 and 29.36.139, such mail ballots shall be issued and canvassed in the same manner as absentee ballots issued pursuant to the request of the voter. The county canvassing board, at the request of the county auditor, may direct that mail ballots be counted on the day of the election. If such count is made, it must be done in secrecy in the presence of at least three election officials and the results not revealed to any unauthorized person until the polls have closed. If electronic vote tallying devices are used, political party observers shall be afforded the opportunity to be present, and a test of the equipment must be performed as required by RCW 29.33.350 prior to the count of ballots. Political party observers shall be allowed to count by hand ballots from up to ten precincts selected by the observers. Any violation of the secrecy of such count shall be subject to the same penalties as provided for in RCW 29.85.225. [1990 c 59 § 76; 1983 1st ex.s. c 71 § 5; 1967 ex.s. c 109 § 7.]

Intent—Effective date—1990 c 59: See notes following RCW 29.01.006.

29.36.139 Mail ballots—Requirements for counting—Challenge. (1) A mail ballot shall be counted only if it is returned in the return identification envelope, if the envelope is signed by the registered voter to whom the ballot is issued, and if the signature is verified as provided in this subsection. The county auditor shall verify the signature of each voter on the return identification envelope with the signature on the voter's registration record. If the county auditor determines that a registered voter to whom a replacement ballot has been issued has voted more than once, the county auditor shall not count any ballot cast by that voter.

The county auditor must notify both the county prosecuting attorney and the state attorney general of every instance in which a voter has voted more than once.

(2) Any mail ballot may be challenged in the same manner as an absentee ballot. [1983 1st ex.s. c 71 § 6.]

29.36.150 Rules for accuracy, secrecy, and uniformity—Out-of-state, overseas, service voters. The secretary of state shall adopt rules not inconsistent with the provisions of this chapter to:

(1) Establish standards and procedures to prevent fraud and to facilitate the accurate processing and canvassing of absentee ballots and mail ballots;

(2) Establish standards and procedures to guarantee the secrecy of absentee ballots and mail ballots;

(3) Provide uniformity among the counties of the state in the conduct of absentee voting and mail ballot elections; and

(4) Facilitate the operation of the provisions of this chapter regarding out-of-state voters, overseas voters, and service voters.

The secretary of state shall produce and furnish envelopes and instructions for out-of-state voters, overseas voters, and service voters to the county auditors. [1987 c 346 § 19; 1983 1st ex.s. c 71 § 8.]

Legislative intent—Effective date—1987 c 346: See notes following RCW 29.36.010.

29.36.160 Penalty. A person who willfully violates any provision of this chapter regarding the assertion or declaration of qualifications to receive or cast an absentee ballot, unlawfully casts a vote by absentee ballot, or willfully violates any provision regarding the conduct of mail ballot special elections under RCW 29.36.120 through 29.36.139 is guilty of a class C felony punishable under RCW 9A.20.021. Except as provided in chapter 29.85 RCW a person who willfully violates any other provision of this chapter is guilty of a misdemeanor. [1991 c 81 § 34; 1987 c 346 § 20; 1983 1st ex.s. c 71 § 9.]

Effective date—1991 c 81: See note following RCW 29.85.010.

Legislative intent—Effective date—1987 c 346: See notes following RCW 29.36.010.

29.36.170 Special absentee ballots. (1) As provided in this section, county auditors shall provide special absentee ballots to be used for state primary or state general elections. A special absentee ballot shall only be provided to a voter who completes an application stating that:

(a) The voter believes that she or he will be residing or stationed or working outside the continental United States; and

(b) The voter believes that she or he will be unable to vote and return a regular absentee ballot by normal mail delivery within the period provided for regular absentee ballots.

The application for a special absentee ballot may not be filed earlier than ninety days before the applicable state primary or general election. The special absentee ballot shall list the offices and measures, if known, scheduled to appear on the state primary or general election ballot. The voter may use the special absentee ballot to write in the

name of any eligible candidate for each office and vote on any measure.

(2) With any special absentee ballot issued under this section, the county auditor shall include a listing of any candidates who have filed before the time of the application for offices that will appear on the ballot at that primary or election and a list of any issues that have been referred to the ballot before the time of the application.

(3) Write-in votes on special absentee ballots shall be counted in the same manner provided by law for the counting of other write-in votes. The county auditor shall process and canvass the special absentee ballots provided under this section in the same manner as other absentee ballots under chapters 29.36 and 29.62 RCW.

(4) A voter who requests a special absentee ballot under this section may also request an absentee ballot under RCW 29.36.010. If the regular absentee ballot is properly voted and returned, the special absentee ballot shall be deemed void and the county auditor shall reject it in whole when special absentee ballots are canvassed. [1991 c 81 § 35; 1987 c 346 § 21.]

Effective date—1991 c 81: See note following RCW 29.85.010.

Legislative intent—Effective date—1987 c 346: See notes following RCW 29.36.010.

Chapter 29.42 POLITICAL PARTIES

Sections

- 29.42.010 Authority—Generally.
 - 29.42.020 State committee.
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 - 29.42.040 Precinct committee officer, eligibility.
 - 29.42.050 Precinct committee officer—Election—Declaration of candidacy, fee—Term—Vacancy.
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- Poll books—As public records—Copies to representatives of major political parties: RCW 29.04.100.*
- Precinct committee officer, notice of election to indicate office: RCW 29.04.020.*
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Voting machine votes, canvassing of, party participation: RCW 29.62.060.

Write-in voting, political party affiliation to appear: RCW 29.51.170.

29.42.010 Authority—Generally. Each political party organization shall have the power to:

- (1) Make its own rules and regulations;
- (2) Call conventions;
- (3) Elect delegates to conventions, state and national;
- (4) Fill vacancies on the ticket;
- (5) Provide for the nomination of presidential electors;

and

(6) Perform all functions inherent in such an organization: PROVIDED, That only major political parties shall have the power to designate candidates to appear on the state primary election ballot as provided in RCW 29.18.150 as now or hereafter amended. [1977 ex.s. c 329 § 16; 1965 c 9 § 29.42.010. Prior: 1961 c 130 § 2; prior: 1943 c 178 § 1, part; 1939 c 48 § 1, part; 1927 c 200 § 1, part; 1925 ex.s. c 158 § 1, part; 1909 c 82 § 6, part; 1907 c 209 § 22, part; Rem. Supp. 1943 § 5198, part.]

Vacancies on ticket—How filled: RCW 29.18.150, 29.18.160.

29.42.020 State committee. The state committee of each major political party shall consist of one committeeman and one committeewoman from each county elected by the county committee at its organization meeting. It shall have a chair and vice-chair who must be of opposite sexes. This committee shall meet during January of each odd-numbered year for the purpose of organization at a time and place designated by a sufficient notice to all the newly elected state committeemen and committeewomen by the authorized officers of the retiring committee. For the purpose of this section a notice mailed at least one week prior to the date of the meeting shall constitute sufficient notice. At its organizational meeting it shall elect its chair and vice-chair, and such officers as its bylaws may provide, and adopt bylaws, rules and regulations. It shall have power to:

- (1) Call conventions at such time and place and under such circumstances and for such purposes as the call to convention shall designate. The manner, number and procedure for selection of state convention delegates shall be subject to the committee's rules and regulations duly adopted;
- (2) Provide for the election of delegates to national conventions;
- (3) Fill vacancies on the ticket for any federal or state office to be voted on by the electors of more than one county;
- (4) Provide for the nomination of presidential electors; and
- (5) Perform all functions inherent in such an organization.

Notwithstanding any provision of this chapter, the committee shall not set rules which shall govern the conduct of the actual proceedings at a party state convention. [1987 c 295 § 11; 1972 ex.s. c 45 § 1; 1965 c 9 § 29.42.020. Prior: 1961 c 130 § 3; prior: 1943 c 178 § 1, part; 1939 c 48 § 1, part; 1927 c 200 § 1, part; 1925 ex.s. c 158 § 1, part; 1909 c 82 § 6, part; 1907 c 209 § 22, part; Rem. Supp. 1943 § 5198, part.]

29.42.030 County central committee—Organization meetings. The county central committee of each major political party shall consist of the precinct committee officers of the party from the several voting precincts of the county. Following each state general election held in even-numbered years, this committee shall meet for the purpose of organization at an easily accessible location within the county, subsequent to the certification of precinct committee officers by the county auditor and no later than the second Saturday of the following January. The authorized officers of the retiring committee shall cause notice of the time and place of such meeting to be mailed to each precinct committee officer at least seventy-two hours prior to the date of the meeting.

At its organization meeting, the county central committee shall elect a chair and vice-chair who must be of opposite sexes; it shall also elect a state committeeman and a state committeewoman. [1987 c 295 § 12; 1973 c 85 § 1; 1973 c 4 § 5; 1965 c 9 § 29.42.030. Prior: 1961 c 130 § 4; prior: 1943 c 178 § 1, part; 1939 c 48 § 1, part; 1927 c 200 § 1, part; 1925 ex.s. c 158 § 1, part; 1909 c 82 § 6, part; 1907 c 209 § 22, part; Rem. Supp. 1943 § 5198, part.]

Precinct election officers appointed from list furnished by chair of county central committee: RCW 29.45.010 and 29.45.030.

29.42.040 Precinct committee officer, eligibility. Any member of a major political party who is a registered voter in the precinct may upon payment of a fee of one dollar file his or her declaration of candidacy as prescribed under RCW 29.15.010 with the county auditor for the office of precinct committee officer of his or her party in that precinct. When elected the precinct committee officer shall serve so long as the committee officer remains an eligible voter in that precinct and until a successor has been elected at the next ensuing state general election in the even-numbered year. [1990 c 59 § 104. Prior: 1987 c 295 § 13; 1987 c 133 § 3; 1973 c 4 § 6; 1965 c 9 § 29.42.040; prior: 1961 c 130 § 5; prior: 1943 c 178 § 1, part; 1939 c 48 § 1, part; 1927 c 200 § 1, part; 1925 ex.s. c 158 § 1, part; 1909 c 82 § 6, part; 1907 c 209 § 22, part; Rem. Supp. 1943 § 5198, part.]

Intent—Effective date—1990 c 59: See notes following RCW 29.01.006.

Precinct election officers, precinct committee officer to certify list of persons qualified: RCW 29.45.030.

29.42.050 Precinct committee officer—Election—Declaration of candidacy, fee—Term—Vacancy. The statutory requirements for filing as a candidate at the primaries shall apply to candidates for precinct committee officer except that the filing period for this office alone shall be extended to and include the Friday immediately following the last day for political parties to fill vacancies in the ticket as provided by RCW 29.18.150, and the office shall not be voted upon at the primaries, but the names of all candidates must appear under the proper party and office designations on the ballot for the general November election for each even-numbered year and the one receiving the highest number of votes shall be declared elected: PROVIDED, That to be declared elected, a candidate must receive at least ten percent of the number of votes cast for the candidate of the candidate's party receiving the greatest number of votes

in the precinct. Any person elected to the office of precinct committee officer who has not filed a declaration of candidacy shall pay the fee of one dollar to the county auditor for a certificate of election. The term of office of precinct committee officer shall be for two years, commencing upon completion of the official canvass of votes by the county canvassing board of election returns. Should any vacancy occur in this office by reason of death, resignation, or disqualification of the incumbent, or because of failure to elect, the respective county chair of the county central committee shall be empowered to fill such vacancy by appointment: PROVIDED, HOWEVER, That in legislative districts having a majority of its precincts in a county with a population of one million or more, such appointment shall be made only upon the recommendation of the legislative district chair: PROVIDED, That the person so appointed shall have the same qualifications as candidates when filing for election to such office for such precinct: PROVIDED FURTHER, That when a vacancy in the office of precinct committee officer exists because of failure to elect at a state general election, such vacancy shall not be filled until after the organization meeting of the county central committee and the new county chair selected as provided by RCW 29.42.030. [1991 c 363 § 34; 1987 c 295 § 14; 1973 c 4 § 7; 1967 ex.s. c 32 § 2; 1965 ex.s. c 103 § 3; 1965 c 9 § 29.42.050. Prior: 1961 c 130 § 6; prior: 1953 c 196 § 1; 1943 c 178 § 1, part; 1939 c 48 § 1, part; 1927 c 200 § 1, part; 1925 ex.s. c 158 § 1, part; 1909 c 82 § 6, part; 1907 c 209 § 22, part; Rem. Supp. 1943 § 5198, part.]

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

Severability—1967 ex.s. c 32: See note following RCW 29.42.070.
Notice of general election, office to be indicated: RCW 29.04.020.

29.42.060 Precinct office to appear on separate absentee ballot. See RCW 29.36.030 and 29.36.070.

29.42.070 Legislative district chair—Election—Term—Removal. Within forty-five days after the statewide general election in even-numbered years, or within thirty days following July 30, 1967, for the biennium ending with the 1968 general elections, the county chair of each major political party shall call separate meetings of all elected precinct committee officers in each legislative district a majority of the precincts of which are within a county with a population of one million or more for the purpose of electing a legislative district chair in such district. The district chair shall hold office until the next legislative district reorganizational meeting two years later, or until a successor is elected.

The legislative district chair can only be removed by the majority vote of the elected precinct committee officers in the chair's district. [1991 c 363 § 35; 1987 c 295 § 15; 1967 ex.s. c 32 § 1.]

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

Severability—1967 ex.s. c 32: "If any provision of this 1967 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the 1967 amendatory act, or the application of the provision to other persons or circumstances is not affected." [1967 ex.s. c 32 § 3.]

Precinct committee officer, appointment to fill vacancy in office of to be made on recommendation of legislative district chair: RCW 29.42.050.

Chapter 29.45

PRECINCT ELECTION OFFICERS

Sections

- 29.45.010 Appointment of judges and inspector.
- 29.45.020 Appointment of clerks—Party representation—Hour to report.
- 29.45.030 Nomination.
- 29.45.040 Vacancies—How filled—Inspector's authority.
- 29.45.050 One set of precinct election officers, exceptions—Counting board—Receiving board.
- 29.45.060 Duties—Generally.
- 29.45.065 Application to other primaries or elections.
- 29.45.070 Inspector as chairman—Authority.
- 29.45.080 Oaths of officers required.
- 29.45.090 Oath of inspectors, form.
- 29.45.100 Oath of judges, form.
- 29.45.110 Oath of clerks, form.
- 29.45.120 Compensation.

Contests, misconduct of precinct election board irregularity must be material to result: RCW 29.65.060. members as grounds for: RCW 29.65.010. number of votes affected—Enough to change result: RCW 29.65.070.

District election officials, see particular district, elections in.

Forms for declaration of death of registered voter, precinct election officers to have: RCW 29.10.090.

Precinct election officers' duties before, during, and after polls open: Chapters 29.48, 29.51, and 29.54 RCW.

Term of county and precinct officers: RCW 36.16.020.

Townships, duties of town officers at elections: Chapter 45.40 RCW.

Violations by election officers, penalties: Chapter 29.85 RCW.

Voting machine precincts, precinct election officers' duties: RCW 29.48.080.

Voting systems, preparation for voting: Chapter 29.33 RCW.

29.45.010 Appointment of judges and inspector. (1) At least ten days prior to any primary or election, general or special, the county auditor shall appoint one inspector and two judges of election for each precinct (or each combination of precincts temporarily consolidated as a single precinct for that primary or election), other than those precincts designated as vote-by-mail precincts pursuant to RCW 29.36.120. Except as provided in subsection (3) of this section, the persons appointed shall be among those whose names are contained on the lists furnished under RCW 29.45.030 by the chairpersons of the county central committees of the political parties entitled to representation thereon. Such precinct election officers, whenever possible, should be residents of the precinct in which they serve.

(2) The county auditor may delete from the lists of names submitted to the auditor by the chairpersons of the county central committees under RCW 29.45.030: (a) The names of those persons who indicate to the auditor that they cannot or do not wish to serve as precinct election officers for the primary or election or who otherwise cannot so serve; and (b) the names of those persons who lack the ability to conduct properly the duties of an inspector or judge of election after training in that proper conduct has been made available to them by the auditor. The lists which are submitted to the auditor in a timely manner under RCW 29.45.030, less the deletions authorized by this subsection,

constitute the official nomination lists for inspectors and judges of election.

(3) If the number of persons whose names are on the official nomination list for a political party is not sufficient to satisfy the requirements of subsection (4) of this section as it applies to that political party or is otherwise insufficient to provide the number of precinct election officials required from that political party, the auditor shall notify the chair of the party's county central committee regarding the deficiency. The chair may, within five business days of being notified by the auditor, add to the party's nomination list the names of additional persons belonging to that political party who are qualified to serve on the election boards. To the extent that, following this procedure, the number of persons whose names appear on the official nomination lists of the political parties is insufficient to provide the number of election inspectors and judges required for a primary or election, the auditor may appoint a properly trained person whose name does not appear on such a list as an inspector or judge of election for a precinct.

(4) The county auditor shall designate the inspector and one judge in each precinct from that political party which polled the highest number of votes in the county for its candidate for president at the last preceding presidential election and one judge from that political party polling the next highest number of votes in the county for its candidate for president at the same election. The provisions of this subsection apply only if the number of names on the official nomination list for inspectors and judges of election for a political party is sufficient to satisfy the requirements imposed by this subsection.

(5) Except as provided in RCW 29.45.040 for the filling of vacancies, this shall be the exclusive method for the appointment of inspectors and judges to serve as precinct election officers at any primary or election, general or special, and shall supersede the provisions of any and all other statutes, whether general or special in nature, having different requirements. [1991 c 106 § 1; 1983 1st ex.s. c 71 § 7; 1965 ex.s. c 101 § 1; 1965 c 9 § 29.45.010. Prior: (i) 1935 c 165 § 2, part; RRS § 5147-1, part. (ii) Code 1881 § 3068, part; 1865 p 30 § 2, part; RRS § 5158, part. (iii) 1907 c 209 § 15, part; RRS § 5192, part. (iv) 1895 c 156 § 6, part; 1889 p 407 § 20, part; RRS § 5277, part. (v) 1947 c 182 § 1, part; Rem. Supp. 1947 § 5166-10, part; prior: 1945 c 164 § 3, part; 1941 c 180 § 1, part; 1935 c 5 § 1, part; 1933 ex.s. c 29 § 1, part; prior: 1933 c 79 § 1, part; 1927 c 279 § 2, part; 1923 c 53 § 3, part; 1921 c 61 § 5, part; Rem. Supp. 1945 § 5147, part.]

29.45.020 Appointment of clerks—Party representation—Hour to report. At the same time the officer having jurisdiction of the election appoints the inspector and two judges as provided in RCW 29.45.010, he may appoint one or more persons to act as clerks if in his judgment such additional persons are necessary, except that in precincts in which voting machines are used, the judges of election shall perform the duties required to be performed by clerks.

Each clerk appointed shall represent a major political party: PROVIDED, That the political party representation of a single set of precinct election officers shall, whenever possible, be equal but, in any event, no single political party

shall be represented by more than a majority of one at each polling place.

The election officer having jurisdiction of the election may designate at what hour the clerks shall report for duty. The hour may vary among the precincts according to the judgment of the appointing officer. [1965 ex.s. c 101 § 2; 1965 c 9 § 29.45.020. Prior: 1955 c 168 § 4; prior: (i) 1915 c 114 § 4, part; 1913 c 58 § 9, part; RRS § 5308, part. (ii) 1895 c 156 § 1, part; Code 1881 § 3069, part; 1865 p 31 § 3, part; RRS § 5159, part.]

29.45.030 Nomination. The precinct committee officer of each major political party shall certify to the officer's county chair a list of those persons belonging to the officer's political party qualified to act upon the election board in the officer's precinct.

By the first day of June each year, the chair of the county central committee of each major political party shall certify to the officer having jurisdiction of the election a list of those persons belonging to the county chair's political party in each precinct who are qualified to act on the election board therein.

The county chair shall compile this list from the names certified by the various precinct committee officers unless no names or not [a] sufficient [number of] names have been certified from a precinct, in which event the county chair may include therein the names of qualified members of the county chair's party selected by the county chair. The county chair shall also have the authority to substitute names of persons recommended by the precinct committee officers if in the judgment of the county chair such persons are not qualified to serve as precinct election officers. [1991 c 106 § 2; 1987 c 295 § 16; 1965 ex.s. c 101 § 3; 1965 c 9 § 29.45.030. Prior: (i) 1907 c 209 § 15, part; RRS § 5192, part. (ii) 1935 c 165 § 2, part; RRS § 5147-1, part.]

29.45.040 Vacancies—How filled—Inspector's authority. If no election officers have been appointed for a precinct, or if at the hour for opening the polls none of those appointed is present at the polling place therein, the voters present may appoint the election board for that precinct. One of the judges may perform the duties of clerk of election. The inspector shall have the power to fill any vacancy that may occur in the board of judges, or by absence or refusal to serve of either of the clerks after the polls shall have been opened. [1965 c 9 § 29.45.040. Prior: (i) Code 1881 § 3075, part; 1865 p 32 § 9, part; RRS § 5165, part. (ii) Code 1881 § 3068, part; 1865 p 30 § 2, part; RRS § 5158, part. (iii) 1907 c 209 § 15, part; RRS § 5192, part.]

29.45.050 One set of precinct election officers, exceptions—Counting board—Receiving board. There shall be but one set of election officers in each precinct except as provided in this section.

In every precinct using paper ballots having two hundred or more registered voters there shall be appointed, and in every precinct having less than two hundred registered voters there may be appointed, at a state primary or state general election, two or more sets of precinct election officers as provided in RCW 29.04.020 and 29.45.010. The

officer in charge of the election may appoint one or more counting boards at his discretion, when he decides that because of a long or complicated ballot or because of the number of expected voters, there is need of additional counting board or boards to improve the speed and accuracy of the count.

In making such appointments, one or more sets of precinct election officers shall be designated as the counting board or boards, the first of which shall consist of an inspector, two judges, and a clerk and the second set, if activated, shall consist of two judges and two clerks. The duties of the counting board or boards shall be the count of ballots cast and the return of the election records and supplies to the officer having jurisdiction of the election.

One set of precinct election officers shall be designated as the receiving board which shall have all other powers and duties imposed by law for such elections. [1973 c 102 § 2; 1965 ex.s. c 101 § 4; 1965 c 9 § 29.45.050. Prior: 1955 c 148 § 2; prior: (i) 1923 c 53 § 4, part; 1921 c 61 § 6, part; RRS § 5148, part. (ii) 1921 c 170 § 4, part; RRS § 5153, part.]

29.45.060 Duties—Generally. The inspector and judges of election in each precinct shall conduct the elections therein and receive, deposit, and count the ballots cast thereat and make returns to the proper canvassing board or officer except that when two or more sets of precinct election officers are appointed as provided in RCW 29.45.050, the ballots shall be counted by the counting board or boards as provided in RCW 29.54.015, 29.54.018, and 29.85.225. [1990 c 59 § 74; 1973 c 102 § 3; 1965 ex.s. c 101 § 5; 1965 c 9 § 29.45.060. Prior: 1955 c 148 § 3; prior: (i) 1923 c 53 § 4, part; 1921 c 61 § 6, part; RRS § 5148, part. (ii) 1921 c 170 § 4, part; RRS § 5153, part.]

Intent—Effective date—1990 c 59: See notes following RCW 29.01.006.

29.45.065 Application to other primaries or elections. All of the provisions of RCW 29.45.050 and 29.45.060 relating to counting boards may be applied on an optional basis to any other primary or election, regular or special, at the discretion of the officer in charge of the election. [1973 c 102 § 5.]

29.45.070 Inspector as chairman—Authority. The inspector shall be chairman of the board and after its organization shall have power to administer all necessary oaths which may be required in the progress of the election. [1965 c 9 § 29.45.070. Prior: Code 1881 § 3075, part; 1865 p 32 § 9, part; RRS § 5165, part.]

29.45.080 Oaths of officers required. The inspector, judges, and clerks of election, before entering upon the duties of their offices, shall take and subscribe the prescribed oath or affirmation which shall be administered to them by any person authorized to administer oaths and verified under the hand of the person by whom such oath or affirmation is administered. If no such person is present, the inspector shall administer the same to the judges and clerks, and one of the judges shall administer the oath to the inspector.

The county auditor shall furnish two copies of the proper form of oath to each precinct election officer, one copy thereof, after execution, to be placed and transmitted with the election returns. [1965 c 9 § 29.45.080. Prior: (i) Code 1881 § 3070; 1865 p 31 § 4; RRS § 5160. (ii) 1895 c 156 § 2, part; Code 1881 § 3074, part; 1865 p 32 § 8, part; RRS § 5164, part.]

29.45.090 Oath of inspectors, form. The following shall be the form of the oath or affirmation to be taken by each inspector:

"I, A B, do swear (or affirm) that I will duly attend to the ensuing election, during the continuance thereof, as an inspector, and that I will not receive any ballot or vote from any person other than such as I firmly believe to be entitled to vote at such election, without requiring such evidence of the right to vote as is directed by law; nor will I vexatiously delay the vote of, or refuse to receive, a ballot from any person whom I believe to be entitled to vote; but that I will in all things truly, impartially, and faithfully perform my duty therein to the best of my judgment and abilities; and that I am not, directly nor indirectly, interested in any bet or wager on the result of this election." [1965 c 9 § 29.45.090. Prior: Code 1881 § 3071; 1865 p 31 § 5; RRS § 5161.]

29.45.100 Oath of judges, form. The following shall be the oath or affirmation of each judge:

"We, A B, do swear (or affirm) that we will as judges duly attend the ensuing election, during the continuance thereof, and faithfully assist the inspector in carrying on the same; that we will not give our consent to the receipt of any vote or ballot from any person, other than one whom we firmly believe to be entitled to vote at such election; and that we will make a true and perfect return of the said election and will in all things truly, impartially, and faithfully perform our duty respecting the same to the best of our judgment and abilities; and that we are not directly nor indirectly interested in any bet or wager on the result of this election." [1965 c 9 § 29.45.100. Prior: Code 1881 § 3072; 1865 p 31 § 6; RRS § 5162.]

29.45.110 Oath of clerks, form. The following shall be the form of the oath to be taken by the clerks:

"We, and each of us, A B, do swear (or affirm) that we will impartially and truly write down the name of each elector who votes at the ensuing election, and also the name of the county and precinct wherein the elector resides; that we will carefully and truly write down the number of votes given for each candidate at the election as often as his name is read to us by the inspector and in all things truly and faithfully perform our duty respecting the same to the best of our judgment and abilities, and that we are not directly nor indirectly interested in any bet or wager on the result of this election." [1965 c 9 § 29.45.110. Prior: Code 1881 § 3073; 1865 p 32 § 7; RRS § 5163.]

29.45.120 Compensation. The fees of officers of election shall be as follows:

To the judges and clerks of an election not less than the minimum hourly wage per hour as provided under RCW 49.46.020 as now or hereafter amended, the exact amount to

be fixed by the respective boards of county commissioners for each county. To inspectors, the rate paid to judges and clerks plus an additional two hours' compensation. The precinct election officer picking up the election supplies and returning the election returns to the county auditor shall be entitled to additional compensation, the exact amount to be determined by the respective boards of county commissioners for each county. [1971 ex.s. c 124 § 2; 1965 c 9 § 29.45.120. Prior: 1961 c 43 § 1; 1951 c 67 § 1; 1945 c 186 § 1; 1919 c 163 § 13; 1895 c 20 § 1; Code 1881 § 3151; 1866 p 8 § 9; 1865 p 52 § 12; Rem. Supp. 1945 § 5166. See also 1907 c 209 § 15; RRS § 5192.]

Severability—1971 ex.s. c 124: "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 124 § 3.]

Chapter 29.48

POLLING PLACE REGULATIONS BEFORE POLLS OPEN

Sections

- 29.48.005 Polling place—May be located outside precinct.
- 29.48.007 Polling place—Use of county, municipality, or special district facilities.
- 29.48.010 Voting booths.
- 29.48.020 Time for arrival of officers.
- 29.48.030 Delivery of supplies.
- 29.48.035 Additional supplies for paper ballots.
- 29.48.040 Additional supplies for voting machines.
- 29.48.050 Receipt for key to voting machine.
- 29.48.060 Posting of instructions.
- 29.48.070 Inspection of voting equipment.
- 29.48.080 Inspection of voting machine.
- 29.48.090 Duty to display flag.
- 29.48.100 Announcement opening the polls.

Delivery of registration files: RCW 29.07.170.

Election laws provided to officers of election: RCW 29.04.060.

Forms available when polls open

statements that registered voter is deceased: RCW 29.10.090.

statements that voter has changed residence: RCW 29.10.130, 29.10.150, 29.10.170.

Poll books: RCW 29.04.100.

Precinct election officers, appointment of and oaths: Chapter 29.45 RCW.

Violations and penalties for actions taken before polls open: Chapter 29.85 RCW.

29.48.005 Polling place—May be located outside precinct. Polling places for the various voting precincts may be located outside the boundaries of the respective precincts, when the officers conducting the primary or election shall deem it feasible: PROVIDED, That such polling places shall be located within a reasonable distance of their respective precincts. The purpose of this section is to furnish adequate voting facilities at readily accessible and identifiable locations and nothing herein shall be construed as affecting the number, method of selection or duties of precinct election officers. [1965 c 9 § 29.48.005. Prior: 1951 c 123 § 1.]

29.48.007 Polling place—Use of county, municipality, or special district facilities. The legislative authority of each county, municipality, and special district shall, at the request of the county auditor, make their facilities available

for use as polling places for primaries, special elections, and state general elections held within that county. When, in the judgment of the county auditor, a facility of a county, municipality, or special district would provide a location for a polling place that would best satisfy the requirements of chapter 29.57 RCW, he or she shall notify the legislative authority of that county, municipality, or district of the number of facilities needed for use as polling places. Payment for polling places and any other conditions or obligations regarding these polling places shall be provided for by contract between the county auditor and the county, municipality, or district. [1985 c 205 § 14; 1965 c 9 § 29.48.007. Prior: 1955 c 201 § 1.]

Effective dates—1985 c 205: See note following RCW 29.57.070.

29.48.010 Voting booths. The county auditor shall provide in each polling place a sufficient number of voting booths or voting devices along with any supplies necessary to enable the voter to mark or register his or her choices on the ballot and within which the voters may cast their votes in secrecy. Where paper ballots are used for voting, the number of voting booths shall be at least one for every fifty registered voters in the precinct. [1990 c 59 § 35; 1965 c 9 § 29.48.010. Prior: 1907 c 130 § 2, part; 1889 p 408 § 21, part; RRS § 5278, part.]

Intent—Effective date—1990 c 59: See notes following RCW 29.01.006.

29.48.020 Time for arrival of officers. The precinct election officers for each precinct shall meet at the designated polling place at the time set by the county auditor. [1977 ex.s. c 361 § 80; 1965 c 9 § 29.48.020. Prior: 1957 c 195 § 6; prior: 1913 c 58 § 12, part; RRS § 5312, part.]

Effective date—Severability—1977 ex.s. c 361: See notes following RCW 29.01.006.

Clerks, hour to report: RCW 29.45.020.

29.48.030 Delivery of supplies. No later than the day before a primary or election, the county auditor shall provide to the inspector or one of the judges of each precinct or to one of the inspectors of a polling place where more than one precinct will be voting, all of the ballots, precinct lists of registered voters, and other supplies necessary for conducting the election or primary. [1990 c 59 § 36; 1977 ex.s. c 361 § 81; 1971 ex.s. c 202 § 40; 1965 c 9 § 29.48.030. Prior: (i) 1921 c 178 § 8; Code 1881 § 3078; 1865 p 34 § 3; RRS § 5322. (ii) 1919 c 163 § 20, part; 1895 c 156 § 9, part; 1889 p 411 § 28, part; RRS § 5293, part. (iii) 1907 c 209 § 20; RRS § 5196. (iv) 1913 c 138 § 29, part; RRS § 5425, part. (v) 1915 c 124 § 1; 1895 c 156 § 5; 1893 c 91 § 1; 1889 p 407 § 18; RRS § 5275. (vi) 1921 c 68 § 1, part; RRS § 5320, part. (vii) 1895 c 156 § 6, part; 1889 p 407 § 20; RRS § 5277, part. (viii) 1895 c 156 § 2, part; Code 1881 § 3074; 1865 p 32 § 8; RRS § 5164, part. (ix) 1905 c 39 § 1, part; 1889 p 405 § 15, part; RRS § 5272, part. (x) 1935 c 20 § 5, part; 1921 c 178 § 6, part; 1915 c 114 § 2, part; 1913 c 58 § 7, part; RRS § 5306, part. (xi) 1854 p 67 § 16; No RRS. (xii) 1854 p 67 § 17, part; No RRS. (xiii) 1915 c 114 § 7, part; 1913 c 58 § 13, part; RRS § 5313, part. (xiv) 1915 c 14 § 6, part; 1913 c 58 § 11, part; RRS § 5311, part. (xv) 1933 c 1 § 10, part; RRS § 5114-10, part.]

(xvi) Code 1881 § 3093, part; RRS § 5338, part. (xvii) 1903 c 85 § 1, part; RRS § 3339, part.]

Intent—Effective date—1990 c 59: See notes following RCW 29.01.006.

Effective date—Severability—1977 ex.s. c 361: See notes following RCW 29.01.006.

29.48.035 Additional supplies for paper ballots. In precincts where votes are cast on paper ballots, the following supplies, in addition to those specified in RCW 29.48.030 as now or hereafter amended, shall be provided:

(1) Two tally books in which the names of the candidates shall be listed in the order in which they appear on the sample ballots and in each case have the proper party designation at the head thereof;

(2) Two certificates or two sample ballots prepared as blanks, for recording of the unofficial results by the precinct election officers. [1977 ex.s. c 361 § 82.]

Effective date—Severability—1977 ex.s. c 361: See notes following RCW 29.01.006.

29.48.040 Additional supplies for voting machines. When voting machines are used the county auditor or other officer shall deliver to the inspector or one of the judges of each precinct not later than forty-five minutes before the time for opening the polls the following additional supplies:

(1) The key for each voting machine, sealed in an envelope upon which is written the designation and location of the polling place, the number of the voting machine, the number or other designation mark of the seal on the machine, and the number registered on the protective counter thereof as reported by the custodian;

(2) Two diagrams;

(3) One extra set of ballot labels;

(4) One envelope containing a seal for sealing the machine after the polls are closed;

(5) One envelope for the return of the keys;

(6) Two statements of canvass. [1965 c 9 § 29.48.040.

Prior: 1915 c 114 § 6, part; 1913 c 58 § 11, part; RRS § 5311, part.]

Voting systems, generally: Chapter 29.33 RCW.

29.48.050 Receipt for key to voting machine. At the time of delivering the key to a voting machine, the county auditor or other officer shall require a receipt therefor bearing upon it the identical information required to be placed upon the envelope in which it is delivered. [1965 c 9 § 29.48.050. Prior: 1915 c 114 § 6, part; 1913 c 58 § 11, part; RRS § 5311, part.]

29.48.060 Posting of instructions. The judges of election shall post in and about the polling place at least two voters' instruction cards and where voting machines are used at least two diagrams of the voting machine. [1965 c 9 § 29.48.060. Prior: (i) 1919 c 163 § 20, part; 1895 c 116 § 9, part; 1889 p 411 § 28, part; RRS § 5293, part. (ii) 1913 c 58 § 12, part; RRS § 5312, part.]

29.48.070 Inspection of voting equipment. Before opening the polls for a precinct, the voting equipment shall be inspected to determine if it has been properly prepared for

voting. If the voting equipment is capable of direct tabulation of each voter's choices, the precinct election officers shall verify that no votes have been registered for any issue or office to be voted on at that primary or election. Any ballot box shall be carefully examined by the judges of election to determine that it is empty. The ballot box shall then be sealed or locked. The ballot box shall not be opened before the certification of the primary or election except in the manner and for the purposes provided under this title. [1990 c 59 § 37; 1965 c 9 § 29.48.070. Prior: 1854 p 67 § 17, part; No RRS.]

Reviser's note: As part of the 1965 reenactment of Title 29 RCW, the phrase "except in the manner and for the purposes otherwise provided by law" was added to harmonize with other sections. See, for example, RCW 29.54.030 and 29.54.045.

Intent—Effective date—1990 c 59: See notes following RCW 29.01.006.

29.48.080 Inspection of voting machine. In precincts where machines are used the election officers before unlocking the machine for voting shall proceed as follows:

(1) They shall see that the voting machine is placed where it can be conveniently attended by the election officers and conveniently operated by the voters, and where, unless its construction requires otherwise, the ballot labels thereon can be plainly seen by the election officers and the public when not being voted on;

(2) They shall see that the model is placed where each voter can conveniently operate it and receive instructions thereon as to the manner of voting, before entering the machine booth;

(3) They shall post one diagram inside the polling room and one outside, in places where the voters can conveniently examine them;

(4) They shall see that the lantern or other means provided for giving light is in such condition that the voting machine is sufficiently lighted to enable voters to readily read the names on the ballot labels;

(5) They shall see that the ballot labels are in the proper places on the machine;

(6) They shall see whether the number or other designating mark on the seal sealing the machine, also the number registered on the protective counter agree with the number written on the envelope containing the keys. If they do not agree they shall at once notify the custodian and delay unlocking the machine, and opening the polls until he has reexamined the machine;

(7) If the numbers or marks on the envelope containing the keys and upon the machine do agree, they shall proceed to see whether the public counter and all the candidate and question counters register "000." If any of the counters are found to register a number other than "000", one of the judges shall at once notify the custodian who shall set such counter at "000;"

(8) Where voting machines equipped with printed election returns mechanism are used, they shall proceed to operate the mechanism provided to produce one imprinted "before election inspection sheet" showing whether the candidate and question counters register "000". If said sheet has imprinted thereon any numbers below any candidate's name or below any question's designation other than "000" one of the judges shall, after the polls close, under the

scrutiny of the other members of the board of election officials, deduct that number from that candidate's or question's total in the space provided for on the return sheet.

After performing their duties as provided in this section, the election officers shall certify thereto in the appropriate places on the statement of canvass as provided thereon. When the polls are declared open, one of the election officers shall break the seal and unlock the machine for voting. [1965 c 9 § 29.48.080. Prior: 1957 c 195 § 7; prior: 1913 c 58 § 12, part; RRS § 5312, part.]

29.48.090 Duty to display flag. At all primaries and elections the flag of the United States shall be conspicuously displayed in front of each polling place. [1965 c 9 § 29.48.090. Prior: 1921 c 68 § 1, part; RRS § 5320, part.]

29.48.100 Announcement opening the polls. The precinct election officers, immediately before they start to issue ballots or permit a voter to vote, shall announce at the place of voting that the polls for that precinct are open. [1990 c 59 § 38; 1965 c 9 § 29.48.100. Prior: Code 1881 § 3077; 1865 p 34 § 2; RRS § 5321.]

Intent—Effective date—1990 c 59: See notes following RCW 29.01.006.

Opening and closing polls: RCW 29.13.080.

Chapter 29.51

POLLING PLACE REGULATIONS DURING VOTING HOURS

Sections

- 29.51.010 Interference with voter prohibited.
- 29.51.020 Acts prohibited in vicinity of polling place—Prohibited practices as to ballots—Penalty.
- 29.51.030 Electioneering by election officers forbidden—Penalty.
- 29.51.050 Issuing ballot to voter—Challenge.
- 29.51.060 Signature required to vote—Procedure if voter unable to sign name.
- 29.51.070 Record of participation.
- 29.51.100 Casting vote.
- 29.51.125 Determination of who has and who has not voted.
- 29.51.140 Mechanical voting devices—When all voters do not vote on all offices.
- 29.51.150 Voting devices—Periodic examination.
- 29.51.170 Write-in voting—Declaration of candidacy—Validity of vote.
- 29.51.175 Votes by stickers, printed labels, rejected.
- 29.51.180 Taking papers into voting booth.
- 29.51.190 Official ballots—Vote only once—Incorrectly marked ballots.
- 29.51.200 Handicapped voters.
- 29.51.215 Handicapped voters—Penalty.
- 29.51.230 Unlawful acts by voters—Penalty.
- 29.51.240 Polls open continuously—Announcement of closing.
- 29.51.250 Voters in polling place at closing time.

Candidate giving or purchasing liquor during voting hours prohibited: RCW 66.44.265.

Employer's duty to provide time to vote: RCW 49.28.120.

Polling place regulations during voting hours and after closing: Chapter 29.54 RCW.

Subversive activities, disqualification from voting or holding office: RCW 9.81.040.

Violations and penalties for acts committed during voting hours: Chapter 29.85 RCW.

Voting systems, use of during voting hours: Chapter 29.33 RCW.

29.51.010 Interference with voter prohibited. No person may interfere with a voter in any way within the polling place. This does not prevent the voter from receiving assistance in preparing his or her ballot as provided in RCW 29.51.200. [1990 c 59 § 39; 1965 c 9 § 29.51.010. Prior: 1907 c 130 § 2, part; 1889 p 408 § 21, part; RRS § 5278, part.]

Intent—Effective date—1990 c 59: See notes following RCW 29.01.006.

29.51.020 Acts prohibited in vicinity of polling place—Prohibited practices as to ballots—Penalty. (1) On the day of any primary or general or special election, no person may, within a polling place, or in any public area within three hundred feet of any entrance to such polling place:

(a) Suggest or persuade or attempt to suggest or persuade any voter to vote for or against any candidate or ballot measure;

(b) Circulate cards or handbills of any kind;

(c) Solicit signatures to any kind of petition; or

(d) Engage in any practice which interferes with the freedom of voters to exercise their franchise or disrupts the administration of the polling place.

(2) No person may obstruct the doors or entries to a building in which a polling place is located or prevent free access to and from any polling place. Any sheriff, deputy sheriff, or municipal law enforcement officer shall prevent such obstruction, and may arrest any person creating such obstruction.

(3) No person may:

(a) Except as provided in RCW 29.54.037, remove any ballot from the polling place before the closing of the polls; or

(b) Solicit any voter to show his or her ballot.

(4) No person other than an inspector or judge of election may receive from any voter a voted ballot or deliver a blank ballot to such elector.

(5) Any violation of this section is a gross misdemeanor, punishable to the same extent as a gross misdemeanor that is punishable under RCW 9A.20.021, and the person convicted may be ordered to pay the costs of prosecution. [1991 c 81 § 20; 1990 c 59 § 75; 1984 c 35 § 1; 1983 1st ex.s. c 33 § 1; 1965 c 9 § 29.51.020. Prior: (i) 1947 c 35 § 1, part; 1889 p 412 § 33, part; Rem. Supp. 1947 § 5298, part. (ii) 1895 c 156 § 7, part; 1889 p 409 § 22, part; Code 1881 § 3079, part; 1865 p 34 § 4, part; RRS § 5279, part.]

Effective date—1991 c 81: See note following RCW 29.85.010.

Intent—Effective date—1990 c 59: See notes following RCW 29.01.006.

29.51.030 Electioneering by election officers forbidden—Penalty. Any election officer who does any electioneering on primary or election day, shall be guilty of a misdemeanor, and upon conviction shall be fined in any sum not exceeding one hundred dollars and pay the costs of prosecution. [1965 c 9 § 29.51.030. Prior: 1947 c 35 § 1, part; 1889 p 412 § 33, part; Rem. Supp. 1947 § 5298, part.]

29.51.050 Issuing ballot to voter—Challenge. A voter desiring to vote shall give his or her name to the precinct election officer who has the precinct list of registered voters. This officer shall announce the name to the precinct election officer who has the copy of the poll book for that precinct. If the right of this voter to participate in the primary or election is not challenged, the voter shall be issued a ballot or permitted to enter a voting booth or to operate a voting device. The number of the ballot or the voter shall be recorded by the precinct election officers. If the right of the voter to participate is challenged, RCW 29.10.125 and 29.10.127 apply to that voter. [1990 c 59 § 40; 1965 c 9 § 29.51.050. Prior: (i) 1895 c 156 § 7, part; 1889 p 409 § 22, part; Code 1881 § 3079, part; 1865 p 34 § 4, part; RRS § 5279, part. (ii) 1915 c 114 § 7, part; 1913 c 58 § 13, part; RRS § 5313, part.]

Intent—Effective date—1990 c 59: See notes following RCW 29.01.006.

29.51.060 Signature required to vote—Procedure if voter unable to sign name. If any person appears to vote at any primary or election as a registered voter in the jurisdiction where the primary or election is being held, the precinct election officers shall require the voter to sign his or her name and current address subject to penalties of perjury in one of the precinct lists of registered voters. If the person registered using a mark or can no longer sign his or her name, the election officers shall require the person offering to vote to be identified by another registered voter.

As soon as it is determined that the person is qualified to vote, one of the precinct election officers shall enter the voter's name in a second poll book. [1990 c 59 § 41; 1971 ex.s. c 202 § 41; 1967 ex.s. c 109 § 9; 1965 ex.s. c 156 § 5; 1965 c 9 § 29.51.060. Prior: 1933 c 1 § 24; RRS § 5114-24.]

Intent—Effective date—1990 c 59: See notes following RCW 29.01.006.

Forms, secretary of state to design—Availability to public: RCW 29.10.150.

Poll books—As public records—Copies furnished, uses restricted: RCW 29.04.100.

29.51.070 Record of participation. As each voter casts his or her vote, the precinct election officers shall insert in the poll books or precinct list of registered voters opposite that voter's name, a notation to credit the voter with having participated in that primary or election. [1990 c 59 § 42; 1971 ex.s. c 202 § 42; 1965 c 9 § 29.51.070. Prior: (i) 1895 c 156 § 7, part; 1889 p 409 § 22, part; Code 1881 § 3079, part; 1865 p 34 § 4, part; RRS § 5279, part. (ii) 1933 c 1 § 25; RRS § 5114-25. (iii) 1915 c 114 § 7, part; 1913 c 58 § 13, part; RRS § 5313, part.]

Intent—Effective date—1990 c 59: See notes following RCW 29.01.006.

29.51.100 Casting vote. On signing the precinct list of registered voters or being issued a ballot, the voter shall, without leaving the polling place, proceed to one of the voting booths or voting devices to cast his or her vote. If the voter was issued a ballot, he or she shall remove the number from the ballot, place the ballot in the ballot box, and return the number to the precinct election officers or

shall deliver it to the precinct election officers who shall remove the number from the ballot and place the ballot in the ballot box. [1990 c 59 § 43; 1988 c 181 § 4; 1965 ex.s. c 101 § 15; 1965 c 9 § 29.51.100. Prior: (i) 1947 c 77 § 2, part; 1895 c 156 § 8, part; 1889 p 409 § 23, part; Rem. Supp. 1947 § 5288, part. (ii) 1889 p 410 § 24, part; RRS § 5289, part.]

Intent—Effective date—1990 c 59: See notes following RCW 29.01.006.

29.51.125 Determination of who has and who has not voted. At any election, general or special, or at any primary, any political party or committee may designate a person other than a precinct election officer, for each polling place to check a list of registered voters of the precinct to determine who has and who has not voted: PROVIDED, That such lists shall be furnished by the party or committee concerned. [1977 ex.s. c 361 § 83; 1965 c 9 § 29.51.125. Prior: 1963 ex.s. c 24 § 1.]

Effective date—Severability—1977 ex.s. c 361: See notes following RCW 29.01.006.

"Major political party" defined: RCW 29.01.090.

Poll books—As public records—Copies to representatives of major political parties: RCW 29.04.100.

29.51.140 Mechanical voting devices—When all voters do not vote on all offices. In primaries or elections where a voter has the right to vote only on certain offices and measures, a precinct election officer shall set the mechanical voting device so that the voter can only vote on those offices and measures or direct the voter to a voting device where the ballot contains the appropriate offices and measures. [1990 c 59 § 44; 1965 c 9 § 29.51.140. Prior: 1915 c 114 § 7, part; 1913 c 58 § 13, part; RRS § 5313, part.]

Intent—Effective date—1990 c 59: See notes following RCW 29.01.006.

29.51.150 Voting devices—Periodic examination. The precinct election officers shall periodically examine the voting devices to determine if they have been tampered with. [1990 c 59 § 45; 1965 c 9 § 29.51.150. Prior: 1915 c 114 § 7, part; 1913 c 58 § 13, part; RRS § 5313, part.]

Intent—Effective date—1990 c 59: See notes following RCW 29.01.006.

29.51.170 Write-in voting—Declaration of candidacy—Validity of vote. For any office at any election or primary, any voter may write in on the ballot the name of any person for an office who has filed as a write-in candidate for the office in the manner provided by RCW 29.04.180 and such vote shall be counted the same as if the name had been printed on the ballot and marked by the voter. No write-in vote made for any person who has not filed a declaration of candidacy pursuant to RCW 29.04.180 is valid if that person filed for the same office, either as a regular candidate or a write-in candidate, at the preceding primary. Any abbreviation used to designate office, position, or political party shall be accepted if the canvassing board can determine, to their satisfaction, the voter's intent. [1988 c 181 § 5; 1973 1st ex.s. c 121 § 1; 1967 ex.s. c 109 § 28;

1965 ex.s. c 101 § 14; 1965 c 9 § 29.51.170. Prior: (i) 1931 c 14 § 1; 1909 c 82 § 12; RRS § 5213. (ii) 1933 c 85 § 2; RRS § 5213-2. (iii) 1905 c 39 § 1, part; 1889 p 405 § 15, part; RRS § 5272, part.]

29.51.175 Votes by stickers, printed labels, rejected. Votes cast by stickers or printed labels are not valid for any purpose and shall be rejected. Votes cast by sticker or label shall not affect the validity of other offices or issues on the voter's ballot. [1990 c 59 § 46; 1965 ex.s. c 101 § 16.]

Intent—Effective date—1990 c 59: See notes following RCW 29.01.006.

29.51.180 Taking papers into voting booth. Any voter may take into the voting booth or voting device any printed or written material to assist in casting his or her vote. The voter shall not use this material to electioneer and shall remove the material when he or she leaves the polls. [1990 c 59 § 47; 1965 c 9 § 29.51.180. Prior: 1905 c 39 § 1, part; 1889 p 405 § 15, part; RRS § 5272, part.]

Intent—Effective date—1990 c 59: See notes following RCW 29.01.006.

29.51.190 Official ballots—Vote only once—Incorrectly marked ballots. No ballots may be used in any polling place other than those prepared by the county auditor. No voter is entitled to vote more than once at a primary or a general or special election, except that if a voter incorrectly marks a ballot, he or she may return it and be issued a new ballot. The precinct election officers shall void the incorrectly marked ballot and return it to the county auditor. [1990 c 59 § 48; 1965 c 9 § 29.51.190. Prior: (i) 1889 p 410 § 25; RRS § 5290. (ii) 1935 c 26 § 3, part; 1921 c 177 § 1, part; 1919 c 163 § 15, part; 1917 c 71 § 2, part; 1909 c 82 § 4, part; 1907 c 209 § 12, part; RRS § 5189, part. (iii) 1895 c 156 § 7, part; 1889 p 409 § 22, part; Code 1881 § 3079, part; 1865 p 34 § 4, part; RRS § 5279, part. (iv) 1915 c 114 § 7, part; 1913 c 58 § 13, part; RRS § 5313, part. (v) 1905 c 39 § 1, part; 1889 p 405 § 15, part; RRS § 5272, part.]

Intent—Effective date—1990 c 59: See notes following RCW 29.01.006.

29.51.200 Handicapped voters. Voting shall be secret except to the extent necessary to assist sensory or physically handicapped voters.

If any voter declares in the presence of the election officers that because of sensory or physical handicap he is unable to register or record his vote, he may designate a person of his choice or two election officers from opposite political parties to enter the voting machine booth with him and record his vote as he directs. [1981 c 34 § 1; 1965 ex.s. c 101 § 17; 1965 c 9 § 29.51.200. Prior: (i) 1915 c 114 § 7, part; 1913 c 58 § 13, part; RRS § 5313, part. (ii) 1947 c 35 § 1, part; 1889 p 412 § 33, part; Rem. Supp. 1947 § 5298, part. Former law: 1901 c 135 § 6; 1889 p 410 § 26.]

Handicapped persons, accessibility of polling places: Chapter 29.57 RCW.

29.51.215 Handicapped voters—Penalty. Any person violating any provision of RCW 29.51.200, as now or hereafter amended, shall be punished as for a misdemeanor.

[1981 c 34 § 2; 1965 c 9 § 29.51.215. Prior: 1935 c 100 § 2; RRS § 5291-2. Formerly RCW 29.85.250.]

29.51.230 Unlawful acts by voters—Penalty. It shall be unlawful for a voter to:

- (1) Show his ballot after it is marked to any person in such a way as to reveal the contents thereof or the name of any candidate for whom he has marked his vote;
- (2) Receive a ballot from any person other than the election officer having charge of the ballots;
- (3) Vote or offer to vote any ballot except one that he has received from the election officer having charge of the ballots;
- (4) Place any mark upon his ballot by which it may afterward be identified as the one voted by him;
- (5) Fail to return to the election officers any ballot he received from an election officer.

A violation of any provision of this section shall be a misdemeanor, punishable by a fine not exceeding one hundred dollars, plus costs of prosecution. [1965 c 9 § 29.51.230. Prior: 1947 c 35 § 1, part; 1889 p 412 § 33, part; Rem. Supp. 1947 § 5298, part.]

29.51.240 Polls open continuously—Announcement of closing. The polls for a precinct shall remain open continuously until the time specified under RCW 29.13.080. At that time, the precinct election officers shall announce that the polls for that precinct are closed. [1990 c 59 § 50; 1965 c 9 § 29.51.240. Prior: 1919 c 163 § 16, part; 1907 c 209 § 17, part; RRS § 5194, part.]

Intent—Effective date—1990 c 59: See notes following RCW 29.01.006.

Opening and closing polls: RCW 29.13.080.

29.51.250 Voters in polling place at closing time. If at the time of closing the polls, there are any voters in the polling place who have not voted, they shall be allowed to vote after the polls have been closed. [1990 c 59 § 51; 1965 c 9 § 29.51.250. Prior: 1919 c 163 § 16, part; 1907 c 209 § 17, part; RRS § 5194, part.]

Intent—Effective date—1990 c 59: See notes following RCW 29.01.006.

Opening and closing polls: RCW 29.13.080.

Chapter 29.54

POLLING PLACE REGULATIONS DURING VOTING HOURS AND AFTER CLOSING

Sections

29.54.010	Unused ballots.
29.54.015	Duties of election officers immediately upon closing.
29.54.018	Tabulation of paper ballots before close of polls.
29.54.025	Counting center, direction and observation of proceedings— Manual count of random precinct.
29.54.037	Ballot pick up, delivery, and transportation.
29.54.042	Tabulation continuous.
29.54.050	Rejection of ballots or parts—Write-in votes.
29.54.060	Questions on legality of ballot—Preservation and return.
29.54.075	Ballot containers, sealing, opening.
29.54.085	Counting ballots—Official returns.
29.54.105	Returns, precinct and cumulative—Delivery to canvassing board.
29.54.121	Sealing of voting devices—Exceptions.

29.54.170 Voting systems—Maintenance of documents.

Polling place regulations during voting hours: Chapter 29.51 RCW.

Return of registration files after election: RCW 29.07.180.

Violations and penalties for acts during voting hours and after closing: Chapter 29.85 RCW.

29.54.010 Unused ballots. At each precinct immediately after the last qualified voter has cast his or her vote, the precinct election officers shall identify and seal all unused ballots for that precinct and seal them in a container to be returned to the county auditor. [1990 c 59 § 52; 1977 ex.s. c 361 § 84; 1965 ex.s. c 101 § 6; 1965 c 9 § 29.54.010. Prior: 1893 c 91 § 2; RRS § 5332.]

Intent—Effective date—1990 c 59: See notes following RCW 29.01.006.

Effective date—Severability—1977 ex.s. c 361: See notes following RCW 29.01.006.

29.54.015 Duties of election officers immediately upon closing. Immediately after the close of the polls and the completion of voting, the precinct election officers shall count the number of voted ballots and make a record of any discrepancy between this number and the number of voters who signed the poll book for that precinct or polling place, complete the certifications in the poll book, prepare the ballots for transfer to the counting center if necessary, and seal the voting devices. [1990 c 59 § 53.]

Intent—Effective date—1990 c 59: See notes following RCW 29.01.006.

29.54.018 Tabulation of paper ballots before close of polls. (1) Paper ballots may be tabulated at the precinct polling place before the closing of the polls under rules adopted by the secretary of state. The tabulation of ballots, paper or otherwise, shall be open to the public, but no persons except those employed and authorized by the county auditor may touch a ballot card or ballot container or operate vote tallying equipment.

(2) The results of the tabulation of paper ballots at the polls shall be delivered to the county auditor as soon as the tabulation is complete. [1990 c 59 § 54.]

Intent—Effective date—1990 c 59: See notes following RCW 29.01.006.

Divulging ballot count: RCW 29.85.225.

29.54.025 Counting center, direction and observation of proceedings—Manual count of random precinct.

(1) The counting center in a county using voting systems shall be under the direction of the county auditor and shall be observed by one representative from each major political party, if representatives have been appointed by the respective major political parties and these representatives are present while the counting center is operating. The proceedings shall be open to the public, but no persons except those employed and authorized by the county auditor may touch any ballot or ballot container or operate a vote tallying system.

(2) The political party observers, upon mutual agreement, may request that a precinct be selected at random on receipt of the ballots from the polling place and that a manual count be made of the number of ballots and of the

votes cast on any office or issue. The ballots for that precinct shall then be counted by the vote tallying system, and this result shall be compared to the results of the manual count. This may be done as many as three times during the tabulation of ballots on the day of the primary or election. [1990 c 59 § 30; 1977 ex.s. c 361 § 71. Formerly RCW 29.34.153.]

Intent—Effective date—1990 c 59: See notes following RCW 29.01.006.

Effective date—Severability—1977 ex.s. c 361: See notes following RCW 29.01.006.

29.54.037 Ballot pick up, delivery, and transportation. (1) At the direction of the county auditor, a team or teams composed of a representative of each major political party shall stop at designated polling places and pick up the sealed containers of voted ballots for delivery to the counting center. There may be more than one delivery from each polling place. Two precinct election officials, one representing each major political party, shall seal the voted ballots in containers furnished by the county auditor and properly identified with his or her address with uniquely prenumbered seals.

(2) At the counting center or the collection stations where the sealed ballot containers are delivered by the designated representatives of the major political parties, the county auditor or a designated representative of the county auditor shall receive the sealed ballot containers, record the time, date, precinct name or number, and seal number of each ballot container. [1990 c 59 § 31; 1977 ex.s. c 361 § 72. Formerly RCW 29.34.157.]

Intent—Effective date—1990 c 59: See notes following RCW 29.01.006.

Effective date—Severability—1977 ex.s. c 361: See notes following RCW 29.01.006.

29.54.042 Tabulation continuous. Except as provided by rule under RCW 29.04.210, on the day of the primary or election, the tabulation of ballots at the polling place or at the counting center shall proceed without interruption or adjournment until all of the ballots cast at the polls at that primary or election have been tabulated. [1990 c 59 § 58.]

Intent—Effective date—1990 c 59: See notes following RCW 29.01.006.

29.54.050 Rejection of ballots or parts—Write-in votes. A ballot is invalid and no votes on that ballot may be counted if it is found folded together with another ballot; or, except for an absentee ballot, it is marked so as to identify the voter.

Those parts of a ballot are invalid and no votes may be counted for those issues or offices where more votes are cast for the office or issue than are permitted by law; write-in votes do not contain all of the information required under RCW 29.51.170; or that issue or office is not marked with sufficient definiteness to determine the voter's choice or intention. No write-in vote may be rejected due to a variation in the form of the name if the election board or the canvassing board can determine the issue for or against which or the person and the office for which the voter intended to vote. [1990 c 59 § 56; 1977 ex.s. c 361 § 88; 1973 1st ex.s. c 121 § 2; 1965 ex.s. c 101 § 11; 1965 c 9 §

29.54.050. Prior: (i) Code 1881 § 3091; 1865 p 38 § 2; RRS § 5336. (ii) 1895 c 156 § 10; 1889 p 411 § 29; RRS § 5294. (iii) 1905 c 39 § 1, part; 1889 p 405 § 15, part; RRS § 5272, part. (iv) 1895 c 156 § 11, part; 1886 p 128 § 1, part; Code 1881 § 3079, part; 1865 p 34 § 4, part; RRS § 5323, part.]

Intent—Effective date—1990 c 59: See notes following RCW 29.01.006.

Effective date—Severability—1977 ex.s. c 361: See notes following RCW 29.01.006.

29.54.060 Questions on legality of ballot—Preservation and return. Whenever the precinct election officers or the counting center personnel have a question about the validity of a ballot or the votes for an office or issue that they are unable to resolve, they shall prepare and sign a concise record of the facts in question or dispute. These ballots shall be delivered to the canvassing board for processing. All ballots shall be preserved in the same manner as valid ballots for that primary or election. [1990 c 59 § 57; 1977 ex.s. c 361 § 89; 1965 c 9 § 29.54.060. Prior: Code 1881 § 3080, part; 1865 p 34 § 5, part; RRS § 5324, part.]

Intent—Effective date—1990 c 59: See notes following RCW 29.01.006.

Effective date—Severability—1977 ex.s. c 361: See notes following RCW 29.01.006.

29.54.075 Ballot containers, sealing, opening. Immediately after their tabulation, all ballots shall be sealed in containers that identify the primary or election and be retained for at least sixty days. The containers may only be opened by the canvassing board as part of the canvass or to conduct recounts or by order of the superior court in a contest or election dispute. If the canvassing board opens a ballot container, it shall make a full record of the additional tabulation or examination made of the ballots. This record shall be added to any other record of the canvassing process in that county. [1990 c 59 § 59.]

Intent—Effective date—1990 c 59: See notes following RCW 29.01.006.

29.54.085 Counting ballots—Official returns. (1) The ballots picked up from the precincts during the polling hours may be counted before the polls have closed. Election returns from the count of these ballots must be held in secrecy until the polls have been closed as provided by RCW 29.54.018.

(2) Upon breaking the seals and opening the ballot containers from the precincts, all voted ballots shall be manually inspected for damage, write-in votes, and incorrect or incomplete marks. If it is found that any ballot is damaged so that it cannot properly be counted by the vote tallying system, a true duplicate copy shall be made of the damaged ballot in the presence of witnesses and substituted for the damaged ballot. All damaged ballots shall be kept by the county auditor until sixty days after the primary or election.

(3) The returns produced by the vote tallying system, to which have been added the counts of questioned ballots, write-in votes, and absentee votes, constitute the official

returns of the primary or election in that county. [1990 c 59 § 33; 1977 ex.s. c 361 § 74. Formerly RCW 29.34.167.]

Intent—Effective date—1990 c 59: See notes following RCW 29.01.006.

Effective date—Severability—1977 ex.s. c 361: See notes following RCW 29.01.006.

29.54.105 Returns, precinct and cumulative—Delivery to canvassing board. The county auditor shall produce cumulative and precinct returns for each primary and election and deliver them to the canvassing board for verification and certification. The precinct and cumulative returns of any primary or election are public records under chapter 42.17 RCW. [1990 c 59 § 60.]

Intent—Effective date—1990 c 59: See notes following RCW 29.01.006.

29.54.121 Sealing of voting devices—Exceptions. Except for reopening to make a recanvass, the registering mechanism of each mechanical voting device used in any primary or election shall remain sealed until ten days after the completion of the canvass of that primary or election in that county. Except where provided by a rule adopted under RCW 29.04.210, voting devices used in a primary or election shall remain sealed until ten days after the completion of the canvass of that primary or election in that county. [1990 c 59 § 24; 1965 c 9 § 29.33.230. Prior: 1917 c 7 § 1, part; 1913 c 58 § 15, part; RRS § 5315, part. Formerly RCW 29.33.230.]

Intent—Effective date—1990 c 59: See notes following RCW 29.01.006.

29.54.170 Voting systems—Maintenance of documents. In counties using voting systems, the county auditor shall maintain the following documents for at least sixty days after the primary or election:

- (1) Sample ballot formats together with a record of the format or formats assigned to each precinct;
- (2) All programming material related to the control of the vote tallying system for that primary or election; and
- (3) All test materials used to verify the accuracy of the tabulating equipment as required by RCW 29.33.350. [1990 c 59 § 61; 1977 ex.s. c 361 § 94.]

Intent—Effective date—1990 c 59: See notes following RCW 29.01.006.

Effective date—Severability—1977 ex.s. c 361: See notes following RCW 29.01.006.

Chapter 29.57

ACCESSIBILITY OF POLLING PLACES AND REGISTRATION FACILITIES

(Formerly: Polling places—Accessibility for handicapped persons)

Sections

- 29.57.010 Intent—Recommendations to county auditors.
- 29.57.030 Polling places—Standards—Revision, when.
- 29.57.040 Public buildings used as polling places—Conditions.
- 29.57.050 Review by and recommendations of disabled voters.
- 29.57.070 Inaccessible polling places—Auditors' list—Notice of changes in locations.
- 29.57.080 Inaccessible polling places—Examinations by secretary of state.

- 29.57.090 Alternative polling places or procedures.
- 29.57.100 Polling places—Accessibility required, exceptions.
- 29.57.110 Polling place accessibility—Report to federal election commission.
- 29.57.120 Registration facilities—Reports and determinations.
- 29.57.130 Voting and registration instructions and information.
- 29.57.140 Secretary of state—Public notice of availability of services.
- 29.57.150 County auditors—Notice of accessibility.
- 29.57.160 Costs for modifications—Alternatives—Election costs.
- 29.57.170 Implementing rules.

Handicapped voters: RCW 29.51.200, 29.51.215.

29.57.010 Intent—Recommendations to county auditors. The intent of this chapter is to implement Public Law 98-435 which requires state and local election officials, wherever possible, to designate and use polling places in federal elections and permanent registration locations which are accessible to elderly and handicapped persons. County auditors are encouraged to:

- (1) Make modifications such as installation of temporary ramps or relocation of polling places within buildings, where appropriate;
- (2) Designate new, accessible polling places to replace those that are inaccessible; and
- (3) Continue to use polling places and voter registration locations which are accessible to elderly and handicapped persons. [1985 c 205 § 1; 1979 ex.s. c 64 § 1.]

29.57.030 Polling places—Standards—Revision, when. The secretary of state, in consultation with the *state building code advisory council and local election officials, shall determine standards for accessible polling places as required by this chapter and provide county auditors with these standards by July 1, 1985. These standards shall be revised whenever there are significant amendments to the applicable rules of the *state building code advisory council. [1985 c 205 § 2; 1979 ex.s. c 64 § 3.]

***Reviser's note:** The "state building code advisory council" was renamed the "state building code council" by 1985 c 360; see RCW 19.27.070.

29.57.040 Public buildings used as polling places—Conditions. Each state agency and entity of local government shall permit the use of any of its buildings and the most suitable locations therein as polling places when required by a county auditor to provide accessible places in each precinct. [1979 ex.s. c 64 § 4.]

29.57.050 Review by and recommendations of disabled voters. County auditors shall, as feasible, solicit and use the assistance of disabled voters in reviewing sites and recommending inexpensive remedies to improve accessibility. [1979 ex.s. c 64 § 5.]

29.57.070 Inaccessible polling places—Auditors' list—Notice of changes in locations. No later than April 1st of each even-numbered year until and including 1994, each county auditor shall report to the secretary of state, on the form provided by the secretary of state, a list of all polling places in the county, specifying any that have been found inaccessible. The auditor shall indicate the reasons for inaccessibility, and what efforts have been made pursuant to this chapter to locate alternative polling places or to make

the existing facilities temporarily accessible. Each county auditor shall notify the secretary of state of any changes in polling place locations before the next state general election, including any changes required due to alteration of precinct boundaries. [1985 c 205 § 3.]

Effective dates—1985 c 205: "(1) Sections 1, 2, and 13 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 immediately.

(2) Sections 15 and 16 of this act shall take effect as provided by Article II, section 1(c) of the state Constitution.

(3) Sections 3 through 12 and 14 of this act shall take effect on January 1, 1986." [1985 c 205 § 18.]

29.57.080 Inaccessible polling places—Examinations by secretary of state. No later than July 1st of each even-numbered year, the secretary of state shall review the reports of the county auditors and shall check each polling place that has been identified as inaccessible under RCW 29.57.070 to verify that every possible effort has been made to comply with this chapter. The secretary of state shall also examine any other polling place which he or she has substantial reason to believe may not comply with the standards established under RCW 29.57.030. [1985 c 205 § 4.]

Effective dates—1985 c 205: See note following RCW 29.57.070.

29.57.090 Alternative polling places or procedures. The secretary of state shall establish procedures to assure that, in any state primary or state general election in an even-numbered year, any handicapped or elderly voter assigned to an inaccessible polling place will, upon advance request of that voter, either be permitted to vote at an alternative accessible polling place not overly inconvenient to that voter or be provided with an alternative means of casting a ballot on the day of the primary or election. The county auditor shall make any accommodations in voting procedures necessary to allow the use of alternative polling places by elderly or handicapped voters under this section. [1985 c 205 § 5.]

Effective dates—1985 c 205: See note following RCW 29.57.070.

29.57.100 Polling places—Accessibility required, exceptions. Each polling place for a state primary or state general election in an even-numbered year shall be accessible unless:

(1) The secretary of state has reviewed that polling place, determined that it is inaccessible, that no alternative accessible polling place is available, that no temporary modification of that polling place or any alternative polling place is possible, and that the county auditor has complied with the procedures established under RCW 29.57.090; or

(2) The secretary of state determines that a state of emergency exists that would otherwise interfere with the efficient administration of that primary or election. [1985 c 205 § 6.]

Effective dates—1985 c 205: See note following RCW 29.57.070.

29.57.110 Polling place accessibility—Report to federal election commission. No later than December 31st of each even-numbered year, the secretary of state shall report to the federal election commission, in a manner to be determined by the commission, the number of accessible and

inaccessible polling places in the state on the date of the preceding state general election, and the reasons for any instances of inaccessibility. [1985 c 205 § 7.]

Effective dates—1985 c 205: See note following RCW 29.57.070.

29.57.120 Registration facilities—Reports and determinations. Each county auditor shall report locations of all permanent voter registration facilities to the secretary of state, indicating which locations meet the standards of RCW 29.57.030. The secretary of state shall determine if the locations and number of accessible registration facilities are reasonable to meet the needs of the elderly and handicapped. [1985 c 205 § 8.]

Effective dates—1985 c 205: See note following RCW 29.57.070.

29.57.130 Voting and registration instructions and information. (1) Each county auditor shall provide voting and registration instructions, printed in large type, to be conspicuously displayed at each polling place and permanent registration facility.

(2) The secretary of state shall make information available for deaf persons throughout the state by telecommunications. [1985 c 205 § 9.]

Effective dates—1985 c 205: See note following RCW 29.57.070.

29.57.140 Secretary of state—Public notice of availability of services. The secretary of state shall provide public notice of the availability of registration and voting aids, assistance to elderly and handicapped persons under RCW 29.51.200 and 42 U.S.C. Section 1973aa-6, and procedures for voting by absentee ballot calculated to reach elderly and handicapped persons not later than public notice of the closing of registration for the state primary and state general election in each even-numbered year. [1985 c 205 § 10.]

Effective dates—1985 c 205: See note following RCW 29.57.070.

29.57.150 County auditors—Notice of accessibility. Each county auditor shall include a notice of the accessibility of polling places in the notice of election published under RCW 29.27.030 and 29.27.080 for the state primary and state general election in each even-numbered year. [1985 c 205 § 11.]

Effective dates—1985 c 205: See note following RCW 29.57.070.

29.57.160 Costs for modifications—Alternatives—Election costs. (1) County auditors shall seek alternative polling places or other low-cost alternatives including, but not limited to, procedural changes and assistance from local disabled groups, service organizations, and other private sources before incurring costs for modifications under this chapter and Public Law 98-435.

(2) In a state primary or state general election in an even-numbered year, the cost of those modifications to buildings or other facilities, including signs designating handicapped accessible parking and entrances, that are necessary to permit the use of those facilities for polling places under this chapter and Public Law 98-435 or any procedures established under RCW 29.57.090 shall be treated

as election costs and prorated under RCW 29.13.045. [1985 c 205 § 12.]

Effective dates—1985 c 205: See note following RCW 29.57.070.

29.57.170 Implementing rules. The secretary of state shall adopt rules to facilitate the implementation of this chapter. [1985 c 205 § 13.]

Chapter 29.60

ADMINISTRATION OF ELECTIONS

Sections

29.60.010	Election administration and certification board—Generally.
29.60.020	Powers and duties of board.
29.60.030	Duties of secretary of state.
29.60.040	Training of election administrators.
29.60.050	Denial of certification—Review and appeal.
29.60.060	Election review section.
29.60.070	Review of county election procedures.
29.60.080	Powers and duties of county auditor and review staff.
29.60.090	Election assistance and clearinghouse program.

29.60.010 Election administration and certification board—Generally. (1) The Washington state election administration and certification board is established and has the responsibilities and authorities prescribed by this chapter. The board is composed of the following members:

(a) The secretary of state or the secretary's designee;

(b) The state director of elections or the director's designee;

(c) Four county auditors appointed by the Washington state association of county auditors or their alternates who are county auditors designated by the association to serve as such alternates, each appointee and alternate to serve at the pleasure of the association;

(d) One member from each of the two largest political party caucuses of the house of representatives designated by and serving at the pleasure of the legislative leader of the respective caucus;

(e) One member from each of the two largest political party caucuses of the senate designated by and serving at the pleasure of the legislative leader of the respective caucus; and

(f) One representative from each major political party, as defined by RCW 29.01.090, designated by and serving at the pleasure of the chair of the party's state central committee.

(2) The board shall elect a chair from among its number; however, neither the secretary of state nor the state director of elections nor their designees may serve as the chair of the board. A majority of the members appointed to the board constitutes a quorum for conducting the business of the board. Chapter 42.30 RCW, the open public meetings act, and RCW 42.32.030 regarding minutes of meetings, apply to the meetings of the board.

(3) Members of the board shall serve without compensation. The secretary of state shall reimburse members of the board, other than those who are members of the legislature, for travel expenses in accordance with RCW 43.03.050 and 43.03.060. Members of the board who are members of the legislature shall be reimbursed as provided in chapter 44.04 RCW. [1992 c 163 § 3.]

29.60.020 Powers and duties of board. (1) The secretary of state and the board created in RCW 29.60.010 shall jointly adopt rules, in the manner specified for the adoption of rules under the administrative procedure act, chapter 34.05 RCW, governing:

(a) The training of persons officially designated by major political parties as elections observers under this title, and the training and certification of election administration officials and personnel;

(b) The policies and procedures for conducting election reviews under RCW 29.60.070; and

(c) The policies and standards to be used by the board in reviewing and rendering decisions regarding appeals filed under RCW 29.60.070.

The initial policies and standards adopted under (c) of this subsection shall be adopted concurrently with adoption of the initial policies and procedures adopted under (b) of this subsection.

(2) The board created in RCW 29.60.010 shall review appeals filed under RCW 29.60.050 or 29.60.070. A decision of the board regarding such an appeal shall be supported by not less than a majority of the members appointed to the board. A decision of the board regarding an appeal filed under RCW 29.60.070 concerning an election review conducted under that section is final. If a decision of the board regarding an appeal filed under RCW 29.60.050 includes a recommendation that a certificate be issued, the certificate shall be issued by the secretary of state as recommended by the board.

(3) The board created in RCW 29.60.010 may adopt rules governing its procedures. [1992 c 163 § 4.]

29.60.030 Duties of secretary of state. (Effective July 1, 1993.) The secretary of state shall:

(1) Establish and operate, or provide by contract, training and certification programs for state and county elections administration officials and personnel and training programs for political party observers which conform to the rules for such programs established under RCW 29.60.020;

(2) Administer tests for state and county officials and personnel who have received such training and issue certificates to those who have successfully completed the training and passed such tests;

(3) Maintain a record of those individuals who have received such training and certificates; and

(4) Provide the staffing and support services required by the board created under RCW 29.60.010. [1992 c 163 § 5.]

Effective date—1992 c 163 §§ 5-13: "Sections 5 through 13 of this act shall take effect July 1, 1993." [1992 c 163 § 15.]

29.60.040 Training of election administrators. (Effective July 1, 1993.) A person having responsibility for the administration or conduct of elections, other than precinct election officers, shall, within eighteen months of undertaking those responsibilities or within eighteen months of July 1, 1993, whichever is later, receive general training regarding the conduct of elections and specific training regarding their responsibilities and duties as prescribed by this title or by rules adopted by the secretary of state under this title. Included among those persons for whom such training is mandatory are the following:

- (1) Secretary of state elections division personnel;
- (2) County elections administrators under RCW 36.22.220;
- (3) County canvassing board members;
- (4) Persons officially designated by each major political party as elections observers; and
- (5) Any other person or group charged with election administration responsibilities if the person or group is designated by rule adopted by the secretary of state as requiring the training.

The secretary of state shall reimburse election observers in accordance with RCW 43.03.050 and 43.03.060 for travel expenses incurred to receive training required under subsection (4) of this section.

Neither this section nor RCW 29.60.030 may be construed as requiring an elected official to receive training or a certificate of training as a condition for seeking or holding elective office or as a condition for carrying out constitutional duties. [1992 c 163 § 6.]

Effective date—1992 c 163 §§ 5-13: See note following RCW 29.60.030.

29.60.050 Denial of certification—Review and appeal. (Effective July 1, 1993.) (1) A decision of the secretary of state to deny certification under RCW 29.60.030 shall be entered in the manner specified for orders under the administrative procedure act, chapter 34.05 RCW. Such a decision shall not be effective for a period of twenty days following the date of the decision, during which time the person denied certification may file a petition with the secretary of state requesting the secretary to reconsider the decision and to grant certification. The petitioner shall include, in the petition, an explanation of the reasons why the initial decision is incorrect and certification should be granted, and may include a request for a hearing on the matter. The secretary of state shall reconsider the matter if the petition is filed in a proper and timely manner. If a hearing is requested, the secretary of state shall conduct the hearing within sixty days after the date on which the petition is filed. The secretary of state shall render a final decision on the matter within ninety days after the date on which the petition is filed.

(2) Within twenty days after the date on which the secretary of state makes a final decision denying a petition under this section, the petitioner may appeal the denial to the board created in RCW 29.60.010. In deciding appeals, the board shall restrict its review to the record established when the matter was before the secretary of state. The board shall affirm the decision if it finds that the record supports the decision and that the decision is not inconsistent with other decisions of the secretary of state in which the same standards were applied and certification was granted. Similarly, the board shall reverse the decision and recommend to the secretary of state that certification be granted if the board finds that such support is lacking or that such inconsistency exists.

(3) Judicial review of certification decisions shall be as prescribed under RCW 34.05.510 through 34.05.598, but shall be limited to the review of board decisions denying certification. [1992 c 163 § 7.]

Effective date—1992 c 163 §§ 5-13: See note following RCW 29.60.030.

29.60.060 Election review section. (Effective July 1, 1993.) An election review section is established in the elections division of the office of the secretary of state. Permanent staff of the elections division, trained and certified as required by RCW 29.60.040, shall perform the election review functions prescribed by RCW 29.60.070. The staff may also be required to assist in training, certification, and other duties as may be assigned by the secretary of state to ensure the uniform and orderly conduct of elections in this state. [1992 c 163 § 8.]

Effective date—1992 c 163 §§ 5-13: See note following RCW 29.60.030.

29.60.070 Review of county election procedures. (Effective July 1, 1993.) (1)(a) The election review staff of the office of the secretary of state shall conduct a review of election-related policies, procedures, and practices in an affected county or counties:

(i) If the unofficial returns of a primary or general election for a position in the state legislature indicate that a mandatory recount is likely for that position; or

(ii) If unofficial returns indicate a mandatory recount is likely in a state-wide election or an election for federal office.

Reviews conducted under (ii) of this subsection shall be performed in as many selected counties as time and staffing permit. Reviews conducted as a result of mandatory recounts shall be performed between the time the unofficial returns are complete and the time the recount is to take place, if possible.

(b) In addition to conducting reviews under (a) of this subsection, the election review staff shall also conduct such a review in a county periodically after a county primary or special or general election at the direction of the secretary of state or at the request of the county auditor. If any resident of this state believes that an aspect of a primary or election has been conducted inappropriately in a county, the resident may file a complaint with the secretary of state. The secretary shall consider such complaints in scheduling periodic reviews under this section.

(c) Each county shall be reviewed under this section not less than once every four years. Before an election review is conducted in a county, the secretary of state shall provide the county auditor of the affected county and the chair of the state central committee of each major political party with notice that the review is to be conducted. When a periodic review is to be conducted in a county at the direction of the secretary of state under (b) of this subsection, the secretary shall provide the affected county auditor not less than thirty days' notice.

(2) Reviews shall be conducted in conformance with rules adopted under RCW 29.60.020. In performing a review in a county under this chapter, the election review staff shall evaluate the policies and procedures established for conducting the primary or election in the county and the practices of those conducting it. As part of the review, the election review staff shall issue to the county auditor and the members of the county canvassing board a report of its findings and recommendations regarding such policies, procedures, and practices. A review conducted under this chapter shall not include any evaluation, finding, or recommendation regarding the validity of the outcome of a primary

or election or the validity of any canvass of returns nor does the election review staff have any jurisdiction to make such an evaluation, finding, or recommendation under this title.

(3) The county auditor of the county in which a review is conducted under this section or a member of the canvassing board of the county may appeal the findings or recommendations of the election review staff regarding the review by filing an appeal with the board created under RCW 29.60.010. [1992 c 163 § 9.]

Effective date—1992 c 163 §§ 5-13: See note following RCW 29.60.030.

29.60.080 Powers and duties of county auditor and review staff. (Effective July 1, 1993.) The county auditor may designate any person who has been certified under this chapter, other than the auditor, to participate in a review conducted in the county under this chapter. Each county auditor and canvassing board shall cooperate fully during an election review by making available to the reviewing staff any material requested by the staff. The reviewing staff shall have full access to ballot pages, absentee voting materials, any other election material normally kept in a secure environment after the election, and other requested material. If ballots are reviewed by the staff, they shall be reviewed in the presence of the canvassing board or its designees. Ballots shall not leave the custody of the canvassing board. During the review and after its completion, the review staff may make appropriate recommendations to the county auditor or canvassing board, or both, to bring the county into compliance with the training required under this chapter, and the laws or rules of the state of Washington, to safeguard election material or to preserve the integrity of the elections process. [1992 c 163 § 10.]

Effective date—1992 c 163 §§ 5-13: See note following RCW 29.60.030.

29.60.090 Election assistance and clearinghouse program. (Effective July 1, 1993.) The secretary of state shall establish within the elections division an election assistance and clearinghouse program, which shall provide regular communication between the secretary of state, local election officials, and major and minor political parties regarding newly enacted elections legislation, relevant judicial decisions affecting the administration of elections, and applicable attorney general opinions, and which shall respond to inquiries from elections administrators, political parties, and others regarding election information. This section does not empower the secretary of state to offer legal advice or opinions, but the secretary may discuss the construction or interpretation of election law, case law, or legal opinions from the attorney general or other competent legal authority. [1992 c 163 § 11.]

Effective date—1992 c 163 §§ 5-13: See note following RCW 29.60.030.

Chapter 29.62 CANVASSING THE RETURNS

Sections

- 29.62.010 Rules for canvassing—Statement of returns—Resolving ties.
- 29.62.020 County canvassing board—Meeting to process absentee ballots, canvass returns.
- 29.62.030 Special canvass for county auditor.
- 29.62.040 County canvassing board—Canvassing procedure—Penalty.
- 29.62.050 Recanvass—Generally.
- 29.62.060 Recanvass of machine votes—Notice—Representation—Relocking.
- 29.62.070 Recanvass of machine votes—Procedure to test counting mechanism—Statement.
- 29.62.080 Tie votes in final election.
- 29.62.090 Abstract by election officer—Transmittal to secretary of state.
- 29.62.100 Secretary of state—Primary returns—State offices, etc.
- 29.62.120 Secretary of state to canvass final returns—Scope.
- 29.62.130 Canvass of vote on state-wide measures.
- 29.62.140 Canvass in commission form cities.
- 29.62.160 Vacancy in United States house of representatives, primary to elect nominees—Canvass of—Certification of nominees.
- 29.62.170 United States constitutional amendment conventions—Delegates—Ascertaining election result.

Absentee ballots

- challenges, canvassing board's power:* RCW 29.36.100.
- grouping of absentee ballots:* RCW 29.36.070.
- processing of incoming absentee ballots:* RCW 29.36.060.
- uncontested offices—Ballots not to be tabulated—Voter credited with voting—Retention of ballots:* RCW 29.36.075.

Cemetery districts, formation of, election on, canvass: RCW 68.52.170.

Cities and towns

- commission form of government, under, election on abandonment of, canvass:* RCW 35.17.450.
- consolidation, canvass of votes on:* RCW 35.10.240.
- disincorporation, canvass of returns:* RCW 35.07.080.
- reduction of city limits, canvass of returns of election on:* RCW 35.16.030.

Conduct of elections—Canvass: RCW 29.13.040.

Counties, bond elections, certification of votes—Canvass: RCW 39.40.030.

Fire protection district

- canvass of election returns:* RCW 52.02.100.
- election to form, declaration election results—Resolution:* RCW 52.02.110.

Irrigation district elections, canvass of: RCW 87.03.020 through 87.03.110.

Liquor, local option, election on, canvass: RCW 66.40.120.

Metropolitan park districts, bond elections, certification of votes—Canvass: RCW 39.40.030.

Port districts, bond elections, certification of votes—Canvass: RCW 39.40.030.

Questions on legality of ballots, preservation and return: RCW 29.54.060.

Recall elections, ascertaining the result: RCW 29.82.140.

Reclamation districts of one million acres

- election to authorize issuance of negotiable bonds of general improvement or divisional district, canvass:* RCW 89.30.538.
- election to form, canvass:* RCW 89.30.100.

Rejection of ballots or parts of ballots: RCW 29.54.050.

Sewer districts, formation of, election for, canvass: RCW 56.04.060.

Statement of canvass to bear certification of inspection of voting machines: RCW 29.48.080.

Townships

- manner of conducting canvass:* RCW 45.12.210.
- result of canvass to be read at meeting:* RCW 45.12.220.

United States presidential electors, canvassing returns for: RCW 29.71.030.

Votes by stickers, printed label, rejected: RCW 29.51.175.

Water districts, withdrawal of territory from, election on, canvass: RCW 57.28.100.

Write-in voting: RCW 29.51.170.

29.62.010 Rules for canvassing—Statement of returns—Resolving ties. Every canvassing board or officer responsible for canvassing and certifying the returns of any primary or election shall:

- (1) Adopt administrative rules to facilitate and govern the canvassing process in that jurisdiction;
- (2) For each primary and election, prepare and sign a statement of the returns for each office, candidate, and issue voted on in that jurisdiction;
- (3) If, at a partisan primary, two or more candidates of the same party receive the greatest, and identical, number of votes for an office, resolve the tie vote by lot;
- (4) If, at a nonpartisan or judicial primary, two or more candidates receive the second greatest, and identical, number of votes for that office or position, resolve the tie vote by lot. [1990 c 59 § 62; 1965 c 9 § 29.62.010. Prior: 1961 c 130 § 10; prior: (i) 1907 c 209 § 24, part; RRS § 5201, part. (ii) Code 1881 § 3096, part; 1866 p 6 § 2, part; 1865 p 39 § 7, part; RRS § 5343, part.]

Intent—Effective date—1990 c 59: See notes following RCW 29.01.006.

29.62.020 County canvassing board—Meeting to process absentee ballots, canvass returns. No later than the tenth day after a special election or primary and no later than the fifteenth day after a general election, the county auditor shall convene the county canvassing board to process the absentee ballots and canvass the votes cast at that primary or election. On the tenth day after a special election or a primary and on the fifteenth day after a general election, the canvassing board shall complete the canvass and certify the results. All properly and timely voted absentee ballots which have been received on or before the date on which the primary or election is certified shall be included in the canvass. Meetings of the county canvassing board are public meetings under chapter 42.30 RCW. The county canvassing board shall consist of the county auditor, the chairman of the county legislative authority, and the prosecuting attorney or designated representatives of those officials.

At the request of any caucus of the state legislature, the county auditor shall transmit copies of all unofficial returns of state and legislative primaries or elections prepared by or for the county canvassing board to either the secretary of the senate or the chief clerk of the house. [1987 c 54 § 2; 1965 c 9 § 29.62.020. Prior: 1957 c 195 § 15; prior: 1919 c 163 § 21, part; Code 1881 § 3095, part; 1868 p 20 § 1, part; 1865 p 39 § 6, part; RRS § 5340, part.]

Absentee ballots, canvassing: RCW 29.36.060.

29.62.030 Special canvass for county auditor. If the primary or election is one at which the county auditor is to be nominated or elected, canvass of the returns for that office shall be made by the other two members of the board; if the two disagree, the returns for that office shall be canvassed by the presiding judge of the superior court of the county. [1965 c 9 § 29.62.030. Prior: 1957 c 195 § 16; prior: (i) Code 1881 § 3098; 1865 p 39 § 8; RRS § 5345. (ii) 1919 c 163 § 21, part; Code 1881 § 3095, part; 1868 p 20 § 1, part; 1865 p 39 § 6, part; RRS § 5340, part.]

29.62.040 County canvassing board—Canvassing procedure—Penalty. Before canvassing the returns of a primary or election, the chairman of the county legislative authority shall administer an oath to the county auditor attesting to the authenticity of the information presented to the canvassing board. This oath must be signed by the county auditor and filed with the returns of the primary or election.

The county canvassing board shall proceed to verify the results from the precincts and the absentee ballots. The board shall execute a certificate of the results of the primary or election signed by all members of the board. Failure to certify the returns, if they can be ascertained with reasonable certainty, is a misdemeanor. [1990 c 59 § 63; 1965 c 9 § 29.62.040. Prior: 1957 c 195 § 17; prior: (i) 1919 c 163 § 21, part; Code 1881 § 3095, part; 1868 p 20 § 1, part; 1865 p 39 § 6, part; RRS § 5340, part. (ii) 1893 c 112 § 2; RRS § 5342. (iii) 1903 c 85 § 1, part; Code 1881 § 3094, part; 1865 p 38 § 4, part; RRS § 5339, part.]

Intent—Effective date—1990 c 59: See notes following RCW 29.01.006.

29.62.050 Recanvass—Generally. Whenever the canvassing board finds that there is an apparent discrepancy or an inconsistency in the returns of a primary or election, the board may recanvass the ballots or voting devices in any precincts of the county. The canvassing board shall correct any error and document the correction of any error that it finds. [1990 c 59 § 64; 1965 c 9 § 29.62.050. Prior: 1951 c 193 § 1; 1917 c 7 § 1, part; 1913 c 58 § 15, part; RRS § 5315, part.]

Intent—Effective date—1990 c 59: See notes following RCW 29.01.006.

Voting systems: Chapter 29.33 RCW.

29.62.060 Recanvass of machine votes—Notice—Representation—Relocking. Before recanvassing the votes cast on a voting machine, the canvassing board or officer shall give notice in writing to the custodian and to each political party participating in the primary or that nominated candidates for the election, of the time and place where the canvass is to be made, and may invite representatives of organizations or other persons involved or interested in any candidate or measure voted upon to be present at the time any such recanvass or recount be made. Each political party may send two representatives to be present at the recanvass. After the recanvass shall have been made the voting machines shall be immediately reclosed and the counter compartments relocked. [1965 c 9 § 29.62.060. Prior: 1951 c 193 § 2; 1917 c 7 § 1, part; 1913 c 58 § 15, part; RRS § 5315, part.]

29.62.070 Recanvass of machine votes—Procedure to test counting mechanism—Statement. If upon such recanvass, it should be found that the original canvass of the returns has been correctly made from the machine, and that the discrepancy still remains unaccounted for, the canvassing board, with the assistance of the custodian, shall in the presence of such said inspector and judges of election and the authorized representatives of the several political parties or organizations who are attendant, make a record of the

number or other designating mark on the seal, and the number on the protective counter and unlock the voting and counting mechanism of said machine and proceed to thoroughly examine and test the machine to determine and reveal the true cause or causes, if any, of the discrepancy in the returns from said machine. Before being tested the counter shall be set at "000," after which each counter shall be operated at least one hundred times. After the completion of said examination and test, the custodian shall then and there prepare a statement in writing giving in detail the result thereof and said statement shall be witnessed by the persons present and shall be filed with the county auditor or other election officer. [1965 c 9 § 29.62.070. Prior: 1951 c 193 § 3; 1917 c 7 § 1, part; 1913 c 58 § 15, part; RRS § 5315, part.]

29.62.080 Tie votes in final election. If the requisite number of any federal, state, county, city, district, or precinct officers shall not be elected by reason of two or more persons having an equal and highest number of votes for one and the same office, the official empowered by state law to issue the original certificate of election shall give notice to the several persons so having the highest and equal number of votes to attend at the appropriate office at the time to be appointed by said official, who shall then and there proceed publicly to decide by lot which of the persons so having an equal number of votes shall be declared duly elected, and the said official shall make out and deliver to the person thus duly declared elected a certificate of his election as hereinbefore provided. [1965 c 9 § 29.62.080. Prior: 1961 c 130 § 13; prior: (i) Code 1881 § 3097; 1866 p 7 § 3; RRS § 5344. (ii) Code 1881 § 3104; 1865 p 41 § 15; RRS § 5349.]

29.62.090 Abstract by election officer—Transmittal to secretary of state. (1) Immediately after the official results of a state primary or general election in a county are ascertained, the county auditor or other election officer shall make an abstract of the number of registered voters in each precinct and of all the votes cast in the county at such state primary or general election for and against state measures and for each candidate for federal, state, and legislative office or for any other office which the secretary of state is required by law to canvass. The abstract shall be entered on blanks furnished by the secretary of state or on compatible computer printouts approved by the secretary of state, and transmitted to the secretary of state no later than the next business day following the certification by the county canvassing board.

(2) After each general election in an even-numbered year, the county auditor or other election officer shall provide to the secretary of state a report of the number of absentee ballots cast in each precinct for and against state measures and for each candidate for federal, state, and legislative office or for any other office which the secretary of state is required by law to canvass. The report may be included in the abstract required by this section or may be transmitted to the secretary of state separately, but in no event later than March 31 of the year following the election. Absentee ballot results may be incorporated into votes cast at the polls for each precinct or may be reported separately on a precinct-by-precinct basis.

(3) If absentee ballot results are not incorporated into votes cast at the polls, the county auditor or other election official may aggregate results from more than one precinct if the auditor, pursuant to rules adopted by the secretary of state, finds that reporting a single precinct's absentee ballot results would jeopardize the secrecy of a person's ballot. To the extent practicable, precincts for which absentee results are aggregated shall be contiguous. [1990 c 262 § 1; 1977 ex.s. c 361 § 96; 1965 c 9 § 29.62.090. Prior: (i) 1895 c 156 § 12; Code 1881 § 3101; 1865 p 40 § 12; RRS § 5346. (ii) Code 1881 § 3103; 1865 p 41 § 14; RRS § 5348.]

Effective date—Severability—1977 ex.s. c 361: See notes following RCW 29.01.006.

29.62.100 Secretary of state—Primary returns—State offices, etc. The secretary of state shall, as soon as possible but in any event not later than the third Tuesday following the primary, canvass and certify the returns of all primary elections as to candidates for state offices, United States senators and representatives in congress, and all other candidates whose district extends beyond the limits of a single county. [1977 ex.s. c 361 § 97; 1965 c 9 § 29.62.100. Prior: 1961 c 130 § 11; prior: 1907 c 209 § 24, part; RRS § 5201, part.]

Effective date—Severability—1977 ex.s. c 361: See notes following RCW 29.01.006.

29.62.120 Secretary of state to canvass final returns—Scope. As soon as the returns have been received from all the counties of the state, but not later than the thirtieth day after the election, the secretary of state shall make a canvass of such of the returns as are not required to be canvassed by the legislature and make out a statement thereof, file it in his office and transmit a certified copy thereof to the governor. [1965 c 9 § 29.62.120. Prior: Code 1881 § 3100, part; No RRS.]

29.62.130 Canvass of vote on state-wide measures. The votes on proposed amendments to the state Constitution, recommendations for the calling of constitutional conventions and other questions submitted to the people shall be counted, canvassed and returned by the regular precinct election officers and by the county auditors and canvassing boards in the manner provided by law for counting, canvassing and returning votes for candidates for state offices. It shall be the duty of the secretary of state in the presence of the governor, within thirty days after any such election, to canvass the votes upon each question and certify to the governor the result thereof, and the governor shall forthwith issue his proclamation giving the whole number of votes cast in the state for and against such measure and declaring the result: PROVIDED, That if the vote cast upon an initiative or referendum measure is equal to less than one-third of the total vote cast at the election, the governor shall proclaim the measure to have failed for that reason. [1965 c 9 § 29.62.130. Prior: (i) 1913 c 138 § 30; RRS § 5426. (ii) 1917 c 23 § 1; RRS § 5341.]

29.62.140 Canvass in commission form cities. In cities operating under the commission form of government the election officers, after counting the ballots, shall make

their returns to the county auditor upon forms furnished by him within six hours after the closing of the polls; and at such time as provided by RCW 29.62.020, the county canvassing board shall canvass the returns of the primary or election, and the county auditor, upon receipt of the certificate of canvass shall make and publish in all newspapers of the city, at least once, the result thereof. The canvass shall be publicly made. In the primary, the two candidates receiving the highest number of votes for each of the offices to be filled shall be declared nominated and their names shall be placed as candidates on the general election ballot. [1965 c 9 § 29.62.140. Prior: 1943 c 25 § 2, part; 1911 c 116 § 7, part; Rem. Supp. 1943 § 9096, part. See also RCW 29.04.010 and 29.13.040.]

29.62.160 Vacancy in United States house of representatives, primary to elect nominees—Canvass of—Certification of nominees. See RCW 29.68.120.

29.62.170 United States constitutional amendment conventions—Delegates—Ascertaining election result. See RCW 29.74.100.

Chapter 29.64

STATUTORY RECOUNT PROCEEDINGS

Sections

- 29.64.010 Application for recount, generally—Requirements for—Application of chapter.
- 29.64.015 Mandatory recount.
- 29.64.020 Deposit of fees—Notice of time and place of recount—Public proceeding.
- 29.64.030 Recounting the votes—Observers—Request to stop.
- 29.64.040 Amended abstracts.
- 29.64.051 Limitation on recounts.
- 29.64.060 Expenses of recount—Charges.
- 29.64.070 Rules and regulations.
- 29.64.080 State-wide measures—Mandatory recount—Cost at state expense.
- 29.64.090 State-wide measures—Mandatory recount—Funds for additional expenses.
- 29.64.900 Short title—Construction.

29.64.010 Application for recount, generally—Requirements for—Application of chapter. An officer of a political party or any person for whom votes were cast in a primary who was not declared nominated may file a written application for a recount of the votes or a portion of the votes cast at that primary for all persons for whom votes were cast for nomination to that office.

An officer of a political party or any person for whom votes were cast at any election may file a written application for a recount of the votes or a portion of the votes cast at that election for all candidates for election to that office.

Any group of five or more registered voters may file a written application for a recount of the votes or a portion of the votes cast upon any question or issue. They shall designate one of the members of the group as chairman and shall indicate the voting residence of each member of the group.

An application for a recount of the votes cast for a state or local office or on a ballot measure in a jurisdiction that is entirely within one county shall be filed with the county

auditor of that county. An application for a recount of the votes cast for a federal office or for any state office or on a ballot measure in a jurisdiction that is not entirely within a single county shall be filed with the secretary of state.

An application for a recount in a jurisdiction using a vote tally system shall specify whether the recount shall be done manually or by the vote tally system. A recount done by the vote tally system shall use separate and distinct programming from that used in the original count, and shall also provide for a separate and distinct test of the logic and accuracy of that program.

An application for a recount shall be filed within three days, excluding Saturdays, Sundays, and holidays, after the county canvassing board or secretary of state has declared the official results of the primary or election for the office or issue for which the recount is requested.

This chapter applies to the recounting of votes cast by paper ballots, to the recheck of votes recorded on voting machines, and to the recounting of votes recorded on ballot cards and counted by a vote tally system. [1987 c 54 § 3; 1977 ex.s. c 361 § 98; 1965 c 9 § 29.64.010. Prior: 1963 ex.s. c 25 § 1; 1961 c 50 § 1; 1955 c 215 § 1.]

Effective date—Severability—1977 ex.s. c 361: See notes following RCW 29.01.006.

29.64.015 Mandatory recount. (1) If the official canvass of all of the returns for any office at any primary or election reveals that the difference in the number of votes cast for a candidate apparently nominated or elected to any office and the number of votes cast for the closest apparently defeated opponent is not more than one-half of one percent of the total number of votes cast for both candidates, the county canvassing board shall conduct a recount of all votes cast on that position.

(a) Whenever such a difference occurs in the number of votes cast for candidates for a position which appears on the ballot in more than one county, the secretary of state shall, within three business days of the day that the returns of the primary or election are first certified by the canvassing boards of those counties, direct those boards to recount all votes cast on the position.

(b) Whenever the difference in the number of votes cast for such candidates is less than one-fourth of one percent of the total number of votes cast for both candidates, the votes shall be recounted manually.

(2) A mandatory recount shall be conducted in the manner provided by RCW 29.64.020, 29.64.030, and 29.64.040. No cost of a mandatory recount may be charged to any candidate. [1991 c 90 § 2; 1987 c 54 § 4; 1965 c 9 § 29.64.015. Prior: 1963 ex.s. c 25 § 2.]

Finding, purpose—1991 c 90: "The legislature finds that it is in the public interest to determine the winner of close contests for elective offices as expeditiously and as accurately as possible. It is the purpose of this act to provide procedures which promote the prompt and accurate recounting of votes for elective offices and which provide closure to the recount process." [1991 c 90 § 1.]

29.64.020 Deposit of fees—Notice of time and place of recount—Public proceeding. An application for a recount shall state the office for which a recount is requested and whether the request is for all or only a portion of the votes cast in that jurisdiction of that office. The person

filing an application shall, at the same time, deposit with the county canvassing board or secretary of state, in cash or by certified check, a sum equal to five cents for each ballot cast in the jurisdiction or portion of the jurisdiction for which the recount is requested as security for the payment of any costs of conducting the recount. These charges shall be determined by the county canvassing board or boards under RCW 29.64.060.

The county canvassing board shall determine a time and a place or places at which the recount will be conducted. This time shall be less than five days after the day upon which: The application was filed with the board; the request for a recount or directive ordering a recount was received by the board from the secretary of state; or the returns are certified which indicate that a recount is required under RCW 29.64.015 for an issue or office voted upon only within the county. The county auditor shall mail a notice of the time and place of the recount to the applicant or affected parties and, if the recount involves an office, to any person for whom votes were cast for that office. The notice shall be mailed by certified mail not less than two days before the date of the recount. Each person entitled to receive notice of the recount may attend, witness the recount, and be accompanied by counsel.

Proceedings of the canvassing board are public under chapter 42.30 RCW. Subject to reasonable and equitable guidelines adopted by the canvassing board, all interested persons may attend and witness a recount. [1991 c 81 § 36; 1987 c 54 § 5; 1977 ex.s. c 361 § 99; 1965 c 9 § 29.64.020. Prior: 1961 c 50 § 2; 1955 c 215 § 2.]

Effective date—1991 c 81: See note following RCW 29.85.010.

Effective date—Severability—1977 ex.s. c 361: See notes following RCW 29.01.006.

29.64.030 Recounting the votes—Observers—Request to stop. (1) At the time and place established for a recount, the canvassing board or its duly authorized representatives, in the presence of all witnesses who may be in attendance, shall open the sealed containers containing the ballots to be recounted, and shall recount the votes for the offices or issues for which the recount has been ordered. Ballots shall be handled only by the members of the canvassing board or their duly authorized representatives. Witnesses shall be permitted to observe the ballots and the process of tabulating the votes, but they shall not be permitted to handle the ballots. The canvassing board shall not permit the tabulation of votes for any nomination, election, or issue other than the ones for which a recount was applied for or required.

At the time and place established for a recanvass of the votes cast on voting devices that do not provide an individual record of the choices of each voter, the canvassing board or its duly authorized representatives, in the presence of all witnesses who may be in attendance, shall open the voting devices to be rechecked, and shall verify the votes cast for the offices and issues for which the recount was ordered. Witnesses shall be permitted to watch the recheck of the voting devices. The canvassing board shall not permit the rechecking of votes for any nomination, election, or issue other than the ones for which a recount was applied for or required.

(2) At any time before the ballots from all of the precincts listed in the application for the recount have been recounted, the applicant may file with the board a written request to stop the recount.

If the canvassing board finds that the results of the votes in the precincts recounted, if substituted for the results of the votes in those precincts as shown in the certified abstract of the votes would not change the result for that office or issue, it shall not recount the ballots of the precincts listed in the application for recount which have not been recounted before the request to stop the recount. The canvassing board shall attach a copy of the request to stop the recount to the partial returns of the recount.

The recount may be observed by persons representing the candidates affected by the recount or the persons representing both sides of an issue that is being recounted. The observers may not make a record of the names, addresses, or other information on the ballots, poll books, or applications for absentee ballots unless authorized by the superior court. The secretary of state or county auditor may limit the number of observers to not less than two on each side if, in his or her opinion, a greater number would cause undue delay or disruption of the recount process. [1991 c 81 § 37; 1990 c 59 § 65; 1965 c 9 § 29.64.030. Prior: 1961 c 50 § 3; 1955 c 215 § 3.]

Effective date—1991 c 81: See note following RCW 29.85.010.

Intent—Effective date—1990 c 59: See notes following RCW 29.01.006.

29.64.040 Amended abstracts. Upon completion of a recount, the canvassing board shall prepare and certify an amended abstract showing the votes cast in each precinct for which the recount was conducted. Copies of the amended abstracts shall be transmitted to the same officers who received the abstract on which the recount was based.

If the nomination, election, or issue for which the recount was conducted was submitted only to the voters of a county, the canvassing board shall file the amended abstract with the original results of that election or primary.

If the nomination, election, or issue for which a recount was conducted was submitted to the voters of more than one county, the secretary of state shall canvass the amended abstracts and shall file an amended abstract with the original results of that election. An amended abstract certified under this section supersedes any prior abstract of the results for the same offices or issues at the same primary or election. [1990 c 59 § 66; 1965 c 9 § 29.64.040. Prior: 1955 c 215 § 4.]

Intent—Effective date—1990 c 59: See notes following RCW 29.01.006.

29.64.051 Limitation on recounts. After being counted, the votes cast in any single precinct may not be recounted more than twice. [1991 c 90 § 3.]

Finding, purpose—1991 c 90: See note following RCW 29.64.015.

29.64.060 Expenses of recount—Charges. The expenses for conducting a recount of votes shall be fixed by the canvassing board.

The cost of the recount shall be deducted from the amount deposited by the applicant for the recount at the time

of filing the request for the recount, and the balance shall be returned to the applicant. If the costs of the recount exceed the deposit, the applicant shall pay the difference. No charges may be deducted by the canvassing board from the deposit for a recount if the recount changes the result of the nomination or election for which the recount was ordered. [1990 c 59 § 68; 1977 ex.s. c 361 § 100; 1965 c 9 § 29.64.060. Prior: 1955 c 215 § 6.]

Intent—Effective date—1990 c 59: See notes following RCW 29.01.006.

Effective date—Severability—1977 ex.s. c 361: See notes following RCW 29.01.006.

29.64.070 Rules. The secretary of state, as chief election officer, shall adopt rules in accordance with chapter 34.05 RCW to facilitate and clarify procedures contained in this chapter. [1991 c 81 § 38; 1965 c 9 § 29.64.070. Prior: 1955 c 215 § 7.]

Effective date—1991 c 81: See note following RCW 29.85.010.

29.64.080 State-wide measures—Mandatory recount—Cost at state expense. When the official canvass of returns of any election reveals that the difference in the number of votes cast for the approval of a state-wide measure and the number of votes cast for the rejection of such measure is not more than one-half of one percent of the total number of votes cast on such measure, the secretary of state shall direct that a recount of all votes cast on such measure be made on such measure, in the manner provided by RCW 29.64.030 and 29.64.040, and the cost of such recount shall be at state expense. [1973 c 82 § 1.]

29.64.090 State-wide measures—Mandatory recount—Funds for additional expenses. Each county auditor shall file with the secretary of state a statement listing only the additional expenses incurred whenever a mandatory recount of the votes cast on a state measure is made as provided in RCW 29.64.080. The secretary of state shall include in his biennial budget request a provision for sufficient funds to carry out the provisions of this section. Payments hereunder shall be from appropriations specifically provided for such purpose by law. [1977 ex.s. c 144 § 5; 1973 c 82 § 2.]

29.64.900 Short title—Construction. This chapter shall be known as the statutory recount act and shall in no way affect or supersede the election contest statutes as contained in chapter 29.65 RCW. [1965 c 9 § 29.64.900. Prior: 1955 c 215 § 8.]

Chapter 29.65 CONTESTS

Sections

29.65.010	Commencement by registered voter—Causes for.
29.65.020	Affidavit of error or omission—Time for filing—Contents—Witnesses.
29.65.040	Hearing date—Issuance of citation—Service.
29.65.050	Witnesses to attend—Hearing of contest—Judgment.
29.65.055	Costs, how awarded.
29.65.060	Misconduct of board—Irregularity must be material to result.

29.65.070 Misconduct of board—Number of votes affected—Enough to change result.

29.65.080 Illegal votes—Allegation of in statement of contest.

29.65.090 Illegal votes—List required for testimony.

29.65.100 Illegal votes—Number of votes affected—Enough to change result.

29.65.120 Nullification of election certificate—When effective.

Contest of election of member of state legislature: RCW 44.04.100.

Statutory recount act not to affect or supersede election contest statutes: RCW 29.64.900.

29.65.010 Commencement by registered voter—Causes for. Any registered voter may contest the right of any person declared elected to an office to be issued a certificate of election for any of the following causes:

(1) For misconduct on the part of any member of any precinct election board involved therein;

(2) Because the person whose right is being contested was not at the time he was declared elected eligible to that office;

(3) Because the person whose right is being contested was previous to the election convicted of a felony by a court of competent jurisdiction, his conviction not having been reversed nor his civil rights restored after the conviction;

(4) Because the person whose right is being contested gave a bribe or reward to a voter or to an inspector or judge of election for the purpose of procuring his election, or offered to do so;

(5) On account of illegal votes.

(a) Illegal votes include but are not limited to the following:

(i) More than one vote cast by a single voter;

(ii) A vote cast by a person disqualified under Article VI, section 3 of the state Constitution.

(b) Illegal votes do not include votes cast by improperly registered voters who were not properly challenged pursuant to RCW 29.10.125 and 29.10.127.

All election contests shall proceed under RCW 29.04.030. [1983 1st ex.s. c 30 § 6; 1977 ex.s. c 361 § 101; 1965 c 9 § 29.65.010. Prior: 1959 c 329 § 26; prior: (i) Code 1881 § 3105; 1865 p 42 § 1; RRS § 5366. (ii) Code 1881 § 3109; 1865 p 43 § 5; RRS § 5370.]

Effective date—Severability—1977 ex.s. c 361: See notes following RCW 29.01.006.

29.65.020 Affidavit of error or omission—Time for filing—Contents—Witnesses. An affidavit of an elector with respect to RCW 29.04.030(6) must be filed with the appropriate court no later than ten days following the issuance of a certificate of election and shall set forth specifically:

(1) The name of the contestant and that he is a registered voter in the county, district or precinct, as the case may be, in which the office is to be exercised;

(2) The name of the person whose right is being contested;

(3) The office;

(4) The particular causes of the contest.

No statement of contest shall be dismissed for want of form if the particular causes of contest are alleged with sufficient certainty. The person charged with the error or omission shall be given the opportunity to call any witness, including the candidate to whom he has issued or intends to

issue the certificate of election. [1977 ex.s. c 361 § 102; 1965 c 9 § 29.65.020. Prior: (i) Code 1881 § 3110; 1865 p 43 § 6; RRS § 5371. (ii) Code 1881 § 3112; 1865 p 44 § 8; RRS § 5373.]

Effective date—Severability—1977 ex.s. c 361: See notes following RCW 29.01.006.

29.65.040 Hearing date—Issuance of citation—Service. Upon such affidavit being filed, it shall be the duty of the clerk to inform the judge of the appropriate court, who may give notice, and order a session of the court to be held at the usual place of holding said court, on some day to be named by him, not less than ten nor more than twenty days from the date of such notice, to hear and determine such contested election: PROVIDED, That if no session be called for the purpose, such contest shall be determined at the first regular session of court after such statement is filed.

The clerk of the court shall also at the time issue a citation for the person charged with the error or omission, to appear at the time and place specified in the notice, which citation shall be delivered to the sheriff and be served upon the party in person; or if he cannot be found, by leaving a copy thereof at the house where he last resided. [1977 ex.s. c 361 § 103; 1965 c 9 § 29.65.040. Prior: (i) Code 1881 § 3113; 1865 p 44 § 9; RRS § 5374. (ii) Code 1881 § 3114; 1865 p 45 § 10; RRS § 5375.]

Effective date—Severability—1977 ex.s. c 361: See notes following RCW 29.01.006.

29.65.050 Witnesses to attend—Hearing of contest—Judgment. The clerk shall issue subpoenas for witnesses in such contested election at the request of either party, which shall be served by the sheriff or constable, as other subpoenas, and the superior court shall have full power to issue attachments to compel the attendance of witnesses who shall have been duly subpoenaed to attend if they fail to do so.

The court shall meet at the time and place designated to determine such contested election by the rules of law and evidence governing the determination of questions of law and fact, so far as the same may be applicable, and may dismiss the proceedings if the statement of the cause or causes of contest is insufficient, or for want of prosecution. After hearing the proofs and allegations of the parties, the court shall pronounce judgment in the premises, either confirming or annulling and setting aside such election, according to the law and right of the case.

If in any such case it shall appear that another person than the one returned has the highest number of legal votes, said court shall declare such person duly elected. [1965 c 9 § 29.65.050. Prior: (i) Code 1881 § 3115; 1865 p 45 § 11; RRS § 5376. (ii) Code 1881 § 3116; 1865 p 45 § 12; RRS § 5377. (iii) Code 1881 § 3117; 1865 p 45 § 13; RRS § 5378. FORMER PARTS OF SECTION: (i) Code 1881 § 3119; 1865 p 45 § 15; RRS § 5379, now codified in RCW 29.65.055. (ii) Code 1881 § 3120; 1865 p 45 § 16; RRS § 5380, now codified in RCW 29.65.055.]

29.65.055 Costs, how awarded. If the proceedings are dismissed for insufficiency, want of prosecution, or the election is by the court confirmed, judgment shall be

rendered against the party contesting such election for costs, in favor of the party charged with error or omission.

If such election is annulled and set aside, judgment for costs shall be rendered against the party charged with the error or omission and in favor of the party alleging the same. [1977 ex.s. c 361 § 104; 1965 c 9 § 29.65.055. Prior: (i) Code 1881 § 3119; 1865 p 45 § 15; RRS § 5379; formerly RCW 29.65.050, part. (ii) Code 1881 § 3120; 1865 p 45 § 16; RRS § 5380, formerly RCW 29.65.050, part.]

Effective date—Severability—1977 ex.s. c 361: See notes following RCW 29.01.006.

29.65.060 Misconduct of board—Irregularity must be material to result. No irregularity or improper conduct in the proceedings of any election board or any member thereof shall amount to such malconduct as to annul or set aside any election unless the irregularity or improper conduct was such as to procure the person whose right to the office may be contested, to be declared duly elected although he did not receive the highest number of legal votes. [1965 c 9 § 29.65.060. Prior: Code 1881 § 3106; 1865 p 43 § 2; RRS § 5367.]

29.65.070 Misconduct of board—Number of votes affected—Enough to change result. When any election for an office exercised in and for a county is contested on account of any malconduct on the part of any election board, or any member thereof, the election shall not be annulled and set aside upon any proof thereof, unless the rejection of the vote of such precinct or precincts will change the result as to such office in the remaining vote of the county. [1965 c 9 § 29.65.070. Prior: Code 1881 § 3107; 1865 p 43 § 3; RRS § 5368.]

29.65.080 Illegal votes—Allegation of in statement of contest. When the reception of illegal votes is alleged as a cause of contest, it shall be sufficient to state generally that illegal votes were cast, which, if given to the person whose election is contested in the specified precinct or precincts, will, if taken from him, reduce the number of his legal votes below the number of legal votes given to some other person for the same office. [1965 c 9 § 29.65.080. Prior: Code 1881 § 3111, part; 1865 p 44 § 7, part; RRS § 5372, part.]

29.65.090 Illegal votes—List required for testimony. No testimony shall be received as to any illegal votes unless the party contesting the election delivers to the opposite party, at least three days before trial, a written list of the number of illegal votes and by whom given, which he intends to prove on such trial. No testimony shall be received as to any illegal votes, except as to such as are specified in the list. [1965 c 9 § 29.65.090. Prior: Code 1881 § 3111, part; 1865 p 44 § 7, part; RRS § 5372, part.]

29.65.100 Illegal votes—Number of votes affected—Enough to change result. No election shall be set aside on account of illegal votes, unless it appears that an amount of illegal votes has been given to the person whose right is being contested, which, if taken from him, would reduce the number of his legal votes below the number of votes given to some other person for the same office, after deducting

therefrom the illegal votes which may be shown to have been given to such other person. [1965 c 9 § 29.65.100. Prior: Code 1881 § 3108; 1865 p 43 § 4; RRS § 5369.]

29.65.120 Nullification of election certificate—When effective. If an election is set aside by the judgment of the superior court and if no appeal is taken therefrom within ten days, the certificate issued shall be thereby rendered void. [1965 c 9 § 29.65.120. Prior: Code 1881 § 3123, part; 1865 p 46 § 19, part; RRS § 5382, part.]

Chapter 29.68

UNITED STATES CONGRESSIONAL ELECTIONS

Sections

- 29.68.070 Vacancy in senatorship—Filling.
 29.68.080 Vacancy in congress—Special election.
 29.68.100 Vacancy in congress—Notices of special primary and special election.
 29.68.120 Vacancy in congress—Canvass of primary and special vacancy election—Certification of nominees.
 29.68.130 Vacancy in congress—General, primary election laws to apply—Time deadlines, modifications.

29.68.070 Vacancy in senatorship—Filling. When a vacancy occurs in the representation of this state in the senate of the United States, the governor shall make a temporary appointment to that office until the people fill the vacancy by election as provided in this chapter. [1985 c 45 § 3; 1965 c 9 § 29.68.070. Prior: 1921 c 33 § 1; RRS § 3798.]

Legislative intent—1985 c 45: See note following RCW 29.13.047.
Vacancies in public office, how caused: RCW 42.12.010.

29.68.080 Vacancy in congress—Special election. (1) Whenever a vacancy occurs in the office of United States representative or United States senator from this state or any congressional district of this state, the governor shall order a special election to fill the vacancy.

(2) Within ten days of such vacancy occurring, he or she shall issue a writ of election fixing a date for the special vacancy election not less than ninety days after the issuance of the writ, fixing a date for the primary for nominating candidates for the special vacancy election not less than thirty days before the day fixed for holding the special vacancy election, fixing the dates for the special filing period, and designating the term or part of the term for which the vacancy exists. If the vacancy is in the office of United States representative, the writ of election shall specify the congressional district that is vacant.

(3) If the vacancy occurs less than six months before a state general election and before the second Friday following the close of the filing period for that general election, the special primary and special vacancy elections shall be held in concert with the state primary and state general election in that year.

(4) If the vacancy occurs on or after the first day for filing under RCW 29.15.020 and on or before the second Friday following the close of the filing period, a special filing period of three normal business days shall be fixed by the governor and notice thereof given to all media, including press, radio, and television within the area in which the

vacancy election is to be held, to the end that, insofar as possible, all interested persons will be aware of such filing period. The last day of the filing period shall not be later than the third Tuesday before the primary at which candidates are to be nominated. The names of candidates who have filed valid declarations of candidacy during this three-day period shall appear on the approaching primary ballot.

(5) If the vacancy occurs later than the second Friday following the close of the filing period, a special primary and special vacancy election to fill the position shall be held after the next state general election but, in any event, no later than the ninetieth day following the November election.

(6) As used in this chapter, "county" means, in the case of a vacancy in the office of United States senator, any or all of the counties in the state and, in the case of a vacancy in the office of United States representative, only those counties wholly or partly within the congressional district in which the vacancy has occurred. [1990 c 59 § 105; 1985 c 45 § 4; 1973 2nd ex.s. c 36 § 3; 1965 c 9 § 29.68.080. Prior: 1915 c 60 § 1; 1909 ex.s. c 25 § 1; RRS § 3799.]

Intent—Effective date—1990 c 59: See notes following RCW 29.01.006.

Legislative intent—1985 c 45: See note following RCW 29.13.047.
Vacancies in public office, how caused: RCW 42.12.010.

29.68.100 Vacancy in congress—Notices of special primary and special election. After calling a special primary and special vacancy election to fill a vacancy in the office of United States representative or United States senator from this state, the governor shall immediately notify the secretary of state who shall, in turn, immediately notify the county auditor of each county wholly or partly within which the vacancy exists.

Each county auditor shall publish notices of the special primary and the special vacancy election at least once in any legal newspaper published in the county, as provided by RCW 29.27.030 and 29.27.080 respectively. [1985 c 45 § 5; 1973 2nd ex.s. c 36 § 5; 1965 c 9 § 29.68.100. Prior: 1909 ex.s. c 25 § 2, part; RRS § 3800, part.]

Legislative intent—1985 c 45: See note following RCW 29.13.047.

29.68.120 Vacancy in congress—Canvass of primary and special vacancy election—Certification of nominees. (1) The canvass of the votes cast at a special primary for a United States representative or senator shall be completed in each county within ten days after the primary. The returns shall be transmitted immediately to the secretary of state, who shall certify the returns in the manner provided by RCW 29.62.100. As soon as possible after the canvass, the secretary of state shall certify the names of the nominees to the county auditors.

(2) The canvass of the votes cast at a special vacancy election for a United States representative or senator shall be completed in each county within fifteen days after the vacancy election. The returns shall be transmitted immediately to the secretary of state, who shall certify the returns in the manner provided in RCW 29.62.120. [1985 c 45 § 6; 1983 c 3 § 46; 1973 2nd ex.s. c 36 § 7; 1965 c 9 § 29.68.120. Prior: 1909 ex.s. c 25 § 3, part; RRS § 3801, part.]

Legislative intent—1985 c 45: See note following RCW 29.13.047.

29.68.130 Vacancy in congress—General, primary election laws to apply—Time deadlines, modifications. The general election laws and laws relating to partisan primaries shall apply to the special primaries and vacancy elections provided for in RCW 29.68.080 through 29.68.120 to the extent that they are not inconsistent with the provisions of these sections. Statutory time deadlines relating to availability of absentee ballots, certification, canvassing, and related procedures that cannot be met in a timely fashion may be modified for the purposes of a specific primary or vacancy election under this chapter by the secretary of state through emergency rules adopted under RCW 29.04.080. [1985 c 45 § 7; 1965 c 9 § 29.68.130. Prior: 1909 ex.s. c 25 § 4; RRS § 3802.]

Legislative intent—1985 c 45: See note following RCW 29.13.047.

Chapter 29.69B CONGRESSIONAL DISTRICTS AND APPORTIONMENT

Reviser's note: The following material represents the congressional portion of the redistricting plan filed with the legislature by the Washington State Redistricting Commission on January 1, 1992, and as amended by Senate Concurrent Resolution No. 8421 under RCW 44.05.100. For state legislative districts, see chapter 44.07C RCW.

WASHINGTON STATE REDISTRICTING COMMISSION REDISTRICTING PLAN

A PLAN Relating to the redistricting of state legislative and congressional districts.

BE IT APPROVED BY THE REDISTRICTING COMMISSION OF THE STATE OF WASHINGTON:

Sec. 1. It is the intent of the commission to reapportion and redistrict the congressional and legislative districts of the state of Washington in accordance with the Constitution and laws of the United States and the state of Washington.

Sec. 2. The definitions set forth in RCW 44.05.020 apply throughout this plan, unless the context requires otherwise.

Sec. 3. In every case the population of the congressional and legislative districts described by this plan has been ascertained on the basis of the total number of persons found inhabiting such areas as of January 1, 1990, in accordance with the 1990 federal decennial census data submitted pursuant to P.L. 94-171.

Sec. 4. (a) Any area not specifically included within the boundaries of any of the districts as described in this plan and which is completely surrounded by a particular district, shall be a part of that district. Any such area not completely surrounded by a particular district shall be a part of the district having the smallest number of inhabitants and having territory contiguous to such area.

(b) Any area described in this plan as specifically embraced in two or more noninclusive districts shall be a part of the adjacent district having the smallest number of inhabitants and shall not be a part of the other district or districts.

(c) Any area specifically mentioned as embraced within a district but separated from such district by one or more other districts, shall be assigned as though it had not been included in any district specifically described.

(d) The 1990 United States federal decennial census data submitted pursuant to P.L. 94-171 shall be used for determining the number of inhabitants under this plan.

(e) If any court of competent jurisdiction requires nonresident military personnel that were not included in the United States census bureau data to be included, these persons shall be included in the population of the district or districts from which the persons were excluded.

Sec. 5. For purposes of this plan, districts shall be described in terms of:

(1) Official United States census bureau tracts, block numbering areas, block groups, blocks, or census county divisions established by the United States bureau of the census in the 1990 federal decennial census;

(2) Counties, municipalities, or other political subdivisions as they existed on January 1, 1990;

(3) Any natural or artificial boundaries or monuments including but not limited to rivers, streams, or lakes as they existed on January 1, 1990;

(4) Roads, streets, or highways as they existed on January 1, 1990.

Sec. 6. The following abbreviations used in this plan have the following meanings:

(1) "T" means "census tract";

(2) "BG" means "census block group";

(3) "B" means "block";

(4) "BNA" means "block numbering area"; and

(5) "Division" or "div." means "census county division".

Sec. 7. For election of members of the legislature, the territory of the state shall be divided into forty-nine districts. Two members of the house of representatives shall be elected from and run at large within each legislative district. One member of the senate shall be elected from each legislative district.

Sec. 8. The legislative districts described by this plan shall be those recorded electronically as "PLAN PRCOM - 019L", maintained in computer files designated as FINAL-LEG, which are public records of the commission. As soon as practicable after approval and submission of this plan to the legislature, the commission shall publish PLAN PRCOM - 019L in conformity with the description terminology set forth in sec. 6.

Sec. 9. For election of members of Congress, the territory of the state shall be divided into nine districts. The congressional districts described by this plan shall be those recorded electronically as "PLAN PRCOM - 0_C", maintained in computer files designated as FINAL-CON, which are public records of the commission. As soon as practicable after approval and submission of this plan to the legislature, the commission shall publish PLAN PRCOM - 0_C in conformity with the description terminology set forth in sec. 6.

Sec. 10. The commission intends that existing law shall continue to govern such matters as the terms and dates of election for members of the senate to be elected from each district, the status of "hold-over" senators, and the elections to fill vacancies, when required, provided that districts referred to in existing law and designated by number (without regard to any letter following that number) shall refer to districts of the same number described in this plan, beginning with the next elections in 1992.

Sec. 11. This commission intends that this plan supersede the district boundaries established by chapter 288, Laws of 1981 and chapter 17, Laws of 1983, and acknowledges that it is inconsistent with certain provisions of existing law, including but not limited to RCW 44.07B.001, RCW 44.07B.002, RCW 44.07B.005 through RCW 44.07B.800, RCW 44.07B.840, and RCW 29.69A.001 through RCW 29.69A.080.

District 1: King: Tract 0004: Block Group 1: Block 101, Block 102, Block 103, Block 104, Block 105, Block 106, Block 107, Block 108, Block 109, Block 110, Block 111, Block 112, Block 113, Block 114, Block 115; Block Group 2: Block 201, Block 202, Block 217, Block 218, Block 220, Block 221, Block 222, Block 223; Block Group 3: Block 301, Block 302, Block 303, Block 304, Block 305, Block 306, Block 308, Block 310, Block 311, Block 312, Block 313, Block 314, Block 315, Block 316, Block 317, Block 318; Block Group 4: Block 401, Block 402, Block 403, Block 404, Block 405, Block 406, Block 407, Block 408, Block 409, Block 410, Block 411, Block 413, Block 414, Block 415; Block Group 5: Block 501, Block 502, Block 503, Block 504, Block 505, Block 506, Block 509, Block 510, Block 511, Block 512, Block 513, Block 514, Block 515; Block Group 6: Block 603, Block 604, Block 605, Block 606, Block 607, Block 608, Block 609, Block 610, Block 611, Block 612; Block Group 7: Block 701, Block 702, Block 704, Block 706, Block 707, Block 708, Block 709, Block 710, Block 711, Block 712, Block 713, Block 714, Block 715, Block 716, Block 717, Block 718, Block 719, Block 720; Tract 0005: Block Group 1: Block 101,

Block 108, Block 109, Block 110; Block Group 2: Block 201, Block 202, Block 203, Block 204, Block 205, Block 206, Block 207, Block 208, Block 213, Block 214, Block 215, Block 216; Block Group 3: Block 301, Block 302, Block 303, Block 304, Block 316, Block 317, Block 318; Block Group 4: Block 401, Block 402, Block 403, Block 404, Block 405, Block 406, Block 407, Block 408, Block 409, Block 410, Block 411, Block 412, Block 413, Block 414, Block 415; Block Group 5: Block 501, Block 502, Block 503, Block 504, Block 505, Block 506A, Block 506B, Block 507, Block 508, Block 509, Block 511, Block 512, Block 513, Block 514; Block Group 6: Block 601, Block 602, Block 603, Block 604, Block 605, Block 606, Block 607, Block 608, Block 609, Block 610, Block 611, Block 612, Block 613, Block 614, Block 615, Block 616, Block 617, Block 619, Block 622, Block 623; Block Group 7: Block 701, Block 702, Block 703, Block 704, Block 705, Block 706, Block 707, Block 708, Block 709, Block 710, Block 711, Block 712, Block 713, Block 716, Block 717; Tract 0241, Tract 0242, Tract 0323.06, Tract 0323.07, Tract 0323.08, Tract 0323.09, Tract 0323.10; Kitsap: Tract 0901.01, Tract 0901.02, Tract 0902, Tract 0903, Tract 0903.99, Tract 0904, Tract 0905, Tract 0906.01, Tract 0906.02, Tract 0907, Tract 0908, Tract 0909, Tract 0910, Tract 0911, Tract 0912.01, Tract 0912.02, Tract 0913, except Block Group 3: Block 316, Block 331; Tract 0914, Tract 0915, Tract 0917, except Block Group 2: Block 205; Tract 0920: Block Group 2: Block 217, Block 218; Snohomish: Tract 0416.04: Block Group 2: Block 207, Block 209; Tract 0417: Block Group 2: Block 210; Block Group 3: Block 303, Block 306, Block 307, Block 311, Block 312, Block 313, Block 314, Block 315, Block 316, Block 317, Block 318, Block 319, Block 320, Block 321; Block Group 4: Block 401B, Block 402B, Block 404, Block 405, Block 406, Block 407, Block 408, Block 409, Block 410, Block 411; Tract 0418.04: Block Group 1: Block 103, Block 104, Block 105, Block 111, Block 112, Block 113, Block 114, Block 115, Block 116; Tract 0419.01: Block Group 3: Block 302, Block 303, Block 304, Block 305, Block 306, Block 307, Block 310; Block Group 9: Block 907; Tract 0420.02: Block Group 1: Block 106; Block Group 2: Block 201, Block 202, Block 203, Block 204; Block Group 3: Block 301, Block 302, Block 303, Block 304, Block 305; Block Group 4: Block 401, Block 402; Tract 0420.03, Tract 0420.04, except Block Group 2: Block 201; Block Group 3: Block 303; Tract 0501, Tract 0502, Tract 0503, Tract 0504.01, Tract 0504.02, Tract 0505, Tract 0506, Tract 0507, Tract 0508, Tract 0509, Tract 0510, Tract 0511, Tract 0512, Tract 0513, Tract 0514, Tract 0515, Tract 0516, Tract 0517, Tract 0518.01, Tract 0518.02, Tract 0519.05, Tract 0519.06, Tract 0519.07, Tract 0519.08, Tract 0519.09, Tract 0519.10, Tract 0519.11, Tract 0519.12, Tract 0520.01, Tract 0520.02, Tract 0520.03, Tract 0521.06, Tract 0521.07, Tract 0521.08, Tract 0521.09.

District 2: Island, San Juan, Skagit, Snohomish: Tract 0401.98, Tract 0402, Tract 0403, Tract 0404, Tract 0405, Tract 0406, Tract 0407, Tract 0408, Tract 0409, Tract 0410, Tract 0411, Tract 0412, Tract 0413, Tract 0414, Tract 0415, Tract 0416.01, Tract 0416.03, Tract 0416.04: Block Group 1: Block 101, Block 102, Block 103, Block 104, Block 105, Block 106, Block 107; Block Group 2: Block 201, Block 202, Block 203, Block 204, Block 205, Block 206, Block 207, Block 208; Block Group 4: Block 401, Block 402, Block 403, Block 404, Block 405, Block 406; Block Group 9: Block 901; Tract 0417: Block Group 1: Block 101, Block 102, Block 103A, Block 103B, Block 104, Block 105A, Block 105B, Block 106, Block 107, Block 108A, Block 108B, Block 109, Block 110A, Block 110B, Block 111A, Block 111B, Block 112, Block 113, Block 114A, Block 114B, Block 115, Block 116, Block 117, Block 118, Block 119, Block 120; Block Group 2: Block 201A, Block 201B, Block 202, Block 203, Block 204, Block 205, Block 206, Block 208, Block 209, Block 213, Block 214; Block Group 3: Block 301, Block 302, Block 304, Block 305, Block 308, Block 309, Block 310; Block Group 4: Block 401A, Block 402A, Block 402C, Block 403; Tract 0418.01, Tract 0418.03, Tract 0418.04: Block Group 1: Block 101, Block 102, Block 106, Block 107, Block 108, Block 109, Block 110; Block Group 4: Block 401, Block 402, Block 403, Block 404, Block 405, Block 406, Block 407, Block 408, Block 409, Block 410, Block 411, Block 412, Block 413, Block 414; Block Group 5: Block 501, Block 502, Block 503, Block 504, Block 505; Tract 0419.01: Block Group 2: Block 201, Block 202; Block Group 3: Block 301, Block 308, Block 309, Block 311, Block 312, Block 313, Block 314, Block 315, Block 316; Block Group 9: Block 901A, Block 901B, Block 901C, Block 901D, Block 901E, Block 902, Block 903, Block 904, Block 905, Block 906, Block 908, Block 909, Block 910, Block 911; Tract 0419.02, Tract 0420.01, Tract 0420.02: Block Group 1: Block 101, Block 102, Block 103, Block 104, Block 105, Block 107,

Block 108, Block 109; Tract 0420.04; Block Group 2: Block 201; Block Group 3: Block 303; Tract 0521.04, Tract 0521.05, Tract 0522.01, Tract 0522.02, Tract 0523.01, Tract 0523.02, Tract 0524, Tract 0525.01, Tract 0525.02, Tract 0526.01, Tract 0526.02, Tract 0527.01, Tract 0527.02, Tract 0527.03, Tract 0528.02, Tract 0528.03, Tract 0528.04, Tract 0529.01, Tract 0529.02, Tract 0530.98, Tract 0531, Tract 0532, Tract 0533, Tract 0534, Tract 0535.01, Tract 0535.02, Tract 0536, Tract 0537, Tract 0538; Whatcom.

District 3: Clark: Tract 0401, Tract 0402, Tract 0403, Tract 0404.01: Block Group 1: Block 101, Block 102, Block 103, Block 104, Block 105, Block 106, Block 107, Block 108, Block 109, Block 110, Block 111, Block 112, Block 113, Block 114, Block 115, Block 116, Block 117, Block 118; Block Group 2: Block 201, Block 202, Block 203, Block 204, Block 205, Block 206, Block 207, Block 208, Block 209, Block 210, Block 211, Block 212, Block 213, Block 214, Block 215, Block 216, Block 217, Block 218, Block 219, Block 320, Block 321, Block 322, Block 323; Block Group 3: Block 301, Block 302, Block 303, Block 304, Block 305, Block 306, Block 307, Block 308, Block 309, Block 310, Block 311, Block 312, Block 313, Block 314, Block 315, Block 316, Block 317, Block 318, Block 319, Block 320, Block 321, Block 322, Block 323; Block Group 4: Block 401, Block 402, Block 403, Block 404, Block 405, Block 406, Block 407, Block 408; Block Group 5: Block 501, Block 502, Block 503, Block 504, Block 505, Block 506, Block 507; Tract 0404.02: Block Group 1: Block 101, Block 102, Block 103, Block 104, Block 105, Block 106, Block 107A, Block 107B, Block 108A, Block 108B, Block 109, Block 110, Block 111, Block 112A, Block 112B, Block 113A, Block 113B, Block 114A, Block 114B, Block 115, Block 116, Block 117, Block 118, Block 119, Block 120; Block Group 2: Block 201, Block 202, Block 203, Block 204, Block 205, Block 206, Block 207; Block Group 3: Block 301A, Block 301B, Block 302, Block 303, Block 304, Block 305, Block 306, Block 307A, Block 307B, Block 308, Block 309, Block 310, Block 311, Block 312, Block 313, Block 314, Block 315, Block 316, Block 317, Block 318, Block 319, Block 320, Block 321, Block 322, Block 323, Block 324, Block 325, Block 326, Block 327A, Block 327B, Block 328, Block 329, Block 330, Block 331, Block 332, Block 333, Block 334, Block 335, Block 336, Block 337, Block 338, Block 339, Block 340, Block 341; Block Group 4: Block 401A, Block 401B, Block 402, Block 403, Block 404, Block 405, Block 406, Block 407, Block 408, Block 409, Block 410, Block 411, Block 412, Block 413, Block 414, Block 415, Block 416, Block 417, Block 418A, Block 418B, Block 418C, Block 418D, Block 419, Block 420A, Block 420B, Block 421, Block 422, Block 423, Block 424, Block 425, Block 426, Block 427, Block 428A, Block 428B, Block 428C, Block 428D, Block 429, Block 430, Block 431, Block 432; Block Group 5: Block 501, Block 502, Block 503, Block 504, Block 505, Block 506, Block 507, Block 508, Block 509, Block 510, Block 511, Block 512A, Block 512B, Block 513, Block 514, Block 515, Block 516, Block 517, Block 518, Block 519, Block 520, Block 521, Block 522, Block 523, Block 524; Tract 0405.01, Tract 0405.02, Tract 0405.03, Tract 0406.01, Tract 0406.02, Tract 0407.02: Block Group 1: Block 101, Block 102, Block 103, Block 104, Block 105, Block 106, Block 107, Block 108, Block 109, Block 110, Block 111, Block 112, Block 113, Block 114, Block 115, Block 116, Block 117; Block Group 2: Block 201, Block 202, Block 203, Block 204, Block 205, Block 206, Block 207; Block Group 5: Block 501, Block 502, Block 503, Block 504; Block Group 6: Block 601, Block 602, Block 603, Block 604, Block 605, Block 606; Block Group 7: Block 701, Block 702, Block 703, Block 704; Tract 0407.03, Tract 0407.04, Tract 0408.01, Tract 0408.02, Tract 0409.02, Tract 0409.03, Tract 0409.04, Tract 0410.02, Tract 0410.03, Tract 0410.05, Tract 0410.06, Tract 0410.07, Tract 0411.03, Tract 0411.04, Tract 0411.05, Tract 0411.06, Tract 0412.01, Tract 0412.03, Tract 0412.04, Tract 0413.04, Tract 0413.05, Tract 0413.06, Tract 0413.07, Tract 0413.08, Tract 0413.09, Tract 0413.10, Tract 0413.11, Tract 0414: Block Group 1: Block 101, Block 102, Block 103, Block 104, Block 105, Block 106, Block 107, Block 108, Block 109, Block 110, Block 111, Block 112, Block 113, Block 114, Block 115, Block 116, Block 117, Block 118, Block 119, Block 120, Block 121, Block 122, Block 123, Block 124, Block 125, Block 126, Block 127; Block Group 2: Block 201, Block 202, Block 203, Block 204, Block 205, Block 206, Block 207, Block 208, Block 209, Block 210, Block 211, Block 212, Block 213, Block 214A, Block 214B, Block 214C, Block 215, Block 216, Block 217, Block 218, Block 219, Block 220, Block 221A, Block 221B, Block 222, Block 223, Block 224, Block 225, Block 226, Block 227, Block 228, Block 229, Block 230, Block 231, Block 232A, Block 232B, Block 233A, Block 233B; Block Group 3: Block 301, Block 302, Block 303, Block 304, Block 305, Block 306, Block 307, Block 308A,

Block 308B, Block 308C, Block 309, Block 310, Block 311, Block 312, Block 313, Block 314, Block 315, Block 316A, Block 316B, Block 317A, Block 317B, Block 318, Block 319, Block 320, Block 321, Block 322, Block 325, Block 326, Block 327, Block 328, Block 329, Block 330, Block 332, Block 339, Block 340, Block 341, Block 357A, Block 357B, Block 359; Block Group 4: Block 401, Block 402, Block 403; Tract 0415: Block Group 1: Block 101, Block 102, Block 103, Block 104, Block 105, Block 106, Block 107, Block 108, Block 109, Block 110, Block 111, Block 112, Block 113, Block 114, Block 115, Block 116, Block 117, Block 118, Block 119, Block 120A, Block 120B, Block 120C, Block 120D, Block 121, Block 122, Block 124, Block 125, Block 126, Block 127, Block 130A, Block 130B, Block 132, Block 133, Block 134, Block 135, Block 138; Block Group 2: Block 201, Block 202, Block 203A, Block 203B, Block 204A, Block 204B, Block 205, Block 206, Block 207, Block 208, Block 209A, Block 209B, Block 209C, Block 209D, Block 209E, Block 210, Block 211, Block 212, Block 213, Block 214, Block 215, Block 216, Block 217, Block 218, Block 219, Block 220, Block 221, Block 222, Block 223, Block 224, Block 225, Block 226, Block 227, Block 228, Block 229, Block 230, Block 231, Block 232, Block 233; 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Block Group 4: Block 401, Block 402A, Block 402B, Block 402C, Block 402D, Block 402E, Block 402F, Block 402G, Block 402H, Block 402J, Block 403, Block 404A, Block 404B, Block 405A, Block 405B, Block 406A, Block 406B, Block 407A, Block 407B, Block 408, Block 409, Block 410, Block 411, Block 412, Block 413, Block 414, Block 415, Block 416, Block 417, Block 418, Block 419, Block 420, Block 421, Block 422, Block 423, Block 424, Block 425, Block 426, Block 427, Block 428, Block 429, Block 430, Block 431, Block 432, Block 433, Block 434, Block 435, Block 436, Block 437, Block 438, Block 439, Block 440, Block 441, Block 442, Block 443, Block 444, Block 445, Block 446, Block 447, Block 448, Block 449, Block 450, Block 451, Block 452, Block 453, Block 454, Block 455, Block 456, Block 457, Block 458, Block 459, Block 460, Block 461, Block 462, Block 463, Block 464, Block 465, Block 466, Block 467, Block 468; Block Group 5: Block 501, Block 502, Block 503, Block 504, Block 505, Block 506, Block 507, Block 508, Block 509, Block 510, Block 511, Block 512, Block 513, Block 514, Block 515, Block 516, Block 517, Block 518, Block 519, Block 520, Block 521, Block 522, Block 523, Block 524, Block 525, Block 526, Block 527, Block 528, Block 529, Block 530, Block 531, Block 532, Block 533, Block 534, Block 535, Block 536, Block 537, Block 538, Block 539, Block 540, Block 541, Block 542, Block 543, Block 544, Block 545, Block 546, Block 547A, Block 547B, Block 547C, Block 547D, Block 548, Block 549, Block 550, Block 551A, Block 551B, Block 551C, Block 552, Block 553, Block 554, Block 555, Block 556, Block 557, Block 558A, Block 558B, Block 558C, Block 558D, Block 558E, Block 558F, Block 559, Block 560, Block 561, Block 562, Block 563, Block 564, Block 565, Block 566, Block 567, Block 568, Block 569A, Block 569B, Block 570, Block 571, Block 572, Block 573, Block 574, Block 575, Block 576, Block 577, Block 578, Block 579A, Block 579B, Block 580A, Block 580B, Block 581A, Block 581B, Block 582, Block 583, Block 584, Block 585, Block 586, Block 587, Block 588, Block 589, Block 590, Block 591, Block 592, Block 593, Block 594, Block 595, Block 596, Block 597; Block Group 6: Block 601, Block 602, Block 603, Block 604, Block 605, Block 606, Block 607, Block 608, Block 609, Block 610, Block 611, Block 612, Block 613, Block 614, Block 615, Block 616, Block 617, Block 618, Block 619, Block 620, Block 621A, Block 621B, Block 622, Block 623, Block 624, Block 625, Block 626, Block 627, Block 628, Block 629, Block 630, Block 631, Block 632, Block 633, Block 634, Block 635, Block 636, Block 637, Block 638, Block 639, Block 640, Block 641, Block 642, Block 643, Block 644, Block 645, Block 646, Block 647, Block 648, Block 649, Block 650,

Block 651, Block 652, Block 653, Block 654, Block 655, Block 656, Block 657, Block 658, Block 659A, Block 659B, Block 659C, Block 660, Block 661, Block 662, Block 663, Block 664, Block 665, Block 666, Block 667, Block 668, Block 669, Block 670, Block 671, Block 672, Block 673, Block 674, Block 675A, Block 675B, Block 676, Block 677, Block 678, Block 679, Block 680A, Block 680B, Block 680C, Block 681, Block 682, Block 683A, Block 683B, Block 683C, Block 684, Block 685, Block 686, Block 687, Block 688, Block 689, Block 690, Block 691, Block 692, Block 693, Block 694, Block 695, Block 696, Block 697; Tract 9503; Lewis, Pacific, Skamania, Thurston: Tract 0101, Tract 0102, Tract 0103, Tract 0104, Tract 0105, Tract 0106, Tract 0107, Tract 0108, Tract 0109, Tract 0110, Tract 0111, Tract 0112, Tract 0113, Tract 0114, Tract 0116.10: Block Group 3: Block 306A, Block 306C, Block 307A, Block 307B, Block 307C; Block Group 4: Block 404A, Block 404B, Block 404C, Block 405; Tract 0116.20: Block Group 1: Block 102A; Block Group 2: Block 204; Tract 0117: Block Group 1: Block 101A, Block 101B, Block 102, Block 103, Block 104, Block 105, Block 106, Block 107, Block 110, Block 111, Block 112, Block 113; Block Group 2: Block 201A, Block 201B, Block 201C, Block 202, Block 203, Block 204, Block 205; Block Group 3: Block 303, Block 304, Block 305, Block 306, Block 307; Block Group 4: Block 401, Block 402, Block 403, Block 404, Block 405; Block Group 5: Block 503, Block 504, Block 505, Block 506, Block 508, Block 509, Block 510, Block 511, Block 512, Block 513, Block 514, Block 515; Tract 0118, Tract 0119, Tract 0120, Tract 0121, Tract 0122.10, Tract 0126: Block Group 3: Block 309; Tract 0127; Wahkiakum.

District 4: Adams: Tract 9503: Block Group 3: Block 312, Block 313, Block 314, Block 315, Block 316, Block 317, Block 318, Block 319, Block 320, Block 321, Block 386, Block 391, Block 392, Block 393, Block 397; Block Group 4: Block 402, Block 403, Block 404, Block 405, Block 406, Block 407, Block 408, Block 409, Block 410, Block 411, Block 412, Block 413, Block 414, Block 415, Block 416, Block 417, Block 418, Block 421, Block 422, Block 423, Block 424, Block 425, Block 426, Block 427, Block 428, Block 429, Block 430, Block 431, Block 432, Block 433, Block 434, Block 435, Block 436, Block 437, Block 438, Block 439, Block 440, Block 450, Block 451, Block 452, Block 453, Block 454, Block 455, Block 456, Block 457, Block 458, Block 459, Block 460; Benton, Chelan, Douglas, Franklin, Grant, Kittitas, Klickitat: Tract 9501: Block Group 1: Block 101, Block 102, Block 103, Block 104, Block 105, Block 106, Block 107, Block 108, Block 109, Block 110, Block 111, Block 112, Block 113, Block 114, Block 115, Block 116, Block 117, Block 118, Block 119, Block 120, Block 121, Block 122, Block 123, Block 124, Block 125, Block 126, Block 127, Block 128, Block 129, Block 130, Block 131, Block 132, Block 133, Block 134, Block 135A, Block 135B, Block 135C, Block 135D, Block 135E, Block 135F, Block 135G, Block 135H, Block 135J, Block 135K, Block 135L, Block 135M, Block 135N, Block 136, Block 137, Block 138, Block 139, Block 140, Block 141, Block 142, Block 143, Block 144, Block 145, Block 146, Block 147, Block 148, Block 149, Block 150A, Block 150B, Block 150C, Block 150D, Block 150E, Block 150F, Block 150G, Block 150H, Block 150J, Block 150K, Block 151A, Block 151B, Block 152, Block 153, Block 154, Block 155A, Block 155B, Block 156, Block 157, Block 158, Block 159, Block 160, Block 161, Block 162, Block 163A, Block 163B, Block 163C, Block 164, Block 165A, Block 165B, Block 166A, Block 166B, Block 167, Block 168, Block 169, Block 170, Block 171, Block 172, Block 173, Block 174, Block 175, Block 176, Block 177, Block 178, Block 179, Block 180, Block 181, Block 182, Block 183, Block 184, Block 185, Block 186, Block 187, Block 188, Block 189, Block 190A, Block 190B, Block 190C, Block 190D, Block 190E, Block 190F, Block 190G, Block 190H, Block 191, Block 192, Block 193, Block 194, Block 195, Block 196, Block 197; Block Group 2: Block 201, Block 202, Block 203, Block 204, Block 205, Block 206, Block 207, Block 208, Block 209, Block 210, Block 211, Block 212, Block 213, Block 214, Block 215, Block 216, Block 217, Block 218, Block 219, Block 220, Block 221, Block 222, Block 223, Block 224, Block 225, Block 226, Block 227, Block 228, Block 229, Block 230, Block 231, Block 232, Block 233, Block 234A, Block 234B, Block 235, Block 236, Block 237, Block 238, Block 239, Block 240, Block 241, Block 242, Block 243, Block 244, Block 245, Block 246, Block 247, Block 248A, Block 248B, Block 248C, Block 249A, Block 249B, Block 250, Block 251, Block 252, Block 253, Block 254, Block 255, Block 256, Block 257, Block 258, Block 259, Block 260A, Block 260B, Block 261A, Block 261B, Block 261C, Block 261D, Block 261E, Block 262A, Block 262B, Block 262C, Block 262D, Block 262E, Block 263A, Block 263B, Block 264, Block 265,

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Chapter 29.70

LOCAL GOVERNMENT REDISTRICTING

Sections

29.70.100 Redistricting by counties, municipal corporations, and special purpose districts.

29.70.100 Redistricting by counties, municipal corporations, and special purpose districts. (1) It is the responsibility of each county, municipal corporation, and special purpose district with a governing body comprised of internal director, council, or commissioner districts not based on statutorily required land ownership criteria to periodically redistrict its governmental unit, based on population information from the most recent federal decennial census.

(2) Within forty-five days after receipt of federal decennial census information applicable to a specific local area, the commission established in RCW 44.05.030 shall forward the census information to each municipal corporation, county, and district charged with redistricting under this section.

(3) No later than eight months after its receipt of federal decennial census data, the governing body of the municipal corporation, county, or district shall prepare a plan for redistricting its internal or director districts.

(4) The plan shall be consistent with the following criteria:

(a) Each internal director, council, or commissioner district shall be as nearly equal in population as possible to each and every other such district comprising the municipal corporation, county, or special purpose district.

(b) Each district shall be as compact as possible.

(c) Each district shall consist of geographically contiguous area.

(d) Population data may not be used for purposes of favoring or disfavoring any racial group or political party.

(e) To the extent feasible and if not inconsistent with the basic enabling legislation for the municipal corporation, county, or district, the district boundaries shall coincide with existing recognized natural boundaries and shall, to the extent possible, preserve existing communities of related and mutual interest.

(5) During the adoption of its plan, the municipal corporation, county, or district shall ensure that full and reasonable public notice of its actions is provided. The municipal corporation, county, or district shall hold at least one public hearing on the redistricting plan at least one week before adoption of the plan.

(6)(a) Any registered voter residing in an area affected by the redistricting plan may request review of the adopted local plan by the superior court of the county in which he or she resides, within forty-five days of the plan's adoption. Any request for review must specify the reason or reasons alleged why the local plan is not consistent with the applicable redistricting criteria. The municipal corporation, county, or district may be joined as respondent. The superior court shall thereupon review the challenged plan for compliance with the applicable redistricting criteria set out in subsection (4) of this section.

(b) If the superior court finds the plan to be consistent with the requirements of this section, the plan shall take effect immediately.

(1992 Ed.)

(c) If the superior court determines the plan does not meet the requirements of this section, in whole or in part, it shall remand the plan for further or corrective action within a specified and reasonable time period.

(d) If the superior court finds that any request for review is frivolous or has been filed solely for purposes of harassment or delay, it may impose appropriate sanctions on the party requesting review, including payment of attorneys' fees and costs to the respondent municipal corporation, county, or district. [1984 c 13 § 4; 1983 c 16 § 15; 1982 c 2 § 27.]

Severability—1984 c 13: See RCW 44.05.902.

Contingent effective date—Severability—1983 c 16: See RCW 44.05.900 and 44.05.901.

Chapter 29.71

UNITED STATES PRESIDENTIAL ELECTORS

Sections

29.71.010 Date of election—Number.
 29.71.020 Nomination—Pledge by electors—What names on ballots—How counted.
 29.71.030 Counting and canvassing the returns.
 29.71.040 Meeting—Time—Procedure—Voting for nominee of other party, penalty.
 29.71.050 Compensation.

29.71.010 Date of election—Number. On the Tuesday next after the first Monday of November in the year in which a president of the United States is to be elected there shall be elected as many electors of president and vice president of the United States as there are senators and representatives in congress allotted to this state. [1965 c 9 § 29.71.010. Prior: 1891 c 148 § 1; RRS § 5138.]

29.71.020 Nomination—Pledge by electors—What names on ballots—How counted. In the year in which a presidential election is held, each major political party and each minor political party or independent candidate convention held under chapter 29.24 RCW that nominates candidates for president and vice-president of the United States shall nominate presidential electors for this state. The party or convention shall file with the secretary of state a certificate signed by the presiding officer of the convention at which the presidential electors were chosen, listing the names and addresses of the presidential electors. Each presidential elector shall execute and file with the secretary of state a pledge that, as an elector, he or she will vote for the candidates nominated by that party. The names of presidential electors shall not appear on the ballots. The votes cast for candidates for president and vice-president of each political party shall be counted for the candidates for presidential electors of that political party. [1990 c 59 § 69; 1977 ex.s. c 238 § 1; 1965 c 9 § 29.71.020. Prior: 1935 c 20 § 1; RRS § 5138-1.]

Intent—Effective date—1990 c 59: See notes following RCW 29.01.006.

29.71.030 Counting and canvassing the returns. The votes for candidates for president and vice president shall be given, received, returned and canvassed as the same are given, returned, and canvassed for candidates for

congress. The secretary of state shall prepare three lists of names of electors elected and affix the seal of the state to the same. Such lists shall be signed by the governor and secretary of state and by the latter delivered to the college of electors at the hour of their meeting. [1965 c 9 § 29.71.030. Prior: 1935 c 20 § 2; RRS § 5139; prior: 1891 c 148 § 2.]

29.71.040 Meeting—Time—Procedure—Voting for nominee of other party, penalty. The electors of the president and vice president shall convene at the seat of government on the day fixed by federal statute, at the hour of twelve o'clock noon of that day. If there is any vacancy in the office of an elector occasioned by death, refusal to act, neglect to attend, or otherwise, the electors present shall immediately proceed to fill it by viva voce, and plurality of votes. When all of the electors have appeared and the vacancies have been filled they shall constitute the college of electors of the state of Washington, and shall proceed to perform the duties required of them by the Constitution and laws of the United States. Any elector who votes for a person or persons not nominated by the party of which he or she is an elector shall be subject to a civil penalty of up to a fine of one thousand dollars. [1977 ex.s. c 238 § 2; 1965 c 9 § 29.71.040. Prior: 1909 c 22 § 1; 1891 c 148 § 3; RRS § 5140.]

29.71.050 Compensation. Every presidential elector who attends at the time and place appointed, and gives his vote for president and vice president, shall be entitled to receive from this state, five dollars for each day's attendance at the meeting of the college of electors, and ten cents per mile for travel by the usually traveled route in going to and returning from the place where the electors meet. [1965 c 9 § 29.71.050. Prior: 1891 c 148 § 4; RRS § 5141.]

Chapter 29.74

UNITED STATES CONSTITUTIONAL AMENDMENT CONVENTIONS

Sections

29.74.010	Governor's proclamation calling convention—When.
29.74.020	Governor's proclamation calling convention—Publication.
29.74.030	Election of convention delegates—Date for, how fixed.
29.74.040	Time and place for holding convention.
29.74.050	Delegates—Number and qualifications.
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29.74.110	Meeting—Organization.
29.74.120	Quorum—Proceedings—Record.
29.74.130	Certification and transmittal of result.
29.74.140	Expenses—How paid—Delegates receive filing fee.
29.74.150	Federal statutes controlling.

29.74.010 Governor's proclamation calling convention—When. Within thirty days after the state is officially notified that the congress of the United States has submitted to the several states a proposed amendment to the Constitution of the United States to be ratified or rejected by a convention, the governor shall issue a proclamation fixing

the time and place for holding the convention and fixing the time for holding an election to elect delegates to the convention. [1965 c 9 § 29.74.010. Prior: 1933 c 181 § 1, part; RRS § 5249-1, part.]

29.74.020 Governor's proclamation calling convention—Publication. The proclamation shall be published once each week for two successive weeks in one newspaper published and of general circulation in each of the congressional districts of the state. The first publication of the proclamation shall be within thirty days of the receipt of official notice by the state of the submission of the amendment. [1965 c 9 § 29.74.020. Prior: 1933 c 181 § 1, part; RRS § 5249-1, part.]

29.74.030 Election of convention delegates—Date for, how fixed. The date for holding the election of delegates shall be not less than one month nor more than six weeks prior to the date of holding the convention: PROVIDED, That if a general state election is to be held not more than six months nor less than three months from the date of official notice of submission to the state of the proposed amendment, the governor must fix the date of the general election as the date for the election of delegates to the convention. [1965 c 9 § 29.74.030. Prior: (i) 1933 c 181 § 1, part; RRS § 5249-1, part. (ii) 1933 c 181 § 9; RRS § 5249-9.]

29.74.040 Time and place for holding convention. The convention shall be held not less than five nor more than eight months from the date of the first publication of the proclamation provided for in RCW 29.74.020. It shall be held in the chambers of the state house of representatives unless the governor shall select some other place at the state capitol. [1965 c 9 § 29.74.040. Prior: 1933 c 181 § 1, part; RRS § 5249-1, part.]

29.74.050 Delegates—Number and qualifications. Each state representative district shall be entitled to as many delegates in the convention as it has members in the house of representatives of the state legislature. No person shall be qualified to act as a delegate in said convention who does not possess the qualifications required of representatives in the state legislature from the same district. [1965 c 9 § 29.74.050. Prior: 1933 c 181 § 2; RRS § 5249-2.]

Qualifications of legislators: State Constitution Art. 2 § 7.

Subversive activities, disqualification from holding public office: RCW 9.81.040.

29.74.060 Delegates—Declarations of candidacy. Anyone desiring to file as a candidate for election as a delegate to said convention shall, not less than thirty nor more than sixty days prior to the date fixed for holding the election, file his declaration of candidacy with the secretary of state. Filing shall be made on a form to be prescribed by the secretary of state and shall include a sworn statement of the candidate that he is either for or against, as the case may be, the amendment which will be submitted to a vote of the convention and that he will, if elected as a delegate, vote in accordance with his declaration. The form shall be so worded that the candidate must give a plain unequivocal

statement of his views as either for or against the proposal upon which he will, if elected, be called upon to vote. No candidate shall in any such filing make any statement or declaration as to his party politics or political faith or beliefs. The fee for filing as a candidate shall be ten dollars and shall be transmitted to the secretary of state with the filing papers and be by the secretary of state transmitted to the state treasurer for the use of the general fund. [1965 c 9 § 29.74.060. Prior: 1933 c 181 § 3; RRS § 5249-3.]

29.74.070 Election of convention delegates—General procedure. The election of delegates to such convention shall as far as practicable, be called, held and conducted, except as otherwise in this chapter provided, in the same manner as a general election under the election laws of this state. [1965 c 9 § 29.74.070. Prior: 1933 c 181 § 4, part; RRS § 5249-4, part.]

29.74.080 Election of convention delegates—Ballots. The issue shall be identified as, "Delegates to a convention for ratification or rejection of a proposed amendment to the United States Constitution, relating (stating briefly the substance of amendment proposed for adoption or rejection)." The names of all candidates who have filed in a district shall be printed on the ballots for that district in two separate groups under the headings, "For the amendment" and "Against the amendment." The names of the candidates in each group shall be printed in alphabetical order. [1990 c 59 § 70; 1965 c 9 § 29.74.080. Prior: 1933 c 181 § 4, part; RRS § 5249-4, part.]

Intent—Effective date—1990 c 59: See notes following RCW 29.01.006.

Ballots: Chapter 29.30 RCW.

29.74.090 Election of convention delegates—Qualifications of voters. Every person possessing the qualifications entitling him to vote at an election for state representatives, on the date of the election, shall be entitled to vote thereat. [1965 c 9 § 29.74.090. Prior: 1933 c 181 § 5; RRS § 5249-5.]

Only registered voters may vote—Exception: RCW 29.04.010.

Registration, information from voter as to qualifications: RCW 29.07.070.

Subversive activities, disqualification from voting: RCW 9.81.040.

29.74.100 Election of convention delegates—Ascertaining election result. The election officials shall count and determine the number of votes cast for each individual; and shall also count and determine the aggregate number of votes cast for all candidates whose names appear under each of the respective headings. Where more than the required number have been voted for, the ballot shall be rejected. The figures determined by the various counts shall be entered in the poll books of the respective precincts. The vote shall be canvassed in each county by the county canvassing board and certificate of results shall within twelve days after the election be transmitted to the secretary of state. Upon receiving such certificate, the secretary of state shall have power to require returns or poll books from any county precinct to be forwarded for his examination.

Where a district embraces precincts of more than one county, the secretary of state shall combine the votes from

all the precincts included in each district. The delegates elected in each district shall be the number of candidates, corresponding to the number of state representatives from the district, who receive the highest number of votes in the group (either "for" or "against"), which received an aggregate number of votes for all candidates in the group greater than the aggregate number of votes for all the candidates in the other group, and the secretary of state shall issue certificates of election, to the delegates so elected. [1965 c 9 § 29.74.100. Prior: 1933 c 181 § 6; RRS § 5249-6.]

29.74.110 Meeting—Organization. The convention shall meet at the time and place fixed in the governor's proclamation. It shall be called to order by the secretary of state, who shall then call the roll of the delegates and preside over the convention until its president is elected. The oath of office shall then be administered to the delegates by the chief justice of the supreme court. As far as practicable, the convention shall proceed under the rules adopted by the last preceding session of the state senate. The convention shall elect a president and a secretary and shall thereafter and thereupon proceed to vote viva voce upon the proposition submitted by the congress of the United States. [1965 c 9 § 29.74.110. Prior: 1933 c 181 § 7, part; RRS § 5249-7, part.]

29.74.120 Quorum—Proceedings—Record. Two-thirds of the elected members of said convention shall constitute a quorum to do business, and a majority of those elected shall be sufficient to adopt or reject any proposition coming before the convention. If such majority votes in favor of the ratification of the amendment submitted to the convention, the said amendment shall be deemed ratified by the state of Washington; and if a majority votes in favor of rejecting or not ratifying the amendment, the same shall be deemed rejected by the state of Washington. [1965 c 9 § 29.74.120. Prior: 1933 c 181 § 8, part; RRS § 5249-8, part.]

29.74.130 Certification and transmittal of result. The vote of each member shall be recorded in the journal of the convention, which shall be preserved by the secretary of state as a public document. The action of the convention shall be enrolled, signed by its president and secretary and filed with the secretary of state and it shall be the duty of the secretary of state to properly certify the action of the convention to the congress of the United States as provided by general law. [1965 c 9 § 29.74.130. Prior: (i) 1933 c 181 § 7, part; RRS § 5249-7, part. (ii) 1933 c 181 § 8, part; RRS § 5249-8, part.]

29.74.140 Expenses—How paid—Delegates receive filing fee. The delegates attending the convention shall be paid the amount of their filing fee, upon vouchers approved by the president and secretary of the convention and state warrants issued thereon and payable from the general fund of the state treasury. The delegates shall receive no other compensation or mileage. All other necessary expenses of the convention shall be payable from the general fund of the state upon vouchers approved by the president and secretary

of the convention. [1965 c 9 § 29.74.140. Prior: 1933 c 181 § 10; RRS § 5249-10.]

29.74.150 Federal statutes controlling. If a congressional measure, which submits to the several states an amendment to the Constitution of the United States for ratification or rejection, provides for or requires a different method of calling and holding conventions to ratify or reject said amendment, the requirements of said congressional measure shall be followed so far as they conflict with the provisions of this chapter. [1965 c 9 § 29.74.150. Prior: 1933 c 181 § 11; RRS § 5249-11.]

Chapter 29.79

INITIATIVE AND REFERENDUM

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Initiative and referendum: State Constitution Art. 2 § 1 and 1A (Amendment 30).

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Vote necessary to validate initiative or referendum: RCW 29.62.130.

Voters' pamphlet: Chapter 29.81 RCW.

29.79.010 Filing proposed measures with secretary of state. If any legal voter of the state, either individually or on behalf of an organization, desires to petition the legislature to enact a proposed measure, or submit a proposed initiative measure to the people, or order that a referendum of all or part of any act, bill, or law, passed by the legislature be submitted to the people, he or she shall file with the secretary of state a typewritten copy of the measure proposed, or the act or part of such act on which a referendum is desired, accompanied by an affidavit that the proposer is a legal voter and a filing fee prescribed under RCW 43.07.120, as now or hereafter amended. [1982 c 116 § 1; 1965 c 9 § 29.79.010. Prior: 1913 c 138 § 1, part; RRS § 5397, part.]

29.79.015 Review of initiative measures by code reviser's office—Certificate of review required for assignment of serial number. Upon receipt of any petition proposing an initiative to the people or an initiative to the legislature, and prior to giving a serial number thereto, the secretary of state shall submit a copy thereof to the office of the code reviser and give notice to the petitioner of such transmittal. Upon receipt of the measure, the assistant code reviser to whom it has been assigned may confer with the petitioner and shall within seven working days from receipt thereof review the proposal for matters of form and style, and such matters of substantive import as may be agreeable to the petitioner, and shall recommend to the petitioner such revision or alteration of the measure as may be deemed necessary and appropriate. The recommendations of the reviser's office shall be advisory only, and the petitioner may accept or reject them in whole or in part. The code reviser shall issue a certificate of review certifying that he has reviewed the measure for form and style and that the recommendations thereon, if any, have been communicated to the petitioner, and such certificate shall issue whether or not the petitioner accepts such recommendations. Within fifteen working days after notification of submittal of the petition to the reviser's office, the petitioner, if he desires to proceed with his sponsorship, shall file the measure together with the certificate of review with the secretary of state for assignment of serial number and the secretary of state shall thereupon submit to the reviser's office a certified copy of the measure filed. Upon submitting the proposal to the secretary of state for assignment of a serial number the secretary of state shall refuse to make such assignment unless the proposal is accompanied by a certificate of review. [1982 c 116 § 2; 1973 c 122 § 2.]

Legislative finding—1973 c 122: "The legislature finds that the initiative process reserving to the people the power to propose bills, laws and to enact or reject the same at the polls, independent of the legislature, is finding increased popularity with citizens of our state. The exercise of this power concomitant with the power of the legislature requires coordination to avoid the duplication and confusion of laws. This legislation is enacted especially to facilitate the operation of the initiative process." [1973 c 122 § 1.]

29.79.020 Time for filing various types. Initiative measures proposed to be submitted to the people must be

filed with the secretary of state within ten months prior to the election at which they are to be submitted, and the petitions therefor must be filed with the secretary of state not less than four months before the next general state-wide election.

Initiative measures proposed to be submitted to the legislature must be filed with the secretary of state within ten months prior to the next regular session of the legislature at which they are to be submitted and the petitions therefor must be filed with the secretary of state not less than ten days before such regular session of the legislature.

A petition ordering that any act or part thereof passed by the legislature be referred to the people must be filed with the secretary of state within ninety days after the final adjournment of the legislative session at which the act was passed. It may be submitted at the next general state-wide election or at a special election ordered by the legislature.

A proposed initiative or referendum measure may be filed no earlier than the opening of the secretary of state's office for business pursuant to RCW 42.04.060 on the first day filings are permitted, and any initiative or referendum petition must be filed not later than the close of business on the last business day in the specified period for submission of signatures. If a filing deadline falls on a Saturday, the office of the secretary of state shall be open on that Saturday for the transaction of business under this section from 8:00 a.m. to 5:00 p.m. on that Saturday. [1987 c 161 § 1; 1965 c 9 § 29.79.020. Prior: (i) 1913 c 138 § 1, part; RRS § 5397, part. (ii) 1913 c 138 § 6, part; RRS § 5402, part. (iii) 1913 c 138 § 5, part; RRS § 5401, part. (iv) 1913 c 138 § 7, part; RRS § 5403, part.]

Initiative, referendum, time for filing: State Constitution Art. 2 § 1 (a) and (d) (Amendment 7).

Petitions—Time for filing: RCW 29.79.140.

29.79.030 Numbering—Transmittal to attorney general. The secretary of state shall give a serial number to each initiative or referendum measure, using a separate series for initiatives to the legislature, initiatives to the people, and referendum measures, and forthwith transmit one copy of the measure proposed bearing its serial number to the attorney general. Thereafter a measure shall be known and designated on all petitions, ballots, and proceedings as "Initiative Measure No. . . ." or "Referendum Measure No. . . .". [1982 c 116 § 3; 1965 c 9 § 29.79.030. Prior: 1913 c 138 § 1, part; RRS § 5397, part.]

29.79.040 Ballot title and summary—Formulation by attorney general. Within seven calendar days after the receipt of an initiative or referendum measure the attorney general shall formulate and transmit to the secretary of state a concise statement posed as a question and not to exceed twenty words, bearing the serial number of the measure and a summary of the measure, not to exceed seventy-five words, to follow the statement. The statement may be distinct from the legislative title of the measure, and shall give a true and impartial statement of the purpose of the measure. Neither the statement nor the summary may intentionally be an argument, nor likely to create prejudice, either for or against the measure. Such concise statement shall constitute the ballot title. The ballot title formulated by the attorney

general shall be the ballot title of the measure unless changed on appeal. When practicable, the question posed by the ballot title shall be written in such a way that an affirmative answer to such question and an affirmative vote on the measure would result in a change in then current law, and a negative answer to the question and a negative vote on the measure would result in no change to then current law. [1982 c 116 § 4; 1973 1st ex.s. c 118 § 2; 1965 c 9 § 29.79.040. Prior: 1953 c 242 § 2; 1913 c 138 § 2; RRS § 5398.]

Ballot titles to constitutional amendments and other measures: RCW 29.27.060 through 29.27.067.

29.79.050 Ballot title and summary—Notice. Upon the filing of the ballot title and summary for an initiative or referendum measure in his office, the secretary of state shall forthwith notify by telephone and by mail the person proposing the measure and any other individuals who have made written request for such notification of the exact language of the ballot title. [1982 c 116 § 5; 1973 1st ex.s. c 118 § 3; 1965 c 9 § 29.79.050. Prior: 1913 c 138 § 3, part; RRS § 5399, part.]

29.79.060 Ballot title and summary—Appeal to superior court. If any person is dissatisfied with the ballot title or summary formulated by the attorney general, he or she may, within five days from the filing of the ballot title in the office of the secretary of state appeal to the superior court of Thurston county by petition setting forth the measure, the title or summary formulated by the attorney general, and his or her objections to the ballot title or summary and requesting amendment of the title or summary by the court.

A copy of the petition on appeal together with a notice that an appeal has been taken shall be served upon the secretary of state, upon the attorney general, and upon the person proposing the measure if the appeal is initiated by someone other than that person. Upon the filing of the petition on appeal or at the time to which the hearing may be adjourned by consent of the appellant, the court shall accord first priority to examining the proposed measure, the title or summary prepared by the attorney general, and the objections to that title or summary, may hear arguments, and shall, within five days, render its decision and file with the secretary of state a certified copy of such ballot title or summary as it determines will meet the requirements of RCW 29.27.060 and 29.79.040. The decision of the superior court shall be final. Such appeal shall be heard without costs to either party. [1982 c 116 § 6; 1965 c 9 § 29.79.060. Prior: 1913 c 138 § 3, part; RRS § 5399, part.]

29.79.070 Ballot title and summary—Mailed to proponents and other persons—Appearance on petitions. When the ballot title and summary are finally established, the secretary of state shall file the instrument establishing it with the proposed measure and transmit a copy thereof by mail to the person proposing the measure and to any other individuals who have made written request for such notification. Thereafter such ballot title shall be the title of the measure in all petitions, ballots, and other proceedings in relation thereto. The summary shall appear on all petitions

directly following the ballot title. [1982 c 116 § 7; 1965 c 9 § 29.79.070. Prior: 1913 c 138 § 4, part; RRS § 5400, part.]

29.79.080 Petitions—Paper—Size—Contents. The person proposing the measure shall print blank petitions upon single sheets of paper of good writing quality (including but not limited to newsprint) not less than eleven inches in width and not less than fourteen inches in length. Each petition at the time of circulating, signing, and filing with the secretary of state shall consist of not more than one sheet with numbered lines for not more than twenty signatures, with the prescribed warning and title, shall be in the form required by RCW 29.79.090, 29.79.100, or 29.79.110, as now or hereafter amended, and shall have a full, true, and correct copy of the proposed measure referred to therein printed on the reverse side of the petition. [1982 c 116 § 8; 1973 1st ex.s. c 118 § 4; 1965 c 9 § 29.79.080. Prior: (i) 1913 c 138 § 4, part; RRS § 5400, part. (ii) 1913 c 138 § 9; RRS § 5405.]

29.79.090 Petitions to legislature—Form. Petitions for proposing measures for submission to the legislature at its next regular session, shall be substantially in the following form:

WARNING

Every person who signs this petition with any other than his or her true name, knowingly signs more than one of these petitions, signs this petition when he or she is not a legal voter, or makes any false statement on this petition may be punished by fine or imprisonment or both.

INITIATIVE PETITION FOR SUBMISSION TO THE LEGISLATURE

To the Honorable, Secretary of State of the State of Washington:

We, the undersigned citizens and legal voters of the State of Washington, respectfully direct that this petition and the proposed measure known as Initiative Measure No. and entitled (here set forth the established ballot title of the measure), a full, true, and correct copy of which is printed on the reverse side of this petition, be transmitted to the legislature of the State of Washington at its next ensuing regular session, and we respectfully petition the legislature to enact said proposed measure into law; and each of us for himself or herself says: I have personally signed this petition; I am a legal voter of the State of Washington in the city (or town) and county written after my name, my residence address is correctly stated, and I have knowingly signed this petition only once.

Petitioner's signature	Print name for positive identification	Residence address, street and number, if any	City or Town	County
(Here follow 20 numbered lines divided into columns as below.)				
1-----	-----	-----	-----	-----
2-----	-----	-----	-----	-----
3-----	-----	-----	-----	-----
etc.				

[1982 c 116 § 9; 1965 c 9 § 29.79.090. Prior: 1913 c 138 § 5, part; RRS § 5401, part.]

29.79.100 Petitions to people—Form. Petitions for proposing measures for submission to the people for their approval or rejection at the next ensuing general election, shall be substantially in the following form:

WARNING

Every person who signs this petition with any other than his or her true name, knowingly signs more than one of these petitions, signs this petition when he or she is not a legal voter, or makes any false statement on this petition may be punished by fine or imprisonment or both.

INITIATIVE PETITION FOR SUBMISSION TO THE PEOPLE

To the Honorable, Secretary of State of the State of Washington:

We, the undersigned citizens and legal voters of the State of Washington, respectfully direct that the proposed measure known as Initiative Measure No., entitled (here insert the established ballot title of the measure), a full, true and correct copy of which is printed on the reverse side of this petition, be submitted to the legal voters of the State of Washington for their approval or rejection at the general election to be held on the day of November, 19. . . ; and each of us for himself or herself says: I have personally signed this petition; I am a legal voter of the State of Washington, in the city (or town) and county written after my name, my residence address is correctly stated, and I have knowingly signed this petition only once.

Petitioner's signature	Print name for positive identification	Residence address, street and number, if any	City or Town	County
(Here follow 20 numbered lines divided into columns as below.)				
1-----	-----	-----	-----	-----
2-----	-----	-----	-----	-----
3-----	-----	-----	-----	-----
etc.				

[1982 c 116 § 10; 1965 c 9 § 29.79.100. Prior: 1913 c 138 § 6, part; RRS § 5402, part.]

29.79.110 Referendum petitions—Form. Petitions ordering that acts or parts of acts passed by the legislature be referred to the people at the next ensuing general election, or special election ordered by the legislature, shall be substantially in the following form:

WARNING

Every person who signs this petition with any other than his or her true name, knowingly signs more than one of these petitions, signs this petition when he or she is not a legal voter, or makes any false statement on this petition may be punished by fine or imprisonment or both.

PETITION FOR REFERENDUM

To the Honorable, Secretary of State of the State of Washington:

We, the undersigned citizens and legal voters of the State of Washington, respectfully order and direct that Referendum Measure No., entitled (here insert the established ballot title of the measure) being a (or part or parts of a) bill passed by the legislature of the State of Washington at the last regular (special) session of said legislature, shall be referred to the people of the state for their approval or rejection at the regular (special) election to be held on the day of November, 19. . . ; and each of us for himself or herself says: I have personally signed this petition; I am a legal voter of the State of Washington, in the city (or town) and county written after my name, my residence address is correctly stated, and I have knowingly signed this petition only once.

Petitioner's signature	Print name for positive identification	Residence address, street and number, if any	City or Town	County
(Here follow 20 numbered lines divided into columns as below.)				
1	---	---	---	---
2	---	---	---	---
3	---	---	---	---
etc.				

[1982 c 116 § 11; 1965 c 9 § 29.79.110. Prior: 1913 c 138 § 7, part; RRS § 5403, part.]

29.79.120 Petitions—Signatures—Number necessary. When the person proposing any initiative measure has secured upon such initiative petition a number of signatures of legal voters equal to or exceeding eight percent of the votes cast for the office of governor at the last regular gubernatorial election prior to the submission of the signatures for verification, or when the person or organization demanding any referendum of an act of the legislature or any part thereof has secured upon any such referendum petition a number of signatures of legal voters equal to or exceeding four percent of the votes cast for the office of governor at the last regular gubernatorial election prior to the submission of the signatures for verification, he or they may submit the petition to the secretary of state for filing. [1982 c 116 § 12; 1965 c 9 § 29.79.120. Prior: 1913 c 138 § 11, part;

RRS § 5407, part. See also State Constitution Art. 2 § 1A (Amendment 30), (L. 1955, p. 1860, S.J.R. No. 4).]

29.79.140 Petitions—Time for filing. The time for submitting initiative or referendum petitions to the secretary of state for filing is as follows:

(1) A referendum petition ordering and directing that the whole or some part or parts of an act passed by the legislature be referred to the people for their approval or rejection at the next ensuing general election or a special election ordered by the legislature, must be submitted not more than ninety days after the final adjournment of the session of the legislature which passed the act;

(2) An initiative petition proposing a measure to be submitted to the people for their approval or rejection at the next ensuing general election, must be submitted not less than four months before the date of such election;

(3) An initiative petition proposing a measure to be submitted to the legislature at its next ensuing regular session must be submitted not less than ten days before the commencement of the session. [1965 c 9 § 29.79.140. Prior: 1913 c 138 § 12, part; RRS § 5408, part.]

Initiative, referendum, time for filing: State Constitution Art. 2 § 1 (a) and (d) (Amendment 7).

Measures, petitions, time for filing various types: RCW 29.79.020.

29.79.150 Petitions—Acceptance or rejection by secretary of state. The secretary of state may refuse to file any initiative or referendum petition being submitted upon any of the following grounds:

(1) That the petition is not in the form required by RCW 29.79.090, 29.79.100, or 29.79.110 as now or hereafter amended.

(2) That the petition clearly bears insufficient signatures.

(3) That the time within which the petition may be filed has expired.

In case of such refusal, the secretary of state shall endorse on the petition the word "submitted" and the date, and retain the petition pending appeal.

If none of the grounds for refusal exists, the secretary of state must accept and file the petition. [1982 c 116 § 13; 1965 c 9 § 29.79.150. Prior: (i) 1913 c 138 § 11, part; RRS § 5407, part. (ii) 1913 c 138 § 12, part; RRS § 5408, part.]

29.79.160 Petitions—Review of refusal to accept and file. If the secretary of state refuses to file an initiative or referendum petition when submitted to him for filing, the persons submitting it for filing may, within ten days after his refusal, apply to the superior court of Thurston county for a citation requiring the secretary of state to bring the petitions before the court, and for a writ of mandate to compel him to file it. The application shall take precedence over other cases and matters and shall be speedily heard and determined.

If the court issues the citation, and determines that the petition is legal in form and apparently contains the requisite number of signatures and was submitted for filing within the time prescribed in the Constitution, it shall issue its mandate requiring the secretary of state to file it in his office as of the date of submission for filing.

The decision of the superior court granting a writ of mandate shall be final. [1965 c 9 § 29.79.160. Prior: 1913 c 138 § 13, part; RRS § 5409, part.]

Initiative, referendum, time for filing: State Constitution Art. 2 § 1 (a) and (d) (Amendment 7).

29.79.170 Petitions—Review—Appellate review of superior court's refusal to issue mandate. The decision of the superior court refusing to grant a writ of mandate, may be reviewed by the supreme court within five days after the decision of the superior court. The review shall be considered an emergency matter of public concern, and shall be heard and determined with all convenient speed, and if the supreme court decides that the petitions are legal in form and apparently contain the requisite number of signatures of legal voters, and were filed within the time prescribed in the Constitution, it shall issue its mandate directing the secretary of state to file the petition in his office as of the date of submission. [1988 c 202 § 28; 1965 c 9 § 29.79.170. Prior: 1913 c 138 § 13, part; RRS § 5409, part.]

Rules of court: Writ procedure superseded by RAP 2.1(b), 2.2, 18.22.

Severability—1988 c 202: See note following RCW 2.24.050.

29.79.180 Petitions—Destruction on final refusal. If no appeal is taken from the refusal of the secretary of state to file a petition within the time prescribed, or if an appeal is taken and the secretary of state is not required to file the petition by the mandate of either the superior or the supreme court, the secretary of state shall destroy it. [1965 c 9 § 29.79.180. Prior: 1913 c 138 § 13, part; RRS § 5409, part.]

29.79.190 Petitions—Consolidation into volumes. If the secretary of state accepts and files an initiative or referendum petition upon its being submitted for filing or if he or she is required to file it by the court, he or she shall, in the presence of the person submitting such petition for filing if he or she desires to be present, arrange and assemble the sheets containing the signatures into such volumes as will be most convenient for verification and canvassing and shall consecutively number the volumes and stamp the date of filing on each volume. [1982 c 116 § 14; 1965 c 9 § 29.79.190. Prior: 1913 c 138 § 14; RRS § 5410.]

29.79.200 Petitions—Verification and canvass of signatures, observers—Statistical sampling—Initiatives to legislature, certification of. Upon the filing of an initiative or referendum petition, the secretary of state shall proceed to verify and canvass the names of the legal voters on the petition. The verification and canvass of signatures on the petition may be observed by persons representing the advocates and opponents of the proposed measure so long as they make no record of the names, addresses, or other information on the petitions or related records during the verification process except upon the order of the superior court of Thurston county. The secretary of state may limit the number of observers to not less than two on each side, if in his or her opinion, a greater number would cause undue delay or disruption of the verification process. Any such limitation shall apply equally to both sides. The secretary of state may use any statistical sampling techniques for this

verification and canvass which have been adopted by rule as provided by chapter 34.05 RCW. No petition will be rejected on the basis of any statistical method employed, and no petition will be accepted on the basis of any statistical method employed if such method indicates that the petition contains less than one hundred ten percent of the requisite number of signatures of legal voters. If the secretary of state finds the same name signed to more than one petition, he or she shall reject all but the first such valid signature. For an initiative to the legislature, the secretary of state shall transmit a certified copy of the proposed measure to the legislature at the opening of its session and, as soon as the signatures on the petition have been verified and canvassed, the secretary of state shall send to the legislature a certificate of the facts relating to the filing, verification, and canvass of the petition. [1982 c 116 § 15; 1977 ex.s. c 361 § 105; 1969 ex.s. c 107 § 1; 1965 c 9 § 29.79.200. Prior: 1933 c 144 § 1; 1913 c 138 § 15; RRS § 5411.]

Effective date—Severability—1977 ex.s. c 361: See notes following RCW 29.01.006.

29.79.210 Petitions to legislature—Count of signatures—Review. Any citizen dissatisfied with the determination of the secretary of state that an initiative or referendum petition contains or does not contain the requisite number of signatures of legal voters may, within five days after such determination, apply to the superior court of Thurston county for a citation requiring the secretary of state to submit the petition to said court for examination, and for a writ of mandate compelling the certification of the measure and petition, or for an injunction to prevent the certification thereof to the legislature, as the case may be. Such application and all proceedings had thereunder shall take precedence over other cases and shall be speedily heard and determined.

The decision of the superior court granting or refusing to grant the writ of mandate or injunction may be reviewed by the supreme court within five days after the decision of the superior court, and if the supreme court decides that a writ of mandate or injunction, as the case may be, should issue, it shall issue the writ directed to the secretary of state; otherwise, it shall dismiss the proceedings. The clerk of the supreme court shall forthwith notify the secretary of state of the decision of the supreme court. [1988 c 202 § 29; 1965 c 9 § 29.79.210. Prior: 1913 c 138 § 17; RRS § 5413.]

Rules of court: Writ procedure superseded by RAP 2.1(b), 2.2, 18.22.

Severability—1988 c 202: See note following RCW 2.24.050.

29.79.230 Initiatives and referenda to voters—Certificates of sufficiency. If a referendum or initiative petition for submission of a measure to the people is found sufficient, the secretary of state shall at the time and in the manner that he certifies to the county auditors of the various counties the names of candidates for state and district officers certify to each county auditor the serial numbers and ballot titles of the several initiative and referendum measures to be voted upon at the next ensuing general election or special election ordered by the legislature. [1965 c 9 § 29.79.230. Prior: 1913 c 138 § 19; RRS § 5415.]

29.79.250 Referendum bills by legislature—Serial numbering. Whenever any bill passed by the legislature

shall be by the legislature referred to the people for their approval or rejection at the next ensuing general election or at a special election ordered by the legislature, the secretary of state shall give such bill a serial number, using a separate series, such series being designated "Referendum bills." [1965 c 9 § 29.79.250. Prior: 1913 c 138 § 20, part; RRS § 5416, part.]

29.79.260 Referendum bills by legislature—Ballot title. If the legislature did not prescribe a ballot title the secretary of state shall obtain from the attorney general a ballot title therefor in the manner provided for obtaining ballot titles for initiative measures, and shall certify the serial number and ballot title of such bill to the county auditors for printing on the ballots for such general or special election in like manner as initiative measures for submission to the people are certified. [1965 c 9 § 29.79.260. Prior: 1913 c 138 § 20, part; RRS § 5416, part.]

29.79.270 Rejected initiative to legislature treated as referendum bill. Whenever any measure proposed by initiative petition for submission to the legislature is rejected by the legislature or the legislature takes no action thereon before the end of the regular session at which it is submitted, the secretary of state shall certify the serial number and ballot title thereof to the county auditors for printing on the ballots at the next ensuing general election in like manner as initiative measures for submission to the people are certified. [1965 c 9 § 29.79.270. Prior: 1913 c 138 § 21; RRS § 5417.]

29.79.280 Substitute for rejected initiative treated as referendum bill. If the legislature, having rejected a measure submitted to it by initiative petition, proposes a different measure dealing with the same subject, the secretary of state shall give that measure the same number as that borne by the initiative measure followed by the letter "B." Such measure so designated as "Alternative Measure No. . . . B," together with the ballot title thereof, when ascertained, shall be certified by the secretary of state to the county auditors for printing on the ballots for submission to the voters for their approval or rejection in like manner as initiative measures for submission to the people are certified. [1965 c 9 § 29.79.280. Prior: 1913 c 138 § 22, part; RRS § 5418, part.]

29.79.290 Substitute for rejected initiative—Ballot title. For a measure designated by him as "Alternative Measure No. . . . B," the secretary of state shall obtain from the attorney general a ballot title in the manner provided for obtaining ballot titles for initiative measures. The ballot title therefor shall be different from the ballot title of the measure in lieu of which it is proposed, and shall indicate, as clearly as possible, the essential differences in the measure. [1965 c 9 § 29.79.290. Prior: 1913 c 138 § 22, part; RRS § 5418, part.]

29.79.300 Printing ballot titles on ballots—Order and form. The county auditor of each county shall cause to be printed on the official ballots for the election at which initiative and referendum measures are to be submitted to the

people for their approval or rejection the serial numbers and ballot titles, certified by the secretary of state. They shall appear under separate headings in the order of the serial numbers as follows:

(1) Measures proposed for submission to the people by initiative petition shall be under the heading, "Proposed by Initiative Petition";

(2) Bills passed by the legislature and ordered referred to the people by referendum petition shall be under the heading, "Passed by the Legislature and Ordered Referred by Petition";

(3) Bills passed and referred to the people by the legislature shall be under the heading, "Proposed to the People by the Legislature";

(4) Measures proposed to the legislature and rejected or not acted upon shall be under the heading, "Proposed to the Legislature and Referred to the People";

(5) Measures proposed to the legislature and alternative measures passed by the legislature in lieu thereof shall be under the heading, "Initiated by Petition and Alternative by Legislature." [1965 c 9 § 29.79.300. Prior: 1913 c 138 § 23; RRS § 5419.]

29.79.310 Form of ballot. Except in the case of alternative voting on a measure initiated by petition, for which a substitute has been passed by the legislature, each measure submitted to the people for approval or rejection shall be so printed on the ballot, under the proper heading, that a voter can, by making one choice, express his or her approval or rejection of such measure. Substantially the following form shall be a compliance with this section:

INITIATIVE MEASURE

(Here insert the ballot title of the measure.)

YES
NO

[1982 c 116 § 16; 1965 c 9 § 29.79.310. Prior: 1913 c 138 § 24; RRS § 5420.]

29.79.320 Form of ballot for alternative measures. If an initiative measure proposed to the legislature has been rejected by the legislature and an alternative measure is passed by the legislature in lieu thereof the serial numbers and ballot titles of both such measures shall be so printed on the official ballots that a voter can express separately by making one cross (X) for each, two preferences: First, as between either measure and neither, and secondly, as between one and the other, as provided in the Constitution. Substantially the following form shall be a compliance with the constitutional provision:

INITIATED BY PETITION AND
ALTERNATIVE BY LEGISLATURE

Initiative Measure No. 25, entitled (here insert the ballot title of the initiative measure).

Alternative Measure No. 25B, entitled (here insert the ballot title of the alternative measure).

VOTE FOR EITHER, OR AGAINST BOTH

- FOR EITHER Initiative No. 25 OR Alternative No. 25B
- AGAINST Initiative No. 25 AND Alternative No. 25B

and vote FOR one.

- FOR Initiative Measure No. 25
- FOR Alternative Measure No. 25B

[1965 c 9 § 29.79.320. Prior: 1913 c 138 § 25; RRS § 5421.]

Ballot requisites: State Constitution Art. 2 § 1(a).

29.79.440 Violations by signers. Every person who signs an initiative or referendum petition with any other than his true name shall be guilty of a felony. Every person who knowingly signs more than one petition for the same initiative or referendum measure or who signs an initiative or referendum petition knowing that he is not a legal voter or who makes a false statement as to his residence on any initiative or referendum petition, shall be guilty of a gross misdemeanor. [1965 c 9 § 29.79.440. Prior: 1913 c 138 § 31; RRS § 5427. Formerly also RCW 29.79.450, 29.79.460, and 29.79.470.]

Misconduct in signing a petition: RCW 9.44.080.

Only registered voters may vote—Exception: RCW 29.04.010.

Registration, information from voter as to qualifications: RCW 29.07.070.

Residence

contingencies affecting: State Constitution Art. 6 § 4. defined: RCW 29.01.140.

29.79.480 Violations by officers. Every officer who wilfully violates any of the provisions of this chapter or chapter 29.81 RCW, for the violation of which no penalty is herein prescribed, or who wilfully fails to comply with the provisions of this chapter or chapter 29.81 RCW, shall be guilty of a gross misdemeanor. [1965 c 9 § 29.79.480. Prior: 1913 c 138 § 32, part; RRS § 5428, part.]

29.79.490 Violations—Corrupt practices. Every person shall be guilty of a gross misdemeanor who:

- (1) For any consideration or gratuity or promise thereof, signs or declines to sign any initiative or referendum petition; or
- (2) Advertises in any manner that for or without consideration, he will solicit or procure signatures upon or influence or attempt to influence persons to sign or not to sign, to vote or not to vote upon an initiative or referendum petition, or to vote for or against any initiative or referendum; or
- (3) For any consideration or gratuity or promise thereof solicits or procures signatures upon an initiative or referendum petition; or
- (4) Gives or offers any consideration or gratuity to any person to induce him to sign or not to sign, or to solicit or procure signatures upon an initiative or referendum petition, or to vote for or against any initiative or referendum measure; or
- (5) Interferes with or attempts to interfere with the right of any voter to sign or not to sign an initiative or referendum

petition or with the right to vote for or against an initiative or referendum measure by threats, intimidation, or any other corrupt means or practice; or

(6) Receives, handles, distributes, pays out, or gives away, directly or indirectly, money or any other thing of value contributed by or received from any person, firm, association, or corporation whose residence or principal office is, or the majority of whose members or stockholders have their residence outside, the state of Washington, for any service rendered for the purpose of aiding in procuring signatures upon any initiative or referendum petition or for the purpose of aiding in the adoption or rejection of any initiative or referendum measure: PROVIDED, That this subsection shall not apply to or prohibit any activity which is properly reported in accordance with the applicable provisions of chapter 42.17 RCW. [1975-'76 2nd ex.s. c 112 § 2; 1965 c 9 § 29.79.490. Prior: 1913 c 138 § 32, part; RRS § 5428, part.]

Construction—Severability—1975-'76 2nd ex.s. c 112: See RCW 42.17.945 and 42.17.912.

Chapter 29.80

CANDIDATES' PAMPHLET

Sections

- 29.80.010 Contents—Publication.
- 29.80.020 Statement and photograph filed by nominee, date.
- 29.80.030 Rejection of statements containing obscene, libelous, etc., language—Certain insignias, uniforms prohibited in photographs—Board of review, appeal by nominee.
- 29.80.040 Publication, date—Dimensions—Consolidation with voters' pamphlet.
- 29.80.050 Charges to nominees for space—Minimum space allocations.
- 29.80.060 Classification and distribution by county—Order of appearance in pamphlet.
- 29.80.070 Rules and regulations.
- 29.80.080 Taped and braille transcripts.
- 29.80.090 Additional information.

Voters' pamphlet: Chapter 29.81 RCW.

29.80.010 Contents—Publication. As soon as possible before each state general election at which federal or state officials are to be elected, the secretary of state shall publish and mail to each individual place of residence of the state a candidates' pamphlet containing photographs and campaign statements of eligible nominees who desire to participate therein, together with a campaign mailing address and telephone number submitted by the nominee at the nominee's option, and in even-numbered years containing a description of the office of precinct committee officer and its duties, in order that voters will understand that the office is a state office and will be found on the ballot of the forthcoming general election. In odd-numbered years no candidates' pamphlet may be published unless an election is to be held to fill a vacancy in one or more of the following state-wide elective offices: United States senator, governor, lieutenant governor, secretary of state, state treasurer, state auditor, attorney general, superintendent of public instruction, commissioner of public lands, insurance commissioner, or justice of the supreme court. [1987 c 295 § 17; 1984 c 54 § 1; 1977 ex.s. c 361 § 106; 1975-'76 2nd ex.s. c 4 § 2; 1973 c 4 § 8; 1965 c 9 § 29.80.010. Prior: 1959 c 329 § 19.]

Severability—1984 c 54: "If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1984 c 54 § 8.]

Effective date—Severability—1977 ex.s. c 361: See notes following RCW 29.01.006.

29.80.020 Statement and photograph filed by nominee, date. At a time to be determined by the secretary of state, but in any event not later than forty-five days before the applicable state general election, each nominee for the office of United States senator, United States representative, governor, lieutenant governor, secretary of state, state treasurer, state auditor, attorney general, superintendent of public instruction, commissioner of public lands, insurance commissioner, state senator, state representative, justice of the supreme court, judge of the court of appeals, or judge of the superior court may file with the secretary of state a written statement advocating his or her candidacy accompanied by the campaign mailing address and telephone number submitted by the nominee at the nominee's option, and a photograph not more than five years old and of a size and quality that the secretary of state determines to be suitable for reproduction in the voters' pamphlet. The maximum number of words for the statements shall be determined according to the offices sought as follows: State representative, one hundred words; state senator, judge of the superior court, judge of the court of appeals, justice of the supreme court, and all state offices voted upon throughout the state, except that of governor, two hundred words; United States senator, United States representative, and governor, three hundred words. No such statement or photograph may be printed in the candidates' pamphlet for any person who is the sole nominee for any nonpartisan or judicial office. [1984 c 54 § 2; 1971 ex.s. c 145 § 1; 1971 c 81 § 78; 1965 c 9 § 29.80.020. Prior: 1959 c 329 § 20.]

Severability—1984 c 54: See note following RCW 29.80.010.

Severability—1971 ex.s. c 145: "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 145 § 8.]

29.80.030 Rejection of statements containing obscene, libelous, etc., language—Certain insignias, uniforms prohibited in photographs—Board of review, appeal by nominee. (1) The secretary of state shall reject any statement offered for filing, which, in his opinion, contains any obscene, profane, libelous or defamatory matter, or any language or matter, the circulation of which through the mails is prohibited by congress. Nor shall any nominee submit a photograph showing the uniform or insignia of any organization which advocates or teaches racial or religious intolerance.

(2) Within five days after such rejection the persons submitting such statement for filing may appeal to a board of review, consisting of the superintendent of public instruction, attorney general and the lieutenant governor. The decision of such board shall be final upon the acceptance or rejection of the matter thus in controversy. [1979 ex.s. c 57 § 4; 1965 c 9 § 29.80.030. Prior: 1959 c 329 § 21.]

29.80.040 Publication, date—Dimensions—Consolidation with voters' pamphlet. The nominees' statements, photographs, and the addresses and telephone numbers submitted by them as set forth in RCW 29.80.010 and 29.80.020 shall be published by the secretary of state as a candidates' pamphlet, the printing of which shall be completed as soon as possible before the state general election concerned. The overall dimensions of the pamphlet shall be determined by the secretary of state as those which in the secretary's judgment best serve the voters, and whenever possible the candidates' pamphlet shall be combined with the voters' pamphlet as a single publication. [1984 c 54 § 3; 1971 ex.s. c 145 § 2; 1965 c 9 § 29.80.040. Prior: 1959 c 329 § 22.]

Severability—1984 c 54: See note following RCW 29.80.010.

Severability—1971 ex.s. c 145: See note following RCW 29.80.020.

Voters' pamphlet: Chapter 29.81 RCW.

29.80.050 Charges to nominees for space—Minimum space allocations. Nominees shall pay for their prorated space in the candidates' pamphlet allocated according to the respective offices sought as follows:

(1) For United States senator, United States representative and governor, each shall pay two hundred dollars. The nominees for each position shall equally share no less than two full pages.

(2) For all state offices voted upon throughout the state, except for that of governor, each shall pay one hundred dollars. The nominees for each position shall equally share no less than one full page.

(3) For state senator, judge of the court of appeals and judge of the superior court, each shall pay fifty dollars. The nominees for each position shall equally share no less than one full page.

(4) For state representative, each shall pay twenty-five dollars. The nominees for each position shall equally share no less than one-half page.

All such payments shall be made to the secretary of state when the statement is offered to him for filing and be transmitted by him to the public printer to be used as a credit offset to the cost of printing the candidates' and voters' pamphlet.

Nominees for president and vice president of each political party certified by the secretary of state shall together be entitled to one page without charge. Each such page so allocated shall not contain more than five hundred words in addition to the pictures of the nominees concerned. [1971 ex.s. c 145 § 3; 1965 c 9 § 29.80.050. Prior: 1959 c 329 § 23.]

Severability—1971 ex.s. c 145: See note following RCW 29.80.020.

29.80.060 Classification and distribution by county—Order of appearance in pamphlet. Whenever practical, the secretary of state shall cause the pamphlets to be printed so that no candidate's picture or statement shall be included in the copy of the pamphlet going to any county where such candidate is not to be voted for.

The candidates' photographs and statements shall appear in the pamphlet in the same sequence as the positions sought appear on the state general election ballot. [1965 c 9 § 29.80.060. Prior: 1959 c 329 § 24.]

29.80.070 Rules and regulations. The secretary of state, as chief election officer, shall make rules and regulations, not inconsistent with this chapter, to facilitate and clarify any procedures contained herein. [1965 c 9 § 29.80.070. Prior: 1959 c 329 § 25.]

29.80.080 Taped and braille transcripts. The secretary of state shall mail without charge taped transcripts of the candidates' pamphlet to any requesting blind person or organization representing the blind. Braille transcripts may also be mailed by the secretary of state to such persons or organizations. Availability of these transcripts shall be publicized by the secretary of state through public service announcements and other appropriate means. [1981 c 243 § 1.]

29.80.090 Additional information. In addition to other contents included in the candidates' pamphlet, the secretary of state shall prepare and include a section containing (1) a brief explanation of how voters may participate in the election campaign process; (2) the name, address, and telephone number of each political party that has one or more nominees listed in the candidates' pamphlet, but this information shall be included in the candidates' pamphlet only if and as filed with the secretary of state by the state committee of a major political party or the presiding officer of the convention of a minor political party; (3) the address and telephone number of the public disclosure commission established under RCW 42.17.350; (4) a summary of the disclosure requirements that apply when contributions are made to candidates and political committees; and (5) an explanation of the federal income tax credits and deductions that are available to persons who make such contributions. Whenever the candidates' pamphlet is combined with the voters' pamphlet, the section shall be placed at or near the beginning of the combined publication. [1984 c 54 § 7.]

Severability—1984 c 54: See note following RCW 29.80.010.

**Chapter 29.81
VOTERS' PAMPHLET**

Sections

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Candidates' pamphlet: Chapter 29.80 RCW.

29.81.010 Contents, how organized. The voters' pamphlet shall contain as to each state measure to be voted upon, the following in the order set forth in this section:

(1) Upon the top portion of the first two opposing pages relating to the measure and not exceeding one-third of the total printing area shall appear:

(a) The legal identification of the measure by serial designation and number;

(b) The official ballot title of the measure;

(c) A brief statement explaining the law as it presently exists;

(d) A brief statement explaining the effect of the proposed measure should it be approved into law;

(e) The total number of votes cast for and against the measure in both the state senate and house of representatives if the measure has been passed by the legislature;

(f) A heavy double ruled line across both pages to clearly set apart the above items from the remaining text.

(2) Upon the lower portion of the left page of the two facing pages shall appear an argument advocating the voters' approval of the measure together with any rebuttal statement of the opposing argument as provided in RCW 29.81.030, 29.81.040, or 29.81.050.

(3) Upon the lower portion of the right hand page of the two facing pages shall appear an argument advocating the voters' rejection of the measure together with any rebuttal statement of the opposing argument as provided in RCW 29.81.030, 29.81.040, or 29.81.050.

(4) Following each argument or rebuttal statement each member of the committee advocating for or against a measure shall be listed by name and address to the end that the public shall be fully apprised of the advocate's identity. Also, following each argument or rebuttal statement, the secretary of state shall list, at the option of the committee that submitted the argument or statement, a telephone number that citizens may call in order to obtain information on the ballot measure.

(5) At the conclusion of the pamphlet the full text of each of the measures shall appear. The text of the proposed constitutional amendments shall be set forth in the form provided for in RCW 29.81.080. [1984 c 54 § 4; 1973 1st ex.s. c 143 § 1; 1965 c 9 § 29.81.010. Prior: 1959 c 329 § 1. Formerly RCW 29.79.3502.]

Severability—1984 c 54: See note following RCW 29.80.010.

Publicity of law, parts of law, and amendments to Constitution referred to people: State Constitution Art. 2 § 1(e) (Amendment 36).

29.81.011 Telephone number, date submitted. Any telephone number to be printed in a voters' pamphlet at the option of a committee, as described in RCW 29.81.010(4), must be submitted by the fifteenth day of August preceding the election for which the pamphlet is published. [1984 c 54 § 5.]

Severability—1984 c 54: See note following RCW 29.80.010.

29.81.012 Application forms for absentee ballots included. In addition to any other contents required by this chapter, every voters' pamphlet published shall contain an application form for a state general election absentee ballot. Upon receipt of the form from a qualified applicant for an absentee ballot, the appropriate election officer shall send the applicant an absentee ballot. [1984 c 54 § 6; 1969 ex.s. c 72 § 1.]

Severability—1984 c 54: See note following RCW 29.80.010.

29.81.014 Information on precinct caucuses and presidential nominations. (1) In each odd-numbered year immediately preceding a year in which a president of the United States is to be nominated and elected, the voter's pamphlet shall contain an insert or a detachable section explaining the precinct caucus and convention process utilized by each major political party to elect delegates to its national presidential candidate nominating convention. The information to be provided shall include, but not be limited to: (a) The dates of precinct caucuses, (b) instructions as to how to ascertain the names of current precinct committeepersons, precinct caucus chairpersons, the locations of precinct caucus meeting places, and the dates of county, district, and state conventions, (c) a description of the rules of procedure which will be used at caucuses and conventions, (d) the formulas utilized to allocate delegates elected at caucuses and conventions, and (e) a description of the other actions which may be taken at the caucuses and conventions in addition to selecting delegates. The content and format of this section of the voter's pamphlet shall be established by the secretary of state after consultation with the chairperson of the state central committee of each major political party, or his or her designated representative.

(2) The voter's pamphlet shall also provide a description of the statutory procedures by which minor political parties are formed and the statutory methods utilized by such parties to nominate candidates for president. The content and format of this description shall be established by the secretary of state. [1977 c 56 § 1.]

29.81.020 Explanatory statement by attorney general, appeal, judicial statement—Arguments and rebuttal statements by committees. (1) The attorney general shall prepare the explanatory statements required to be presented on the top portion of the two facing pages relating to each measure. Such statements shall be prepared in clear and concise language and shall avoid the use of legal and other technical terms insofar as possible. Any person dissatisfied with the explanatory statement so prepared may at any time within ten days from the filing thereof in the office of the secretary of state appeal to the superior court of Thurston county by petition setting forth the measure, the explanatory statement prepared by the

attorney general, and his objection thereto and praying for the amendment thereof. A copy of the petition and a notice of such appeal shall be served on the secretary of state and the attorney general. The court shall, upon filing of the petition, examine the measure, the explanatory statement, and the objections thereto and may hear argument thereon and shall, as soon as possible, render its decision and certify to and file with the secretary of state such explanatory statement as it determines will meet the requirements of this chapter. The decision of the superior court shall be final and its explanatory statement shall be the established explanatory statement. Such appeal shall be heard without costs to either party.

(2) Arguments and rebuttal statements advocating the voters' approval or rejection of any measure shall be prepared and submitted for printing by the committees created pursuant to RCW 29.81.030, 29.81.040 and 29.81.050. Such arguments and rebuttal statements shall be the arguments and rebuttal statements and no other arguments or rebuttal statements shall appear in the pamphlet as to such measure. Arguments may contain graphs and charts, supported by factual statistical data and pictures or other illustrations, but cartoons or caricatures shall not be permitted. [1973 1st ex.s. c 143 § 2; 1965 c 9 § 29.81.020. Prior: 1959 c 329 § 2. Formerly RCW 29.79.3506.]

29.81.030 Preparation of arguments advocating approval of constitutional amendment, referendum bill—Committee membership. Arguments advocating voters' approval of any proposed constitutional amendment or referendum bill shall be composed and submitted for printing by a committee created as follows: The presiding officer of the state senate shall appoint one state senator known to favor the measure and the presiding officer of the house of representatives shall appoint one state representative known to favor the measure. The two persons so appointed shall appoint a third member to the committee who may or may not be a member of the legislature. If no member of the legislature can be enlisted to serve on such committee, then a committee composed of the secretary of state, the presiding officer of the senate, and the presiding officer of the house of representatives shall appoint any persons who are, in their judgment, qualified to serve in such capacity. [1973 1st ex.s. c 143 § 3; 1965 c 9 § 29.81.030. Prior: 1959 c 329 § 3. Formerly RCW 29.79.3510.]

29.81.040 Preparation of arguments advocating rejection of constitutional amendment, referendum bill—Committee membership. Arguments advocating voters' rejection of any proposed constitutional amendment or referendum bill passed by the legislature and referred to the people for final decision and rebuttal statements of arguments advocating approval of such measures shall be composed and submitted for printing by a committee created as follows: The presiding officer of the state senate shall appoint one state senator and the presiding officer of the house of representatives shall appoint one state representative. Whenever possible, the two persons so appointed shall be known to have opposed the measure and they shall appoint a third member to the committee who may or may not be a member of the legislature. If no member of the

legislature can be enlisted to serve on such committee, then a committee composed of the secretary of state, the presiding officer of the house and the presiding officer of the senate shall appoint any persons who are, in their judgment, qualified to serve in such capacity. [1973 1st ex.s. c 143 § 4; 1971 ex.s. c 145 § 4; 1965 c 9 § 29.81.040. Prior: 1959 c 329 § 4. Formerly RCW 29.79.3514.]

Severability—1971 ex.s. c 145: See note following RCW 29.80.020.

29.81.042 Time for submission of arguments to secretary of state. The committees appointed to compose the arguments to appear in the voters' pamphlet pursuant to RCW 29.81.030 and 29.81.040 shall submit such arguments, not to exceed two hundred fifty words in length, to the secretary of state no later than the first day of June preceding the election at which the measures will appear. In the event that a committee appointed pursuant to RCW 29.81.030 or 29.81.040 fails to submit its argument prior to the first day of June preceding the election, the secretary of state, the presiding officer of the house of representatives, and the presiding officer of the state senate shall appoint any persons who are, in their judgment, qualified to compose such an argument. Any additional committee so appointed shall have until the last day of June preceding the election on the measure to compose and submit the appropriate argument. [1973 1st ex.s. c 143 § 6.]

29.81.043 Transmittal of arguments to committees—Rebuttal arguments. On or before the first day of July preceding the election, the secretary of state shall transmit each argument submitted advocating approval of a constitutional amendment or referendum bill to the committee appointed to compose the argument against the same measure and transmit each argument submitted advocating rejection of a constitutional amendment or referendum bill to the committee appointed to compose the argument in favor of the same measure. The committees concerned may submit rebuttal arguments, not to exceed seventy-five words in length, addressing statements made by the opposing committee, but interjecting no new issue no later than the fifteenth day of July preceding the election at which the measure is to appear. [1973 1st ex.s. c 143 § 7.]

29.81.050 Initiatives and referendums—Arguments and rebuttals by committees for and against. Arguments advocating voters' approval of any initiative measure or any act passed by the legislature and referred to the people by referendum petition and rebuttal statements of arguments advocating rejection of such measures shall be composed and submitted for printing by a committee created as follows:

The presiding officer of the state senate, the presiding officer of the house of representatives, and the secretary of state shall together appoint two persons known to favor the measure to serve on the committee. The two persons so appointed shall appoint a third person to the committee.

Arguments advocating voters' rejection of any initiative measure or any act passed by the legislature and referred to the people by referendum petition and rebuttal statements of arguments advocating approval of such measures shall be composed and submitted for printing by a committee created as follows:

The presiding officer of the state senate, the presiding officer of the house of representatives, and the secretary of state shall together appoint two persons to serve on the committee. Whenever possible, the two persons so appointed shall be known to have opposed the measure. The two persons so appointed shall appoint a third person to the committee. [1973 1st ex.s. c 143 § 5; 1965 c 9 § 29.81.050. Prior: 1959 c 329 § 5. Formerly RCW 29.79.3518.]

29.81.052 Time for submission of arguments to secretary of state. The committees appointed to compose the arguments to appear in the voters' pamphlet pursuant to RCW 29.81.050 shall submit such arguments, not to exceed two hundred fifty words in length, no later than the last day of July preceding the election at which the measures will appear. [1973 1st ex.s. c 143 § 8.]

29.81.053 Transmittal of arguments to committees—Rebuttal arguments. On or before the first day of August preceding the election, the secretary of state shall transmit each argument submitted advocating approval of an initiative measure or any act passed by the legislature and referred to the people by referendum petition to the committee appointed to compose the argument against the same measure and transmit each argument submitted advocating rejection of an initiative measure or any act passed by the legislature and referred to the people by referendum petition to the committee appointed to compose the argument in favor of the measure. The committees concerned may submit rebuttal arguments not to exceed seventy-five words in length addressing statements made by the opposing committee, but interjecting no new issue no later than the fifteenth day of August preceding the election at which the measure is to appear. [1973 1st ex.s. c 143 § 9.]

29.81.060 Committees—Chairmen, advisory members, vacancies. Committees created pursuant to RCW 29.81.030, 29.81.040 and 29.81.050 shall elect from their members a chairman to conduct the business of the committee. Each committee may name other persons, not to exceed five, to serve as advisory committee members without vote.

In the event of a vacancy or vacancies in one of the committees, the remaining committee members or member, shall fill such vacancy or vacancies by appointment. Should any vacancy not be filled within fifteen days after it first occurs, the secretary of state shall fill such vacancy by appointment. [1965 c 9 § 29.81.060. Prior: 1959 c 329 § 6. Formerly RCW 29.79.3522.]

29.81.070 Rules and regulations by secretary of state. The secretary of state shall promulgate such rules and regulations as may be necessary to facilitate the provisions of this chapter including but not limited to the setting of final dates for the appointment of committees, for the filing of arguments and explanatory statements with his office, and for filing with his office a notice of any judicial review concerning the provisions of this chapter. [1965 c 9 § 29.81.070. Prior: 1959 c 329 § 7. Formerly RCW 29.79.3526.]

29.81.080 Manner and style of printing proposed constitutional amendments. Any proposed constitutional amendment which amends any part of the Constitution as it then exists shall be set forth in the following form: All deleted matter shall be set in italics and enclosed in brackets and all new material shall be underlined and there shall appear in bold face type between the caption and the body of the amendment, the following statement: "All words printed in italics are in the Constitution at the present and are being taken out by this amendment. All words underscored do not appear in the Constitution as it now is written but will be put in if this amendment is adopted." PROVIDED, That if in the opinion of the secretary of state the proposed amendment is so extensive that the foregoing method is not practical then, in that case, the section of the Constitution as it stands at the time of the election and the Constitution as it will appear if amended shall be printed on facing pages headed in bold face type by the words "the Constitution as it is before amendment" and "the Constitution as it will be if amended". [1965 c 9 § 29.81.080. Prior: 1959 c 329 § 8. Formerly RCW 29.79.3530.]

29.81.090 Refusal of arguments containing obscene, libelous, treasonable, etc., language—Board of censors, appeal by committee. If in the opinion of the secretary of state any argument offered for filing contains any obscene, vulgar, profane, scandalous, libelous, defamatory, or treasonable matter, or any language tending to provoke crime or a breach of the peace, or any language or matter the circulation of which through the mails is prohibited by any act of congress, the secretary of state shall refuse to file it: PROVIDED, That the committee submitting such argument for filing may appeal to a board of censors consisting of the lieutenant governor, the attorney general and the superintendent of public instruction, and the decision of a majority of such board shall be final. [1979 ex.s. c 57 § 5; 1965 c 9 § 29.81.090. Prior: 1959 c 329 § 18; prior: 1933 c 144 § 4, part; 1929 c 130 § 1, part; 1913 c 138 § 26, part; RRS § 5422, part. Formerly RCW 29.79.360.]

29.81.100 Publication of pamphlets—Arrangement of material. As soon as possible prior to any state general election at which any initiative measure, referendum measure, or amendment to the state Constitution is to be submitted to the people, the secretary of state shall cause to be printed in pamphlet form a true copy of the serial designation or number, the ballot title, the legislative title, if any, the full text of and the arguments for and arguments against each such measure to be submitted to the people, and such other information pertaining to elections as may be required by law or in the judgment of the secretary of state is deemed informative to the voters. [1973 c 4 § 9; 1971 ex.s. c 145 § 5; 1965 c 9 § 29.81.100. Prior: 1959 c 329 § 10; prior: 1917 c 30 § 1, part; 1913 c 138 § 27, part; RRS § 5423, part. Formerly RCW 29.79.370.]

Severability—1971 ex.s. c 145: See note following RCW 29.80.020.

29.81.110 Order of measures and arguments. All measures and arguments shall be printed in the following order:

- (1) Those "Proposed by Initiative Petition";

- (2) Those "Proposed to the People by the Legislature";
- (3) Those "Proposed to the Legislature and Referred to the People";
- (4) Those "Initiated by Petition and Alternative by the Legislature";
- (5) "Amendments to the Constitution Proposed by the Legislature"; and
- (6) "Measures Recommending Constitutional Conventions". [1965 c 9 § 29.81.110. Prior: 1959 c 329 § 11; prior: 1917 c 30 § 1, part; 1913 c 138 § 27, part; RRS § 5423, part. Formerly RCW 29.79.380.]

29.81.120 Printing specifications and make-up of measures and arguments. All measures and arguments shall be printed and bound in a single pamphlet according to the following specifications:

- (1) It shall be printed in clear readable type;
- (2) The pamphlet shall be of such size and be printed on a quality and weight of paper which in the judgment of the secretary of state best serves the voters.

It shall be the duty of the secretary of state to publish in such pamphlets a table of contents and a brief alphabetical index of subjects. [1971 ex.s. c 145 § 6; 1965 c 9 § 29.81.120. Prior: 1959 c 329 § 12; prior: 1917 c 30 § 1, part; 1913 c 138 § 27, part; RRS § 5423, part. Formerly RCW 29.79.300.]

Severability—1971 ex.s. c 145: See note following RCW 29.80.020.

29.81.130 Costs of printing and binding. The cost of printing and binding such pamphlets including the printing of arguments shall be paid from the moneys appropriated for printing for the secretary of state. [1965 c 9 § 29.81.130. Prior: 1959 c 329 § 13; prior: 1917 c 30 § 1, part; 1913 c 138 § 27, part; RRS § 5423, part. Formerly RCW 29.79.400.]

29.81.140 Distribution to voters. As soon as possible before any election at which initiative or referendum measures, referendum bills, proposed constitutional amendments, or any other state measures are to be submitted to the people, the secretary of state shall transmit, by mail with postage fully prepaid, one copy of the pamphlet to each individual place of residence in the state and shall make such additional distribution as he shall deem necessary to reasonably assure that each voter will have an opportunity to study the measures prior to election. [1971 ex.s. c 145 § 7; 1965 c 9 § 29.81.140. Prior: 1913 c 138 § 29, part; RRS § 5425, part. Formerly RCW 29.79.410.]

Severability—1971 ex.s. c 145: See note following RCW 29.80.020.

29.81.150 Distribution to officers and institutions. The secretary of state shall transmit by the least expensive means, copies of the pamphlet as follows:

- (1) Two copies to:
 - Each state officer and each member of a state board;
 - Each county officer;
 - Each judge of the supreme and superior courts;
 - Each public library;
 - Each member of the legislature;
- (2) Three copies to:

Each voting precinct in the state, by transmittal through the county auditor of each county for the precincts in his county for the information of voters at the polls;

Each educational, charitable, penal, and reformatory institution of the state for its library;

(3) Five copies to the state library;

(4) Reserve supply for distribution on request as many copies as he deems necessary. [1965 c 9 § 29.81.150. Prior: 1913 c 138 § 29, part; RRS § 5425, part. Formerly RCW 29.79.420.]

29.81.160 Distribution costs—How paid. The cost of mailing and distributing the pamphlets shall be paid from money appropriated for postage for the secretary of state. [1965 c 9 § 29.81.160. Prior: 1913 c 138 § 29, part; RRS § 5425, part. Formerly RCW 29.79.430.]

29.81.170 Candidates' pamphlet—Publication, date—Dimensions—Consolidation with voters' pamphlet. See RCW 29.80.040.

29.81.180 Taped and braille transcripts. The secretary of state shall mail without charge taped transcripts of the voters' pamphlet to any requesting blind person or organization representing the blind. Braille transcripts may also be mailed by the secretary of state to such persons or organizations. Availability of these transcripts shall be publicized by the secretary of state through public service announcements and other appropriate means. [1981 c 243 § 2.]

Chapter 29.81A

LOCAL VOTERS' PAMPHLETS

Sections

29.81A.010	Authorization—Contents—Format.
29.81A.020	Notice of production—Local governments' decision to participate.
29.81A.030	Administrative rules.
29.81A.040	Contents.
29.81A.050	Candidates, when included.
29.81A.060	Mailing.
29.81A.070	Cost.
29.81A.080	Arguments advocating approval and disapproval—Preparation by committees.
29.81A.900	Effective date—1984 c 106.
29.81A.901	Severability—1984 c 106.

29.81A.010 Authorization—Contents—Format. At least ninety days before any primary or general election, or at least forty days before any special election held under RCW 29.13.010 or 29.13.020, the legislative authority of any county or first-class or code city may adopt an ordinance authorizing the publication and distribution of a local voters' pamphlet. The pamphlet shall provide information on all measures within that jurisdiction and may, if specified in the ordinance, include information on candidates within that jurisdiction. If both a county and a first-class or code city within that county authorize a local voters' pamphlet for the same election, the pamphlet shall be produced jointly by the county and the first-class or code city. If no agreement can be reached between the county and first-class or code city,

the county and first-class or code city may each produce a pamphlet. Any ordinance adopted authorizing a local voters' pamphlet may be for a specific primary, special election, or general election or for any future primaries or elections. The format of any local voters' pamphlet shall, whenever applicable, comply with the provisions of chapters 29.80 and 29.81 RCW regarding the publication of the state candidates' and voters' pamphlets. [1984 c 106 § 3.]

29.81A.020 Notice of production—Local governments' decision to participate. (1) Within five days of the adoption by the county legislative authority of an ordinance authorizing the publication and distribution of a local voters' pamphlet, the county auditor shall notify each city, town, or special taxing district located wholly within that county that a pamphlet will be produced. If the ordinance applies to future primaries or elections, the ordinance shall provide for such a notification prior to those primaries or elections. If a city, town, or district is located within more than one county, the respective county auditors may enter into an interlocal agreement to permit the distribution of each county's local voters' pamphlet into those parts of the city, town, or district located outside of that county.

(2) If a first-class or code city authorizes the production and distribution of a local voters' pamphlet, the city clerk of that city shall notify any special taxing district located wholly within that city that a pamphlet will be produced. Notification shall be provided in the manner required or provided for in subsection (1) of this section.

(3) Upon receipt of the notification, the legislative authority of each city, town, or district shall determine whether it will include any information from that jurisdiction in the local voters' pamphlet for a specific primary, special election, or general election or for any future primaries or elections. If it chooses to participate, it shall include information on all measures from that jurisdiction, and may include information on candidates. [1984 c 106 § 4.]

29.81A.030 Administrative rules. The county auditor or, if applicable, the city clerk of a first-class or code city shall, in consultation with the participating jurisdictions, adopt and publish administrative rules necessary to facilitate the provisions of any ordinance authorizing production of a local voters' pamphlet. Any amendment to such a rule shall also be adopted and published. Copies of the rules shall identify the date they were adopted or last amended and shall be made available to any person upon request. One copy of the rules adopted by a county auditor and one copy of any amended rules shall be submitted to the county legislative authority. One copy of the rules adopted by a city clerk and one copy of any amended rules shall be submitted to the city legislative authority. These rules shall include but not be limited to the following:

(1) Deadlines for decisions by cities, towns, or special taxing districts on being included in the pamphlet;

(2) Limits on the length and deadlines for submission of arguments for and against each measure;

(3) The basis for rejection of any explanatory or candidates' statement or argument deemed to be libelous or otherwise inappropriate. Any statements by a candidate shall be limited to those about the candidate himself or herself;

(4) Limits on the length and deadlines for submission of candidates' statements;

(5) An appeal process in the case of the rejection of any statement or argument. [1984 c 106 § 5.]

29.81A.040 Contents. The local voters' pamphlet shall include but not be limited to the following:

(1) Appearing on the cover, the words "official local voters' pamphlet," the name of the jurisdiction producing the pamphlet, the jurisdictions that have measures or candidates in the pamphlet, and the date of the election or primary;

(2) Information on how a person may register to vote and obtain an absentee ballot;

(3) The text of each measure accompanied by an explanatory statement prepared by the prosecuting attorney for any county measure or by the attorney for the jurisdiction submitting the measure if other than a county measure. All explanatory statements for city, town, or district measures not approved by the attorney for the jurisdiction submitting the measure shall be reviewed and approved by the county prosecuting attorney or city attorney, when applicable, before inclusion in the pamphlet;

(4) The arguments for and against each measure submitted by committees selected pursuant to RCW 29.81A.080. [1984 c 106 § 6.]

29.81A.050 Candidates, when included. If the legislative authority of a county or first-class or code city provides for the inclusion of candidates in the local voters' pamphlet, the pamphlet shall include the statements from candidates and may also include those candidates' photographs. [1984 c 106 § 7.]

29.81A.060 Mailing. As soon as practicable before the primary, special election, or general election, the county auditor, or if applicable, the city clerk of a first-class or code city, as appropriate, shall mail the local voters' pamphlet to every residence in each jurisdiction that has included information in the pamphlet. The county auditor or city clerk, as appropriate, may choose to mail the pamphlet to each registered voter in each jurisdiction that has included information in the pamphlet, if in his or her judgment, a more economical and effective distribution of the pamphlet would result. If the county or city chooses to mail the pamphlet to each residence, no notice of election otherwise required by RCW 29.27.080 need be published. [1984 c 106 § 8.]

29.81A.070 Cost. The cost of a local voters' pamphlet shall be considered an election cost to those local jurisdictions included in the pamphlet and shall be pro-rated in the manner provided in RCW 29.13.045. [1984 c 106 § 9.]

29.81A.080 Arguments advocating approval and disapproval—Preparation by committees. For each measure from a jurisdiction that is included in a local voters' pamphlet, the legislative authority of that jurisdiction shall formally appoint a committee to prepare arguments advocating voters' approval of the measure and shall formally appoint a committee to prepare arguments advocating voters'

rejection of the measure. The authority shall appoint persons known to favor the measure to serve on the committee advocating approval and shall, whenever possible, appoint persons known to oppose the measure to serve on the committee advocating rejection. Each committee shall have not more than three members, however, a committee may seek the advice of any person or persons. [1984 c 106 § 10.]

29.81A.900 Effective date—1984 c 106. This act shall take effect on January 1, 1985. [1984 c 106 § 14.]

29.81A.901 Severability—1984 c 106. 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 106 § 13.]

Chapter 29.82 THE RECALL

Sections	
29.82.010	Initiating recall proceedings—Statement—Contents—Verification—Definitions.
29.82.015	Petition—Where filed.
29.82.021	Ballot synopsis.
29.82.023	Determination by superior court—Correction of ballot synopsis.
29.82.025	Filing supporting signatures—Time limitations.
29.82.030	Petition—Form.
29.82.040	Petition—Size.
29.82.060	Number of signatures required.
29.82.080	Canvassing petition for sufficiency of signatures—Time of—Notice.
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29.82.100	Fixing date for recall election—Notice.
29.82.105	Response to petition charges.
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29.82.120	Fraudulent names—Record of.
29.82.130	Conduct of election—Contents of ballot.
29.82.140	Ascertaining the result—When recall effective.
29.82.160	Enforcement provisions—Mandamus—Appellate review.
29.82.170	Violations by signers—Officers.
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29.82.220	Violations—Corrupt practices.

Recall of elective officers: State Constitution Art. 1 §§ 33, 34 (Amendment 8).

29.82.010 Initiating recall proceedings—Statement—Contents—Verification—Definitions. Whenever any legal voter of the state or of any political subdivision thereof, either individually or on behalf of an organization, desires to demand the recall and discharge of any elective public officer of the state or of such political subdivision, as the case may be, under the provisions of sections 33 and 34 of Article 1 of the Constitution, he or they shall prepare a typewritten charge, reciting that such officer, naming him or her and giving the title of his office, has committed an act or acts of malfeasance, or an act or acts of misfeasance while in office, or has violated his oath of office, or has been guilty of any two or more of the acts specified in the Constitution as grounds for recall. The charge shall state the act or acts complained of in concise language, give a detailed description including the approxi-

mate date, location, and nature of each act complained of, be signed by the person or persons making the charge, give their respective post office addresses, and be verified under oath that he or they believe the charge or charges to be true and have knowledge of the alleged facts upon which the stated grounds for recall are based.

For the purposes of this chapter:

(1) "Misfeasance" or "malfeasance" in office means any wrongful conduct that affects, interrupts, or interferes with the performance of official duty;

(a) Additionally, "misfeasance" in office means the performance of a duty in an improper manner; and

(b) Additionally, "malfeasance" in office means the commission of an unlawful act;

(2) "Violation of the oath of office" means the wilful neglect or failure by an elective public officer to perform faithfully a duty imposed by law. [1984 c 170 § 1; 1975-'76 2nd ex.s. c 47 § 1; 1965 c 9 § 29.82.010. Prior: 1913 c 146 § 1; RRS § 5350. Former part of section: 1913 c 146 § 2; RRS § 5351, now codified in RCW 29.82.015.]

Severability—1975-'76 2nd ex.s. c 47: "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." [1975-'76 2nd ex.s. c 47 § 3.]

29.82.015 Petition—Where filed. Any person making a charge shall file it with the elections officer whose duty it is to receive and file a declaration of candidacy for the office concerning the incumbent of which the recall is to be demanded. The officer with whom the charge is filed shall promptly (1) serve a copy of the charge upon the officer whose recall is demanded, and (2) certify and transmit the charge to the preparer of the ballot synopsis provided in RCW 29.82.021. The manner of service shall be the same as for the commencement of a civil action in superior court. [1984 c 170 § 2; 1975-'76 2nd ex.s. c 47 § 2; 1965 c 9 § 29.82.015. Prior: 1913 c 146 § 2; RRS § 5351. Formerly RCW 29.82.010, part.]

Severability—1975-'76 2nd ex.s. c 47: See note following RCW 29.82.010.

29.82.021 Ballot synopsis. (1) Within fifteen days after receiving a charge, the officer specified below shall formulate a ballot synopsis of the charge of not more than two hundred words.

(a) If the recall is demanded of an elected public officer whose political jurisdiction encompasses an area in more than one county, the attorney general shall be the preparer, except if the recall is demanded of the attorney general, the chief justice of the supreme court shall be the preparer.

(b) If the recall is demanded of an elected public officer whose political jurisdiction lies wholly in one county, the prosecuting attorney shall be the preparer, except that if the prosecuting attorney is the officer whose recall is demanded, the attorney general shall be the preparer.

(2) The synopsis shall set forth the name of the person charged, the title of his office, and a concise statement of the elements of the charge. Upon completion of the ballot synopsis, the preparer shall certify and transmit the exact language of the ballot synopsis to the persons filing the charge and the officer subject to recall. The preparer shall additionally certify and transmit the charges and the ballot

synopsis to the superior court of the county in which the officer subject to recall resides and shall petition the superior court to approve the synopsis and to determine the sufficiency of the charges. [1984 c 170 § 3.]

29.82.023 Determination by superior court—Correction of ballot synopsis. Within fifteen days after receiving the petition, the superior court shall have conducted a hearing on and shall have determined, without cost to any party, (1) whether or not the acts stated in the charge satisfy the criteria for which a recall petition may be filed, and (2) the adequacy of the ballot synopsis. The clerk of the superior court shall notify the person subject to recall and the person demanding recall of the hearing date. Both persons may appear with counsel. The court may hear arguments as to the sufficiency of the charges and the adequacy of the ballot synopsis. The court shall not consider the truth of the charges, but only their sufficiency. An appeal of a sufficiency decision shall be filed in the supreme court as specified by RCW 29.82.160. The superior court shall correct any ballot synopsis it deems inadequate. Any decision regarding the ballot synopsis by the superior court is final. The court shall certify and transmit the ballot synopsis to the officer subject to recall, the person demanding the recall, and either the secretary of state or the county auditor, as appropriate. [1984 c 170 § 4.]

29.82.025 Filing supporting signatures—Time limitations. (1) The sponsors of a recall demanded of any public officer shall stop circulation and file all petitions with the appropriate elections officer not less than six months before the next general election in which the officer whose recall is demanded is subject to reelection.

(2) The sponsors of a recall demanded of an officer elected to a state-wide position shall have a maximum of two hundred seventy days and the sponsors of a recall demanded of any other officer shall have a maximum of one hundred eighty days in which to obtain and file supporting signatures after the issuance of a ballot synopsis by the superior court. If the decision of the superior court regarding the sufficiency of the charges is not appealed, the one hundred eighty or two hundred seventy day period for the circulation of signatures begins on the sixteenth day following the decision of the superior court. If the decision of the superior court regarding the sufficiency of the charges is appealed, the one hundred eighty or two hundred seventy day period for the circulation of signatures begins on the day following the issuance of the decision by the supreme court. [1984 c 170 § 5; 1971 ex.s. c 205 § 2.]

Severability—1971 ex.s. c 205: "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 205 § 6.]

29.82.030 Petition—Form. Recall petitions shall be printed on single sheets of paper of good writing quality (including but not limited to newsprint) not less than eleven inches in width and not less than fourteen inches in length. No petition may be circulated or signed prior to the first day of the one hundred eighty or two hundred seventy day period

established by RCW 29.82.025 for that recall petition. Such petitions shall be substantially in the following form:

WARNING

Every person who signs this petition with any other than his true name, or who knowingly (1) signs more than one of these petitions, (2) signs this petition when he is not a legal voter, or (3) makes herein any false statement, may be fined, or imprisoned, or both.

Petition for the recall of (here insert the name of the office and of the person whose recall is petitioned for) to the Honorable (here insert the name and title of the officer with whom the charge is filed).

We, the undersigned citizens and legal voters of (the state of Washington or the political subdivision in which the recall is to be held), respectfully direct that a special election be called to determine whether or not (here insert the name of the person charged and the office which he holds) be recalled and discharged from his office, for and on account of (his having committed the act or acts of malfeasance or misfeasance while in office, or having violated his oath of office, as the case may be), in the following particulars: (here insert the synopsis of the charge); and each of us for himself says: I have personally signed this petition; I am a legal voter of the State of Washington in the precinct and city (or town) and county written after my name, and my residence address is correctly stated, and to my knowledge, have signed this petition only once.

Petitioner's signature	Print name for positive identification	Residence address, street and number, if any	City or Town	County
(Here follow 20 numbered lines divided into columns as below.)				
1	---	---	---	---
2	---	---	---	---
3	---	---	---	---
etc.				

[1984 c 170 § 6; 1971 ex.s. c 205 § 4; 1965 c 9 § 29.82.030. Prior: 1913 c 146 § 4; RRS § 5353.]

Severability—1971 ex.s. c 205: See note following RCW 29.82.025.

29.82.040 Petition—Size. Each recall petition at the time of circulating, signing and filing with the officer with whom it is to be filed, shall consist of not more than five sheets with numbered lines for not more than twenty signatures on each sheet, with the prescribed warning, title and form of petition on each sheet, and a full, true and correct copy of the original statement of the charges against the officer referred to therein, printed on sheets of paper of like size and quality as the petition, firmly fastened together. [1965 c 9 § 29.82.040. Prior: 1913 c 146 § 6; RRS § 5355.]

29.82.060 Number of signatures required. When the person, committee, or organization demanding the recall of a public officer has secured sufficient signatures upon the recall petition the person, committee, or organization may

submit the same to the officer with whom the charge was filed for filing in his or her office. The number of signatures required shall be as follows:

(1) In the case of a state officer, an officer of a city of the first class, a member of a school board in a city of the first class, or a county officer of a county with a population of forty thousand or more—signatures of legal voters equal to twenty-five percent of the total number of votes cast for all candidates for the office to which the officer whose recall is demanded was elected at the preceding election.

(2) In the case of an officer of any political subdivision, city, town, township, precinct, or school district other than those mentioned in subsection (1) of this section, and in the case of a state senator or representative—signatures of legal voters equal to thirty-five percent of the total number of votes cast for all candidates for the office to which the officer whose recall is demanded was elected at the preceding election. [1991 c 363 § 36; 1965 c 9 § 29.82.060. Prior: 1913 c 146 § 8, part; RRS § 5357, part.]

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

Recall of elective officers—Percentages required: State Constitution Art. 1 § 34 (Amendment 8).

29.82.080 Canvassing petition for sufficiency of signatures—Time of—Notice. Upon the filing of a recall petition in his office, the officer with whom the charge was filed shall stamp on each petition the date of filing, and shall notify the persons filing them and the officer whose recall is demanded of the date when the petitions will be canvassed, which date shall be not less than five or more than ten days from the date of its filing. [1965 c 9 § 29.82.080. Prior: 1913 c 146 § 9, part; RRS § 5358, part.]

29.82.090 Verification and canvass of signatures—Procedure—Statistical sampling. (1) Upon the filing of a recall petition, the elections officer shall proceed to verify and canvass the names of legal voters on the petition.

(2) The verification and canvass of signatures on the petition may be observed by persons representing the advocates and opponents of the proposed recall so long as they make no record of the names, addresses, or other information on the petitions or related records during the verification process except upon the order of the superior court. The elections officer may limit the number of observers to not fewer than two on each side, if in his or her opinion a greater number would cause undue delay or disruption of the verification process. Any such limitation shall apply equally to both sides. If the elections officer finds the same name signed to more than one petition, he or she shall reject all but the first such valid signature.

(3) Where the recall of a state-wide elected official is sought, the secretary of state may use any statistical sampling techniques for verification and canvassing which have been adopted by rule for canvassing initiative petitions under RCW 29.79.200. No petition will be rejected on the basis of any statistical method employed. No petition will be accepted on the basis of any statistical method employed if such method indicates that the petition contains less than the number of signatures of legal voters required by Article I, section 33 (Amendment 8) of the state Constitution. [1984

c 170 § 7; 1977 ex.s. c 361 § 107; 1965 c 9 § 29.82.090. Prior: 1913 c 146 § 9, part; RRS § 5358, part.]

Effective date—Severability—1977 ex.s. c 361: See notes following RCW 29.01.006.

29.82.100 Fixing date for recall election—Notice. If, at the conclusion of the verification and canvass, it is found that a petition for recall bears the required number of signatures of certified legal voters, the officer with whom the petition is filed shall promptly certify the petitions as sufficient and fix a date for the special election to determine whether or not the officer charged shall be recalled and discharged from office. The special election shall be held not less than forty-five nor more than sixty days from the certification and, whenever possible, on one of the dates provided in RCW 29.13.020, but no recall election may be held between the date of the primary and the date of the general election in any calendar year. Notice shall be given in the manner as required by law for special elections in the state or in the political subdivision, as the case may be. [1984 c 170 § 8; 1977 ex.s. c 361 § 108; 1971 ex.s. c 205 § 5; 1965 c 9 § 29.82.100. Prior: 1913 c 146 § 9, part; RRS § 5358, part.]

Effective date—Severability—1977 ex.s. c 361: See notes following RCW 29.01.006.

Severability—1971 ex.s. c 205: See note following RCW 29.82.025.

29.82.105 Response to petition charges. When a date for a special recall election is set the certifying officer shall serve a notice of the date of the election to the officer whose recall is demanded and the person demanding recall. The manner of service shall be the same as for the commencement of a civil action in superior court. After having been served a notice of the date of the election and the ballot synopsis, the officer whose recall is demanded may submit to the certifying officer a response, not to exceed two hundred fifty words in length, to the charge contained in the ballot synopsis. Such response shall be submitted by the seventh consecutive day after service of the notice. The certifying officer shall promptly send a copy of the response to the person who filed the petition. [1984 c 170 § 9; 1980 c 42 § 1.]

29.82.110 Destruction of insufficient recall petition. If it is found that the recall petition does not contain the requisite number of signatures of certified legal voters, the officer shall so notify the persons filing the petition, and at the expiration of thirty days from the conclusion of the count he shall destroy the petitions unless prevented therefrom by the injunction or mandate of a court. [1965 c 9 § 29.82.110. Prior: 1913 c 146 § 9, part; RRS § 5358, part.]

29.82.120 Fraudulent names—Record of. The officer making the canvass of a recall petition shall keep a record of all names appearing thereon which are not certified to be legal voters of the state or of the political subdivision, as the case may be, and of all names appearing more than once thereon, and he shall report the same to the prosecuting attorneys of the respective counties where such names appear to have been signed, to the end that prosecutions may be had

for such violation of this chapter. [1965 c 9 § 29.82.120. Prior: 1913 c 146 § 10; RRS § 5359.]

29.82.130 Conduct of election—Contents of ballot. The special election for the recall of an officer shall be conducted in the same manner as a special election for that jurisdiction. The county auditor shall conduct the recall election. The ballots at any recall election shall contain a full, true, and correct copy of the ballot synopsis of the charge and the officer's response to the charge if one has been filed. [1990 c 59 § 71; 1980 c 42 § 2; 1965 c 9 § 29.82.130. Prior: 1913 c 146 § 11; RRS § 5360. See also RCW 29.48.040.]

Intent—Effective date—1990 c 59: See notes following RCW 29.01.006.

29.82.140 Ascertaining the result—When recall effective. The votes on a recall election shall be counted, canvassed, and the results certified in the manner provided by law for counting, canvassing, and certifying the results of an election for the office from which the officer is being recalled: PROVIDED, That if the officer whose recall is demanded is the officer to whom, under the law, returns of elections are made, such returns shall be made to the officer with whom the charge is filed, and who called the special election; and in case of an election for the recall of a state officer, the county canvassing boards of the various counties shall canvass and return the result of such election to the officer calling such special election. If a majority of all votes cast at the recall election is for the recall of the officer charged, he shall thereupon be recalled and discharged from his office, and the office shall thereupon become and be vacant. [1977 ex.s. c 361 § 109; 1965 c 9 § 29.82.140. Prior: 1913 c 146 § 12; RRS § 5361.]

Effective date—Severability—1977 ex.s. c 361: See notes following RCW 29.01.006.

Canvassing the returns: Chapter 29.62 RCW.

Polling place regulations during voting hours and after closing: Chapter 29.54 RCW.

29.82.160 Enforcement provisions—Mandamus—Appellate review. The superior court of the county in which the officer subject to recall resides has original jurisdiction to compel the performance of any act required of any public officer or to prevent the performance by any such officer of any act in relation to the recall not in compliance with law.

The supreme court has like original jurisdiction in relation to state officers and revisory jurisdiction over the decisions of the superior courts. Any proceeding to compel or prevent the performance of any such act shall be begun within ten days from the time the cause of complaint arises, and shall be considered an emergency matter of public concern and take precedence over other cases, and be speedily heard and determined. Appellate review of a decision of any superior court shall be begun and perfected within fifteen days after its decision in a recall election case and shall be considered an emergency matter of public concern by the supreme court, and heard and determined within thirty days after the decision of the superior court.

[1988 c 202 § 30; 1984 c 170 § 10; 1965 c 9 § 29.82.160. Prior: 1913 c 146 § 14; RRS § 5363.]

Rules of court: Writ procedure superseded by RAP 2.1(b), 16.2, 18.22.

Severability—1988 c 202: See note following RCW 2.24.050.

29.82.170 Violations by signers—Officers. Every person who signs a recall petition with any other than his true name is guilty of a felony. Every person who knowingly (1) signs more than one petition for the same recall, (2) signs a recall petition when he is not a legal voter, or (3) makes a false statement as to his residence on any recall petition is guilty of a gross misdemeanor. Every registration officer who makes any false report or certificate on any recall petition is guilty of a gross misdemeanor. [1984 c 170 § 11; 1965 c 9 § 29.82.170. Prior: 1913 c 146 § 15; RRS § 5364. Formerly codified also in RCW 29.82.180, 29.82.190, and 29.82.200.]

29.82.210 Violations by officers. Every officer who wilfully violates any of the provisions of this chapter, for the violation of which no penalty is herein prescribed or who wilfully fails to comply with the provisions of this chapter shall be guilty of a gross misdemeanor. [1965 c 9 § 29.82.210. Prior: 1953 c 113 § 1; prior: 1913 c 146 § 16, part; RRS § 5365, part.]

29.82.220 Violations—Corrupt practices. Every person is guilty of a gross misdemeanor, who:

(1) For any consideration, compensation, gratuity, reward, or thing of value or promise thereof, signs or declines to sign any recall petition; or

(2) Advertises in any newspaper, magazine or other periodical publication, or in any book, pamphlet, circular, or letter, or by means of any sign, signboard, bill, poster, handbill, or card, or in any manner whatsoever, that he will either for or without compensation or consideration circulate, solicit, procure, or obtain signatures upon, or influence or induce or attempt to influence or induce persons to sign or not to sign any recall petition or vote for or against any recall; or

(3) For pay or any consideration, compensation, gratuity, reward, or thing of value or promise thereof, circulates, or solicits, procures, or obtains or attempts to procure or obtain signatures upon any recall petition; or

(4) Pays or offers or promises to pay, or gives or offers or promises to give any consideration, compensation, gratuity, reward, or thing of value to any person to induce him to sign or not to sign, or to circulate or solicit, procure, or attempt to procure or obtain signatures upon any recall petition, or to vote for or against any recall; or

(5) By any other corrupt means or practice or by threats or intimidation interferes with or attempts to interfere with the right of any legal voter to sign or not to sign any recall petition or to vote for or against any recall; or

(6) Receives, accepts, handles, distributes, pays out, or gives away, directly or indirectly, any money, consideration, compensation, gratuity, reward, or thing of value contributed by or received from any person, firm, association, or corporation whose residence or principal office is, or the majority of whose stockholders are nonresidents of the state of Washington, for any service, work, or assistance of any

kind done or rendered for the purpose of aiding in procuring signatures upon any recall petition or the adoption or rejection of any recall. [1984 c 170 § 12; 1965 c 9 § 29.82.220. Prior: 1953 c 113 § 2; prior: 1913 c 146 § 16, part; RRS § 5365, part.]

Chapter 29.85 CRIMES AND PENALTIES

Sections

- 29.85.010 Ballots—Removing from polling place.
- 29.85.020 Unauthorized examination of ballots, election materials—Revealing information.
- 29.85.040 Ballots—Unlawful appropriation, printing, or distribution.
- 29.85.060 Hindering or bribing voter.
- 29.85.070 Influencing voter to withhold vote.
- 29.85.090 Solicitation of bribe by voter.
- 29.85.100 Certificates of nomination and election—Declarations of candidacy—Petitions of nomination—Frauds and falsehoods.
- 29.85.110 Tampering with polling place materials.
- 29.85.170 Officers—Violations generally.
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- 29.85.220 Repeaters—Unqualified persons—Officers conniving with.
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- 29.85.230 Returns and posted copy of results—Tampering with.
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- 29.85.300 Absentee voting, violations relating to qualifications and voting, penalty.
- 29.85.320 Aiding blind voters, violations relating to—Penalty.
- 29.85.321 Preventing interference with balloting.
- 29.85.323 Electioneering within the polls forbidden—Prohibited practices as to ballots—Penalty.
- 29.85.325 Electioneering by election officers forbidden—Penalty.
- 29.85.329 Unlawful acts by voters—Penalty.
- 29.85.360 County canvassing board—Canvassing procedure—Penalty.
- 29.85.370 Initiative, referendum—Violations by signers.
- 29.85.373 Initiative, referendum—Violations by officers.
- 29.85.375 Initiative, referendum—Violations—Corrupt practices.
- 29.85.380 Recall—Violations by signers—Officers.
- 29.85.381 Recall—Violation by officers.
- 29.85.383 Recall—Violations—Corrupt practices.

Anarchy and sabotage: Chapter 9.05 RCW.

Bribery and corrupt influence: Chapter 9A.68 RCW.

Bribery or corrupt solicitation: State Constitution Art. 2 § 30.

Contests, bribe or reward by person whose right is being contested as grounds for: RCW 29.65.010.

Duplication of, use of nonexistent or untrue names, as felony: RCW 29.15.100.

Financial disclosure by candidates and elected officials: Chapter 42.17 RCW.

Forgery: RCW 9A.60.020.

Libel and slander: Chapter 9.58 RCW.

Misconduct in signing a petition: RCW 9.44.080.

Perjury: Chapter 9A.72 RCW.

Polling places, violations prior, during, and after voting hours: Chapters 29.48, 29.51, and 29.54 RCW.

Prevention and correction of election frauds and errors: RCW 29.04.030.

Refusing to leave voting booth—Penalty: RCW 29.51.221.

Statement concerning registered voter

change of residence, false, subject to perjury: RCW 29.10.130.
deceased, false, subject to perjury: RCW 29.10.090.

Subversive activities

generally: Chapter 9.81 RCW.

misstatements of candidates punishable as perjury, penalty: RCW 9.81.110.

29.85.010 Ballots—Removing from polling place.

Any person who, without lawful authority, removes a ballot from a polling place is guilty of a gross misdemeanor punishable to the same extent as a gross misdemeanor that is punishable under RCW 9A.20.021. [1991 c 81 § 1; 1965 c 9 § 29.85.010. Prior: 1893 c 115 § 2; RRS § 5396.]

Effective date—1991 c 81: "This act shall take effect July 1, 1992." [1991 c 81 § 42.]

29.85.020 Unauthorized examination of ballots, election materials—Revealing information. (1) It is a gross misdemeanor for a person to examine, or assist another to examine, any voter record, ballot, or any other state or local government official election material if the person, without lawful authority, conducts the examination:

(a) For the purpose of identifying the name of a voter and how the voter voted; or

(b) For the purpose of determining how a voter, whose name is known to the person, voted; or

(c) For the purpose of identifying the name of the voter who voted in a manner known to the person.

(2) Any person who reveals to another information which the person ascertained in violation of subsection (1) of this section is guilty of a gross misdemeanor.

(3) A gross misdemeanor under this section is punishable to the same extent as a gross misdemeanor that is punishable under RCW 9A.20.021. [1991 c 81 § 2; 1965 c 9 § 29.85.020. Prior: 1911 c 89 § 1, part; Code 1881 § 906; 1873 p 205 § 105; 1854 p 93 § 96; RRS § 5387.]

Effective date—1991 c 81: See note following RCW 29.85.010.

29.85.040 Ballots—Unlawful appropriation, printing, or distribution. Any person who is retained or employed by any officer authorized by the laws of this state to procure the printing of any official ballot or who is engaged in printing official ballots is guilty of a gross misdemeanor if the person knowingly:

(1) Appropriates any official ballot to himself or herself; or

(2) Gives or delivers any official ballot to or permits any official ballot to be taken by any person other than the officer authorized by law to receive it; or

(3) Prints or causes to be printed any official ballot: (a) In any other form than that prescribed by law or as directed by the officer authorized to procure the printing thereof; or (b) with any other names thereon or with the names spelled otherwise than as directed by such officer, or the names or printing thereon arranged in any other way than that authorized and directed by law.

A gross misdemeanor under this section is punishable to the same extent as a gross misdemeanor that is punishable under RCW 9A.20.021. [1991 c 81 § 3; 1965 c 9 § 29.85.040. Prior: 1893 c 115 § 1; RRS § 5395.]

Effective date—1991 c 81: See note following RCW 29.85.010.

29.85.060 Hindering or bribing voter. Any person who uses menace, force, threat, or any unlawful means

towards any voter to hinder or deter such a voter from voting, or directly or indirectly offers any bribe, reward, or any thing of value to a voter in exchange for the voter's vote for or against any person or ballot measure, or authorizes any person to do so, is guilty of a class C felony punishable under RCW 9A.20.021. [1991 c 81 § 5; 1965 c 9 § 29.85.060. Prior: (i) 1911 c 89 § 1, part; Code 1881 § 904; 1873 p 204 § 103; 1854 p 93 § 94; RRS § 5386. (ii) 1911 c 89 § 1, part; 1901 c 142 § 1; Code 1881 § 909; 1873 p 205 § 106; 1865 p 50 § 1; 1854 p 93 § 97; RRS § 5388.]

Effective date—1991 c 81: See note following RCW 29.85.010.

29.85.070 Influencing voter to withhold vote. Any person who in any way, directly or indirectly, by menace or unlawful means, attempts to influence any person in refusing to give his or her vote in any primary or special or general election is guilty of a gross misdemeanor punishable to the same extent as a gross misdemeanor that is punishable under RCW 9A.20.021. [1991 c 81 § 6; 1965 c 9 § 29.85.070. Prior: Code 1881 § 3140; RRS § 5389.]

Effective date—1991 c 81: See note following RCW 29.85.010.

29.85.090 Solicitation of bribe by voter. Any person who solicits, requests, or demands, directly or indirectly, any reward or thing of value or the promise thereof in exchange for his or her vote or in exchange for the vote of any other person for or against any candidate or for or against any ballot measure to be voted upon at a primary or special or general election is guilty of a gross misdemeanor punishable to the same extent as a gross misdemeanor that is punishable under RCW 9A.20.021. [1991 c 81 § 7; 1965 c 9 § 29.85.090. Prior: 1907 c 209 § 32; RRS § 5207.]

Effective date—1991 c 81: See note following RCW 29.85.010.

29.85.100 Certificates of nomination and election—Declarations of candidacy—Petitions of nomination—Frauds and falsehoods. Every person who:

(1) Knowingly and falsely issues a certificate of nomination or election; or

(2) Knowingly provides false information on a certificate which must be filed with an elections officer under chapter 29.24 RCW; or

(3) Knowingly provides false information on his or her declaration of candidacy or petition of nomination; or

(4) Conceals or fraudulently defaces or destroys a certificate which has been filed with an elections officer under chapter 29.24 RCW or a declaration of candidacy or petition of nomination which has been filed with an elections officer, or any part of such a certificate, declaration, or petition, is guilty of a class C felony punishable under RCW 9A.20.021. [1991 c 81 § 8; 1965 c 9 § 29.85.100. Prior: 1889 p 411 § 30; RRS § 5295.]

Effective date—1991 c 81: See note following RCW 29.85.010.

29.85.110 Tampering with polling place materials. Any person who willfully defaces, removes, or destroys any of the supplies or materials which the person knows are intended both for use in a polling place and for enabling a voter to prepare his or her ballot is guilty of a class C felony punishable under RCW 9A.20.021. [1991 c 81 § 9; 1965 c 9 § 29.85.110. Prior: 1889 p 412 § 31; RRS § 5296.]

FORMER PART OF SECTION: 1935 c 108 § 3, part; RRS § 5339-3, part, now codified, as reenacted, in RCW 29.85.230.]

Effective date—1991 c 81: See note following RCW 29.85.010.

29.85.170 Officers—Violations generally. Every person charged with the performance of any duty under the provisions of any law of this state relating to elections, including primaries, or the provisions of any charter or ordinance of any city or town of this state relating to elections who willfully neglects or refuses to perform such duty, or who, in the performance of such duty, or in his or her official capacity, knowingly or fraudulently violates any of the provisions of law relating to such duty, is guilty of a class C felony punishable under RCW 9A.20.021 and shall forfeit his or her office. [1991 c 81 § 10; 1965 c 9 § 29.85.170. Prior: (i) 1889 p 412 § 32; RRS § 5297. (ii) 1911 c 89 § 1, part; Code 1881 § 912; 1877 p 205 § 2; RRS § 5392.]

Effective date—1991 c 81: See note following RCW 29.85.010.

29.85.210 Repeaters. Any person who votes or attempts to vote more than once at any primary or general or special election is guilty of a gross misdemeanor, punishable to the same extent as a gross misdemeanor that is punishable under RCW 9A.20.021. [1991 c 81 § 13; 1965 c 9 § 29.85.210. Prior: 1911 c 89 § 1, part; Code 1881 § 903; 1873 p 204 § 102; 1865 p 51 § 5; 1854 p 93 § 93; RRS § 5383.]

Effective date—1991 c 81: See note following RCW 29.85.010.

29.85.220 Repeaters—Unqualified persons—Officers conniving with. Any precinct election officer who knowingly permits any voter to cast a second vote at any primary or general or special election, or knowingly permits any person not a qualified voter to vote at any primary or general or special election, is guilty of a class C felony punishable under RCW 9A.20.021. [1991 c 81 § 14; 1965 c 9 § 29.85.220. Prior: 1911 c 89 § 1, part; Code 1881 § 911; 1873 p 205 § 108; RRS § 5385.]

Effective date—1991 c 81: See note following RCW 29.85.010.

29.85.225 Divulging ballot count. (1) In any location in which ballots are counted, no person authorized by law to be present while votes are being counted may divulge any results of the count of the ballots at any time prior to the closing of the polls for that primary or special or general election.

(2) A violation of this section is a gross misdemeanor punishable to the same extent as a gross misdemeanor that is punishable under RCW 9A.20.021. [1991 c 81 § 15; 1990 c 59 § 55; 1977 ex.s. c 361 § 85; 1965 c 9 § 29.54.035. Prior: 1955 c 148 § 6. Formerly RCW 29.54.035.]

Effective date—1991 c 81: See note following RCW 29.85.010.

Intent—Effective date—1990 c 59: See notes following RCW 29.01.006.

Effective date—Severability—1977 ex.s. c 361: See notes following RCW 29.01.006.

Divulging returns in voting device precincts: RCW 29.54.085.

29.85.230 Returns and posted copy of results—Tampering with. It shall be a gross misdemeanor, punishable to the same extent as a gross misdemeanor that is punishable under RCW 9A.20.021, for any person to remove or deface the posted copy of the result of votes cast at their precinct or to delay delivery of or change the copy of primary or special or general election returns to be delivered to the proper election officer. [1991 c 81 § 16; 1965 c 9 § 29.85.230. Prior: 1935 c 108 § 3; RRS § 5339-3. Formerly RCW 29.85.110, part.]

Effective date—1991 c 81: See note following RCW 29.85.010.

29.85.240 Unqualified persons voting. Any person who knows that he or she does not possess the legal qualifications of a voter and who votes at any primary or special or general election authorized by law to be held in this state for any office whatever shall be guilty of a class C felony punishable under RCW 9A.20.021. [1991 c 81 § 17; 1965 c 9 § 29.85.240. Prior: 1911 c 89 § 1, part; Code 1881 § 905; 1873 p 204 § 104; 1865 p 51 § 4; 1854 p 93 § 95; RRS § 5384.]

Effective date—1991 c 81: See note following RCW 29.85.010.

29.85.260 Voting machines, devices—Tampering with—Extra keys. Any person who tampers with or damages or attempts to damage any voting machine or device to be used or being used in a primary or special or general election, or who prevents or attempts to prevent the correct operation of such machine or device, or any unauthorized person who makes or has in his or her possession a key to a voting machine or device to be used or being used in a primary or special or general election, shall be guilty of a class C felony punishable under RCW 9A.20.021. [1991 c 81 § 18; 1965 c 9 § 29.85.260. Prior: 1913 c 58 § 16; RRS § 5316.]

Effective date—1991 c 81: See note following RCW 29.85.010.

29.85.275 Political advertising, removing or defacing. A person who removes or defaces lawfully placed political advertising including yard signs or billboards without authorization is guilty of a misdemeanor punishable to the same extent as a misdemeanor that is punishable under RCW 9A.20.021. The defacement or removal of each item constitutes a separate violation. [1991 c 81 § 19; 1984 c 216 § 5.]

Effective date—1991 c 81: See note following RCW 29.85.010.

*Political advertising
generally: RCW 42.17.510 through 42.17.540.
rates for candidates: RCW 65.16.095.*

29.85.285 Statement of expense of candidate—Penalty. See RCW 42.17.030 through 42.17.130 and 42.17.240.

29.85.290 Duplication of names—Conspiracy—Criminal and civil liability. See RCW 29.15.110.

29.85.300 Absentee voting, violations relating to qualifications and voting, penalty. See RCW 29.36.160.

29.85.320 Aiding blind voters, violations relating to—Penalty. See RCW 29.51.215.

29.85.321 Preventing interference with balloting. See RCW 29.51.010.

29.85.323 Electioneering within the polls forbidden—Prohibited practices as to ballots—Penalty. See RCW 29.51.020.

29.85.325 Electioneering by election officers forbidden—Penalty. See RCW 29.51.030.

29.85.329 Unlawful acts by voters—Penalty. See RCW 29.51.230.

29.85.360 County canvassing board—Canvassing procedure—Penalty. See RCW 29.62.040.

29.85.370 Initiative, referendum—Violations by signers. See RCW 29.79.440.

29.85.373 Initiative, referendum—Violations by officers. See RCW 29.79.480.

29.85.375 Initiative, referendum—Violations—Corrupt practices. See RCW 29.79.490.

29.85.380 Recall—Violations by signers—Officers. See RCW 29.82.170.

29.85.381 Recall—Violation by officers. See RCW 29.82.210.

29.85.383 Recall—Violations—Corrupt practices. See RCW 29.82.220.

Chapter 29.91

NUCLEAR WASTE SITE—ELECTION FOR DISAPPROVAL

Sections

- 29.91.010 Findings.
- 29.91.020 High-level nuclear waste repository—Selection of site in state—Special election for disapproval.
- 29.91.030 Costs of election.
- 29.91.040 Special election—Notification of auditors—Application of election laws.
- 29.91.050 Ballot title.
- 29.91.060 Effect of vote.
- 29.91.900 Transmission of copies of act—1986 ex.s. c 1.
- 29.91.901 Referral to electorate—Ballot title—1986 ex.s. c 1.

High-level nuclear waste repository siting: Chapter 43.205 RCW.

29.91.010 Findings. (1) The legislature and the people find that the federal Nuclear Waste Policy Act provides that within sixty days of the president's recommendation of a site for a high-level nuclear waste repository, a state may disapprove the selection of such site in that state.

(2) The legislature and the people desire, if the governor and legislature do not issue a notice of disapproval within twenty-one days of the president's recommendation, that the people of this state have the opportunity to vote upon disapproval. [1986 ex.s. c 1 § 3.]

29.91.020 High-level nuclear waste repository—Selection of site in state—Special election for disapproval.

(1) Within seven days after any recommendation by the president of the United States of a site in the state of Washington to be a high-level nuclear waste repository under 42 U.S.C. Sec. 10136, the governor shall set the date for a special state-wide election to vote on disapproval of the selection of such site. The special election shall be no more than fifty days after the date of the recommendation of the president of the United States.

(2) If either the governor or the legislature submits a notice of disapproval to the United States congress within twenty-one days of the date of the recommendation by the president of the United States, then the governor is authorized to cancel the special election pursuant to subsection (1) of this section. [1986 ex.s. c 1 § 4.]

29.91.030 Costs of election. The state of Washington shall assume the costs of any special election called under RCW 29.91.020 in the same manner as provided in RCW 29.13.047 and 29.13.048. [1986 ex.s. c 1 § 5.]

29.91.040 Special election—Notification of auditors—Application of election laws. The secretary of state shall promptly notify the county auditors of the date of the special election and certify to them the text of the ballot title for this special election. The general election laws shall apply to the election required by RCW 29.91.020 to the extent that they are not inconsistent with this chapter. Statutory deadlines relating to certification, canvassing, and the voters' pamphlet may be modified for the election held pursuant to RCW 29.91.020 by the secretary of state through emergency rules adopted under RCW 29.04.080. [1986 ex.s. c 1 § 6.]

29.91.050 Ballot title. The ballot title for the special election called under RCW 29.91.020 shall be "Shall the Governor be required to notify Congress of Washington's disapproval of the President's recommendation of [name of site] as a national high-level nuclear waste repository?" [1986 ex.s. c 1 § 7.]

29.91.060 Effect of vote. If the governor or the legislature fails to prepare and submit a notice of disapproval to the United States congress within fifty-five days of the president's recommendation and a majority of the voters in the special election held pursuant to RCW 29.91.020 favored such notice of disapproval, then the vote of the people shall be binding on the governor. The governor shall prepare and submit the notice of disapproval to the United States congress pursuant to 42 U.S.C. Sec. 10136. [1986 ex.s. c 1 § 8.]

29.91.900 Transmission of copies of act—1986 ex.s. c 1. Within ten days of December 4, 1986, the secretary of state shall transmit copies of this act, including the voter referendum results, to the president of the United States, the United States department of energy, the president of the United States senate, the speaker of the house of representatives, each member of congress, and the governors and legislatures of the other forty-nine states. [1986 ex.s. c 1 § 10.]

health and safety, the support of the state government and its existing public institutions and shall take effect immediately. [1965 c 9 § 29.98.050.]

29.91.901 Referral to electorate—Ballot title—1986 ex.s. c 1. This act shall be submitted to the people of the state of Washington for their adoption and ratification, or rejection, at the next succeeding general election to be held in this state, in accordance with Article II, section 1 of the state Constitution, as amended, and the laws adopted to facilitate the operation thereof. The ballot title for this act shall be: "Shall state officials continue challenges to the federal selection process for high-level nuclear waste repositories and shall a means be provided for voter disapproval of any Washington site?" [1986 ex.s. c 1 § 11.]

Reviser's note: "This act," chapters 29.91 and 43.205 RCW, was adopted and ratified by the people at the November 4, 1986, general election (Referendum Bill No. 40).

Chapter 29.98 CONSTRUCTION

Sections

- 29.98.010 Continuation of existing law.
- 29.98.020 Title, chapter, section headings not part of law.
- 29.98.030 Invalidity of part of title not to affect remainder.
- 29.98.040 Repeals and saving.
- 29.98.050 Emergency—1965 c 9.

Title 29 RCW controls in event of conflict with school election provisions of Title 28A RCW: RCW 28A.320.410.

29.98.010 Continuation of existing law. The provisions of this title insofar as they are substantially the same as statutory provisions repealed by this chapter, and relating to the same subject matter, shall be construed as restatements and continuations, and not as new enactments. [1965 c 9 § 29.98.010.]

29.98.020 Title, chapter, section headings not part of law. Title headings, chapter headings, and section or subsection headings, as used in this title do not constitute any part of the law. [1965 c 9 § 29.98.020.]

29.98.030 Invalidity of part of title not to affect remainder. If any provision of this title, or its application to any person or circumstance is held invalid, the remainder of the title, or the application of the provision to other persons or circumstances is not affected. [1965 c 9 § 29.98.030.]

29.98.040 Repeals and saving. See 1965 c 9 § 29.98.040.

29.98.050 Emergency—1965 c 9. This act is necessary for the immediate preservation of the public peace,

Title 30

BANKS AND TRUST COMPANIES

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- 30.08** Organization and powers.
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Indemnification of corporation directors, officers, trustees authorized, insurance: RCW 23B.08.320, 23B.08.500 through 23B.08.580, 23B.08.600, and 23B.17.030.

Investment of county funds not required for immediate expenditures, service fee: RCW 36.29.020.

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Master license system exemption: RCW 19.02.800.

Mortgages: Title 61 RCW.

Negotiable instruments: Title 62A RCW.

Powers of appointment: Chapter 11.95 RCW.

Probate—Bank exempted from executors, administrators, and special administrator's bond: RCW 11.28.185, 11.32.020.

Public charitable trusts: Chapter 11.110 RCW.

Public depositaries, deposit and investment of public funds: Chapter 39.58 RCW.

Real property and conveyances: Title 64 RCW.

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repository lease agreements ineffective to create joint ownership or transfer property at death: RCW 11.02.090(3).

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Chapter 30.04 GENERAL PROVISIONS

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Federal bonds and notes as investment or collateral: Chapter 39.60 RCW.

Interest and usury in general: Chapter 19.52 RCW.

Issuance of money, liability of stockholders: State Constitution Art. 12 § 11.

30.04.010 Definitions. Certain terms used in this title shall have the meanings ascribed in this section.

"Banking" shall include the soliciting, receiving or accepting of money or its equivalent on deposit as a regular business.

"Bank," unless a different meaning appears from the context, means any corporation organized under the laws of this state engaged in banking, other than a trust company or a mutual savings bank.

"Branch bank" means any office of deposit or discount maintained by any bank or trust company, domestic or

otherwise, other than its principal place of business, regardless of whether it be in the same city or locality.

The term "trust business" shall include the business of doing any or all of the things specified in RCW 30.08.150(2), (3), (4), (5), (6), (7), (8), (9), (10) and (11).

"Trust company," unless a different meaning appears from the context, means any corporation organized under the laws of this state engaged in trust business.

A "savings account" is an account of a bank in respect of which, (1) a passbook, certificate or other receipt may be required by the bank to be presented whenever a deposit or withdrawal is made and (2) the depositor at any time may be required by the bank to give notice of an intended withdrawal before the withdrawal is made.

"Savings bank" shall include (1) any bank whose deposits shall be limited exclusively to savings accounts, and (2) the department of any bank or trust company that accepts, or offers to accept, deposits for savings accounts in accordance with the provisions of this title.

"Commercial bank" shall include any bank other than one exclusively engaged in accepting deposits for savings accounts.

"Person" unless a different meaning appears from the context, shall include a firm, association, partnership or corporation, or the plural thereof, whether resident, nonresident, citizen or not.

"Supervisor" means the state supervisor of banking.

"Foreign bank" and "foreign banker" shall include:

(1) Every corporation not organized under the laws of the territory or state of Washington doing a banking business, except a national bank;

(2) Every unincorporated company, partnership or association of two or more individuals organized under the laws of another state or country, doing a banking business;

(3) Every other unincorporated company, partnership or association of two or more individuals, doing a banking business, if the members thereof owning a majority interest therein or entitled to more than one-half of the net assets thereof are not residents of this state;

(4) Every nonresident of this state doing a banking business in his own name and right only. [1959 c 106 § 1; 1955 c 33 § 30.04.010. Prior: 1933 c 42 § 2; 1917 c 80 § 14; RRS § 3221.]

30.04.020 Use of words indicating bank or trust company—Penalty. The name of every bank shall contain the word "bank" and the name of every trust company shall contain the word "trust," or the word "bank." Except as provided in RCW 33.08.030, no person except:

(1) A national bank;

(2) A bank or trust company authorized by the laws of this state;

(3) A corporation established under RCW 31.30.010;

(4) A foreign corporation authorized by this title so to do, shall,

(a) Use as a part of his or its name or other business designation or in any manner as if connected with his or its business or place of business any of the following words or the plural thereof, to wit: "bank," "banking," "banker," "trust."

(b) Use any sign at or about his or its place of business or use or circulate any advertisement, letterhead, billhead, note, receipt, certificate, blank, form, or any written or printed or part written and part printed paper, instrument or article whatsoever, directly or indirectly indicating that the business of such person is that of a bank or trust company.

This section shall not prevent a lender approved by the United States secretary of housing and urban development for participation in any mortgage insurance program under the National Housing Act from using the words "mortgage banker" or "mortgage banking" in the conduct of its business, but only if both words are used together in either of the forms which appear in quotations in this sentence.

Every person who, and every director and officer of every corporation which, to the knowledge of such director or officer violates any provision of this section shall be guilty of a gross misdemeanor. [1986 c 284 § 15; 1983 c 42 § 2; 1981 c 88 § 1; 1955 c 33 § 30.04.020. Prior: 1925 ex.s. c 114 § 1; 1917 c 80 § 18; RRS § 3225.]

Severability—1986 c 284: See RCW 31.30.900.

30.04.030 Rules and regulations—Administration and interpretation of title. The supervisor shall have power to adopt uniform rules and regulations in accordance with the administrative procedure act, chapter 34.05 RCW, to govern examinations and reports of banks and trust companies and the form in which they shall report their assets, liabilities, and reserves, charge off bad debts and otherwise keep their records and accounts, and otherwise to govern the administration of this title. He shall mail a copy of the rules and regulations to each bank and trust company at its principal place of business.

The supervisor shall have the power, and broad administrative discretion, to administer and interpret the provisions of this title to facilitate the delivery of financial services to the citizens of the state of Washington by the banks and trust companies subject to this title. [1986 c 279 § 1; 1955 c 33 § 30.04.030. Prior: 1917 c 80 § 58, part; RRS § 3265, part.]

30.04.050 Violations—Penalty. Every bank and trust company and their officers, employees, and agents shall comply with the rules and regulations. The violation of any rule or regulation in addition to any other penalty provided in this title, shall subject the offender to a penalty of one hundred dollars for each offense, to be recovered by the attorney general in a civil action in the name of the state. Each day's continuance of the violation shall be a separate and distinct offense. [1955 c 33 § 30.04.050. Prior: 1917 c 80 § 58, part; RRS § 3265, part.]

30.04.060 Examinations directed—Cooperative agreements and actions. (1) The supervisor, the deputy supervisor, or a bank examiner shall visit each bank and each trust company at least once every eighteen months, and oftener if necessary, for the purpose of making a full investigation into the condition of such corporation, and for that purpose they are hereby empowered to administer oaths and to examine under oath any director, officer, employee, or agent of such corporation. The supervisor may make such other full or partial examinations as deemed necessary

and may examine any bank holding company that owns any portion of a bank or trust company chartered by the state of Washington and obtain reports of condition for any bank holding company that owns any portion of a bank or trust company chartered by the state of Washington. The supervisor may visit and examine into the affairs of any nonpublicly held corporation in which the bank, trust company, or bank holding company has an investment or any publicly held corporation the capital stock of which is controlled by the bank, trust company, or bank holding company; may appraise and revalue such corporations' investments and securities; and shall have full access to all the books, records, papers, securities, correspondence, bank accounts, and other papers of such corporations for such purposes. The supervisor may, in his or her discretion, accept in lieu of the examinations required in this section the examinations conducted at the direction of the federal reserve board or the Federal Deposit Insurance Corporation. Any willful false swearing in any examination is perjury in the second degree.

(2) The supervisor may enter into cooperative and reciprocal agreements with the bank regulatory authorities of the United States, any state, the District of Columbia, or any trust territory of the United States for the periodic examination of domestic bank holding companies owning banking institutions in other states, the District of Columbia, or trust territories, and subsidiaries of such domestic bank holding companies, or of out-of-state bank holding companies owning a bank or trust company the principal operations of which are conducted in this state. The supervisor may accept reports of examination and other records from such authorities in lieu of conducting his or her own examinations. The supervisor may enter into joint actions with other regulatory bodies having concurrent jurisdiction or may enter into such actions independently to carry out his or her responsibilities under this title and assure compliance with the laws of this state. [1989 c 180 § 1; 1985 c 305 § 3; 1983 c 157 § 3; 1982 c 196 § 6; 1955 c 33 § 30.04.060. Prior: 1937 c 48 § 1; 1919 c 209 § 5; 1917 c 80 § 7; RRS § 3214.]

Severability—1983 c 157: See note following RCW 30.04.235.

Severability—1982 c 196: See note following RCW 30.04.550.

Supervisor of banking and bank examiners: Chapter 43.19 RCW.

30.04.070 Cost of examination. The supervisor shall collect from each bank, mutual savings bank, trust company or industrial loan company for each examination of its condition the estimated actual cost of such examination. [1955 c 33 § 30.04.070. Prior: 1929 c 73 § 1; 1923 c 172 § 16; 1921 c 73 § 1; 1917 c 80 § 8; RRS § 3215.]

30.04.075 Examination reports and information—Confidentiality—Disclosure—Penalty. (1) All examination reports and all information obtained by the supervisor and the supervisor's staff in conducting examinations of banks, trust companies, or alien banks, and information obtained by the supervisor and the supervisor's staff from other state or federal bank regulatory authorities with whom the supervisor has entered into agreements pursuant to RCW 30.04.060(2), and information obtained by the supervisor and the supervisor's staff relating to examination and supervision of bank holding companies owning a bank in this state or

subsidiaries of such holding companies, is confidential and privileged information and 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 supervisor may furnish all or any part of examination reports prepared by the supervisor's office to:

(a) Federal agencies empowered to examine state banks, trust companies, or alien banks;

(b) Bank regulatory authorities with whom the supervisor has entered into agreements pursuant to RCW 30.04.060(2), and other bank regulatory authorities who are the primary regulatory authority or insurer of accounts for a bank holding company owning a bank, trust company, or national banking association the principal operations of which are conducted in this state or a subsidiary of such holding company; provided that the supervisor shall first find that the reports of examination to be furnished shall receive protection from disclosure comparable to that accorded by this section;

(c) Officials empowered to investigate criminal charges subject to legal process, valid search warrant, or subpoena. If the supervisor furnishes any examination report to officials empowered to investigate criminal charges, the supervisor may only furnish that part of the report which is necessary and pertinent to the investigation, and the supervisor may do this only after notifying the affected bank, trust company, or alien bank and any customer of the bank, trust company, or alien bank who is named in that part of the examination or report ordered to be furnished unless the officials requesting the report first obtain a waiver of the notice requirement from a court of competent jurisdiction for good cause;

(d) The examined bank, trust company, or alien bank, or holding company thereof;

(e) The attorney general in his or her role as legal advisor to the supervisor;

(f) Liquidating agents of a distressed bank, trust company, or alien bank;

(g) A person or organization officially connected with the bank as officer, director, attorney, auditor, or independent attorney or independent auditor;

(h) The Washington public deposit protection commission as provided by RCW 39.58.105.

(3) All examination reports furnished under subsections (2) and (4) of this section shall remain the property of the division of banking, and be confidential and no person, agency, or authority to whom reports are furnished or any officer, director, or employee thereof shall disclose or make public any of the reports or any information contained therein except in published statistical material that does not disclose the affairs of any individual or corporation: PROVIDED, That nothing herein shall prevent the use in a criminal prosecution of reports furnished under subsection (2) of this section.

(4) The examination report made by the division of banking is designed for use in the supervision of the bank, trust company, or alien bank. The report shall remain the property of the supervisor and will be furnished to the bank, trust company, or alien bank solely for its confidential use. Under no circumstances shall the bank, trust company, or alien bank or any of its directors, officers, or employees disclose or make public in any manner the report or any

portion thereof, to any person or organization not connected with the bank as officer, director, employee, attorney, auditor, or candidate for executive office with the bank. The bank may also, after execution of an agreement not to disclose information in the report, disclose the report or relevant portions thereof to a party proposing to acquire or merge with the bank.

(5) Examination reports and information obtained by the supervisor and the supervisor's staff in conducting examinations, or obtained from other state and federal bank regulatory authorities with whom the supervisor has entered into agreements pursuant to RCW 30.04.060(2), or relating to examination and supervision of bank holding companies owning a bank, trust company, or national banking association the principal operations of which are conducted in this state or a subsidiary of such holding company, or information obtained as a result of applications or investigations pursuant to RCW 30.04.230, shall not be subject to public disclosure under chapter 42.17 RCW.

(6) In any civil action in which the reports are sought to be discovered or used as evidence, any party may, upon notice to the supervisor, petition the court for an in camera review of the report. The court may permit discovery and introduction of only those portions of the report which are relevant and otherwise unobtainable by the requesting party. This subsection shall not apply to an action brought or defended by the supervisor.

(7) This section shall not apply to investigation reports prepared by the supervisor and the supervisor's staff concerning an application for a new bank or trust company or an application for a branch of a bank, trust company, or alien bank: PROVIDED, That the supervisor may adopt rules making confidential portions of the reports if in the supervisor's opinion the public disclosure of the portions of the report would impair the ability to obtain the information which the supervisor considers necessary to fully evaluate the application.

(8) Every person who violates any provision of this section shall be guilty of a gross misdemeanor. [1989 c 180 § 2; 1986 c 279 § 2; 1977 ex.s. c 245 § 1.]

Severability—1977 ex.s. c 245: "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." [1977 ex.s. c 245 § 6.]

30.04.085 Receipt for deposits—Contents. Each person making a deposit in a bank or trust company shall be given a receipt that shall show or in conjunction with the deposit slip can be used to trace the name of the bank or trust company, the name of the account, the account number, the date, and the amount deposited. If specifically requested by the depositor when making the deposit, the receipt must expressly show the name of the bank or trust company, the date, the amount deposited, plus either the name of the account or the account number or both the name of the account and the account number. [1985 c 305 § 2.]

30.04.111 Limit on loans and extensions of credit to one person—Exceptions. The total loans and extensions of credit by a bank or trust company to a person outstanding at any one time shall not exceed twenty percent of the capital and surplus of such bank or trust company. The following

loans and extensions of credit shall not be subject to this limitation:

(1) Loans or extensions of credit arising from the discount of commercial or business paper evidencing an obligation to the person negotiating it with recourse;

(2) Loans or extensions of credit secured by bonds, notes, certificates of indebtedness, or treasury bills of the United States or by other such obligations wholly guaranteed as to principal and interest by the United States;

(3) Loans or extensions of credit to or secured by unconditional takeout commitments or guarantees of any department, agency, bureau, board, commission, or establishment of the United States or any corporation wholly owned directly or indirectly by the United States;

(4) Loans or extensions of credit fully secured by a segregated deposit account or accounts in the lending bank;

(5) Loans or extensions of credit secured by collateral having a readily ascertained market value of at least one hundred fifteen percent of the outstanding amount of the loan or extension of credit;

(6) Loans or extensions of credit secured by bills of lading, warehouse receipts, or similar documents transferring or securing title to readily marketable staples shall be subject to a limitation of thirty-five percent of capital and surplus in addition to the general limitations, if the market value of the staples securing each additional loan or extension of credit at all times equals or exceeds one hundred fifteen percent of the outstanding amount of the loan or extension of credit. The staples shall be fully covered by insurance whenever it is customary to insure the staples;

(7) The purchase of bankers' acceptances of the kind described in section 13 of the federal reserve act and issued by other banks shall not be subject to any limitation based on capital and surplus;

(8) The unpaid purchase price of a sale of bank property, if secured by such property.

For the purposes of this section "capital" shall include the amount of common stock outstanding and unimpaired, the amount of preferred stock outstanding and unimpaired, and capital notes or debentures issued pursuant to chapter 30.36 RCW.

For the purposes of this section "surplus" shall include capital surplus, reflecting the amounts paid in excess of the par or stated value of capital stock, or amounts contributed to the bank other than for capital stock, and amounts transferred to surplus from undivided profits pursuant to resolution of the board of directors.

The term "person" shall include an individual, sole proprietor, partnership, joint venture, association, trust, estate, business trust, corporation, sovereign government or agency, instrumentality, or political subdivision thereof, or any similar entity or organization.

The supervisor may prescribe rules to administer and carry out the purposes of this section, including rules to define or further define terms used in this section and to establish limits or requirements other than those specified in this section for particular classes or categories of loans or extensions of credit, and to determine when a loan putatively made to a person shall, for purposes of this section, be attributed to another person. [1986 c 279 § 3.]

30.04.112 "Loans or obligations" and "liabilities" limited for purposes of RCW 30.04.111. Sales of federal reserve funds with a maturity of one business day or under a continuing contract are not "loans or obligations" or "liabilities" for the purposes of the loan limits established by RCW 30.04.111. However, sales of federal reserve funds with a maturity of more than one business day are subject to those limits.

For the purposes of this section, "sale of federal reserve funds" means any transaction among depository institutions involving the disposal of immediately available funds resulting from credits to deposit balances at federal reserve banks or from credits to new or existing deposit balances due from a correspondent depository institution. [1989 c 220 § 1; 1983 c 157 § 2.]

Severability—1983 c 157: See note following RCW 30.04.235.

30.04.120 Loans on own stock prohibited—Shares of other corporations. The shares of stock of every bank and trust company shall be deemed personal property. No such corporation shall hereafter make any loan or discount on the security of its own capital stock, nor be the purchaser or holder of any such shares, unless such security or purchase shall be necessary to prevent loss upon a debt previously contracted in good faith; in which case the stocks so purchased or acquired shall be sold at public or private sale, or otherwise disposed of, within six months from the time of its purchase or acquisition. Except as hereinafter provided or otherwise permitted by law, nothing herein contained shall authorize the purchase by any such bank or trust company for its own account of any shares of stock of any corporation, except a federal reserve bank of which such corporation shall become a member, and then only to the extent required by such federal reserve bank: **PROVIDED**, That any bank or trust company may purchase, acquire and hold shares of stock in any other corporation which shares have been previously pledged as security to any loan or discount made in good faith and such purchase shall be necessary to prevent loss upon a debt previously contracted in good faith and stock so purchased or acquired shall be sold at public or private sale or otherwise disposed of within two years from the time of its purchase or acquisition. Any time limit imposed in this section may be extended by the supervisor upon cause shown. Banks and trust companies are authorized to make loans on the security of the capital stock of a bank or trust company other than the lending corporation. [1986 c 279 § 4; 1973 1st ex.s. c 104 § 1; 1955 c 33 § 30.04.120. Prior: 1943 c 187 § 1; 1933 c 42 § 9; 1929 c 73 § 5; 1917 c 80 § 36; Rem. Supp. 1943 § 3243.]

30.04.125 Investment in corporations—Authorized businesses. Unless otherwise prohibited by law, any state bank or trust company may invest in the capital stock of corporations organized to conduct the following businesses:

(1) A safe deposit business: **PROVIDED**, That the amount of investment does not exceed fifteen percent of its capital stock and surplus;

(2) A corporation holding the premises of the bank or its branches: **PROVIDED**, That without the approval of the supervisor, the investment of such stock shall not exceed, together with all loans made to the corporation by the bank,

a sum equal to the amount permitted to be invested in the premises by RCW 30.04.210;

(3) Stock in a small business investment company licensed and regulated by the United States as authorized by the small business act, Public Law 85-536, 72 Statutes at Large 384, in an amount not to exceed five percent of its capital and surplus;

(4) Capital stock of a banking service corporation or corporations. The total amount that a bank may invest in the shares of such corporation may not exceed ten percent of its capital and surplus. A bank service corporation may not engage in any activity other than those permitted by the bank service corporation act, 12 U.S.C. Sec. 1861, et seq., as subsequently amended and in effect on June 11, 1986. The performance of any service, and any records maintained by any such corporation for a bank, shall be subject to regulation and examination by the supervisor and appropriate federal agencies to the same extent as if the services or records were being performed or maintained by the bank on its own premises;

(5) Capital stock of a federal reserve bank to the extent required by such federal reserve bank;

(6) A corporation engaging in business activities that have been determined by the board of governors of the federal reserve system or by the United States congress to be closely related to the business of banking, as of June 11, 1986;

(7) A governmentally sponsored corporation engaged in secondary marketing of loans and the stock of which must be owned in order to participate in its marketing activities;

(8) A corporation in which all of the voting stock is owned by the bank and that engages exclusively in nondeposit-taking activities that are authorized to be engaged in by the bank or trust company. [1986 c 279 § 5.]

30.04.127 Formation, incorporation, or investment in corporations or other entities authorized—Approval—Exception. (1) A bank or trust company, alone or in conjunction with other entities, may form, incorporate, or invest in corporations or other entities, whether or not such other corporation or entity is related to the bank or trust company's business. The aggregate amount of funds invested, or used in the formation of corporations or other entities under this section shall not exceed ten percent of the assets or fifty percent of the net worth, whichever is less, of the bank or trust company. For purposes of this subsection, "net worth" means the aggregate of capital, surplus, undivided profits, and all capital notes and debentures which are subordinate to the interest of depositors.

(2) A bank or trust company may engage in an activity permitted under this section only with the prior authorization of the supervisor. In approving or denying a proposed activity, the supervisor shall consider the financial and management strength of the institution, the convenience and needs of the public, and whether the proposed activity should be conducted through a subsidiary or affiliate of the bank. The supervisor may not authorize under this section and no bank or trust company may act as an insurance or travel agent unless otherwise authorized by state statute. [1987 c 498 § 1.]

30.04.129 Investment in obligations issued or guaranteed by multilateral development bank. Any bank or trust company may invest in obligations issued or guaranteed by any multilateral development bank in which the United States government formally participates. Such investment in any one multilateral development bank shall not exceed five percent of the bank's or trust company's paid-in capital and surplus. [1985 c 301 § 2.]

30.04.130 Defaulted debts, judgments to be charged off—Valuation of assets. Any debt due a bank or trust company on which interest is one year or more past due and unpaid, unless such debt be well secured and in the course of collection by legal process or probate proceedings, or unless such debt be represented by or secured by bonds or other collateral having a readily ascertainable market value shall be considered a bad debt, and shall be charged off of the books of such corporation. Such assets shall be carried on the books of such corporation at such value as the supervisor may from time to time direct, but in no event shall such carrying value exceed the market value thereof. A judgment held by a bank or trust company shall not be considered an asset of the corporation after two years from the date of its rendition unless with the written permission of the supervisor specifying an additional period: PROVIDED, That time consumed by any appeal shall be excluded.

All assets or portion thereof that the supervisor may have required a bank or trust company to charge off shall be charged off. No bank or trust company shall enter or at any time carry on its books any of its assets at a valuation exceeding the actual cost. However, accreting the discount on securities is permitted on a pro rata basis, over the life of the security. [1986 c 279 § 6; 1955 c 33 § 30.04.130. Prior: 1937 c 61 § 1; 1919 c 209 § 15; 1917 c 80 § 47; RRS § 3254.]

30.04.140 Pledge of securities or assets prohibited—Exceptions. No bank or trust company shall pledge or hypothecate any of its securities or assets to any depositor, except that it may qualify as depository for United States deposits, or other public funds, or funds held in trust and deposited by any public officer by virtue of his office, or as a depository for the money of estates under the statutes of the United States pertaining to bankruptcy or funds deposited by a trustee or receiver in bankruptcy appointed by any court of the United States or any referee thereof, or funds held by the United States or the state of Washington, or any officer thereof in trust, or for funds of corporations owned or controlled by the United States, and may give such security for such deposits as are required by law or by the officer making the same; and it may give security to its trust department for deposits with itself which represent trust funds invested in savings accounts or which represent fiduciary funds awaiting investment or distribution. [1986 c 279 § 7; 1983 c 157 § 6; 1967 c 133 § 2; 1955 c 33 § 30.04.140. Prior: 1933 c 42 § 24, part; 1917 c 80 § 54, part; RRS § 3261, part.]

Severability—1983 c 157: See note following RCW 30.04.235.

30.04.180 Dividends. No bank or trust company shall declare or pay any dividend to an amount greater than its net profits then on hand.

The board of directors of any bank or trust company may declare a dividend out of so much of the undivided profits of such bank or trust company as they shall judge expedient: PROVIDED, HOWEVER, That before any such dividend is declared or the net profits in any way disposed of, not less than one-tenth of such net profits shall be carried to a surplus fund until the amount in such surplus fund shall be equal to twenty-five percent of the paid-in common stock of such bank or trust company: PROVIDED, FURTHER, That for the purposes of this section, any amounts paid into a fund for the retirement of any preferred stock of any such bank and trust company out of its net profits for such period or periods shall be deemed to be additions to its surplus fund if, upon the retirement of such preferred stock, the amounts so paid into such retirement fund may then properly be carried to surplus. In any such case the bank and trust company shall be obligated to transfer to surplus the amounts so paid into such retirement fund on account of the preferred stock as such stock is retired: PROVIDED FURTHER, That the supervisor shall in his discretion have the power to require any bank or trust company to suspend the payment of any and all dividends until all requirements that may have been made by the supervisor shall have been complied with; and upon such notice to suspend dividends no bank or trust company shall thereafter declare or pay any dividends until such notice has been rescinded in writing. A dividend is payable in property or capital stock. [1986 c 279 § 8; 1981 c 89 § 1; 1969 c 136 § 2; 1955 c 33 § 30.04.180. Prior: 1933 c 42 § 7; 1931 c 11 § 1; 1917 c 80 § 33; RRS § 3240.]

Severability—1981 c 89: "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 89 § 8.]

30.04.210 Real estate holdings. A bank or trust company may purchase, hold, and convey real estate for the following purposes:

(1) Such as shall be necessary for the convenient transaction of its business, including with its banking offices other space in the same building to rent as a source of income: PROVIDED, That any bank or trust company shall not invest for such purposes more than the greater of: (a) Fifty percent of its capital, surplus, and undivided profits; or (b) one hundred twenty-five percent of its capital stock without the approval of the supervisor.

(2) Such as shall be purchased or conveyed to it in satisfaction, or on account of, debts previously contracted in the course of its business.

(3) Such as it shall purchase at sale under judgments, decrees, liens, or mortgage foreclosures, from debts owed to it.

(4) Such as a trust company receives in trust or acquires pursuant to the terms or authority of any trust.

(5) Such as it may take title to or for the purpose of investing in real estate conditional sales contracts.

(6) Such as shall be purchased, held, or conveyed in accordance with RCW 30.04.212 granting banks the power

to invest directly or indirectly in unimproved or improved real estate.

No real estate specified in subdivision (4) shall be considered an asset of the bank or trust company holding the same in trust nor shall any real estate except that specified in subdivision (1) be carried as an asset on the bank's or trust company's books for a longer period than five years from the date title is acquired thereto, unless an extension of time be granted by the supervisor. [1986 c 279 § 9; 1985 c 329 § 4; 1979 c 142 § 1; 1973 1st ex.s. c 104 § 2; 1955 c 33 § 30.04.210. Prior: 1947 c 149 § 1; 1917 c 80 § 37; Rem. Supp. 1947 § 3244.]

Legislative intent—1985 c 329: See note following RCW 30.60.010.

Severability—Effective date—1985 c 329: See RCW 30.60.900 and 30.60.901.

Adoption of rules: RCW 30.60.030.

30.04.212 Real property and improvements thereon.

(1) In addition to the powers granted under RCW 30.04.210 and subject to the limitations and restrictions contained in this section and in RCW 30.60.010 and 30.60.020, a bank:

(a) May acquire any interest in unimproved or improved real property;

(b) May construct, alter, and manage improvements of any description on real estate in which it holds a substantial equity interest.

(2) The powers granted under subsection (1) of this section do not include, and a bank may not:

(a) Manage any real property in which the bank does not own a substantial equity interest;

(b) Engage in activities of selling, leasing, or otherwise dealing in real property as an agent or broker; or

(c) Acquire any equity interest in any one to four-family dwelling that is used as a principal residence by the owner of the dwelling; however, this shall not prohibit a bank from making loans secured by such dwelling where all or part of the bank's anticipated compensation results from the appreciation and sale of such dwelling.

(3) The aggregate amount of funds invested under this section shall not exceed two percent of a bank's capital, surplus, and undivided profits. Such percentage amount shall be increased based upon the most recent community reinvestment rating assigned to a bank by the supervisor in accordance with RCW 30.60.010, as follows:

(a) Excellent performance: Increase to 10%

(b) Good performance: Increase to 8%

(c) Satisfactory performance: Increase to 6%

(d) Inadequate performance: Increase to 3%

(e) Poor performance: No increase

(4) For purposes of this section only, each bank will be deemed to have been assigned a community reinvestment rating of "1" for the period beginning with January 1, 1986, and ending December 31, 1986. Thereafter, each bank will be assigned an annual rating in accordance with RCW 30.60.010, which rating shall remain in effect for the next succeeding year and until the supervisor has conducted a new investigation and assigned a new rating for the next succeeding year, the process repeating on an annual basis.

(5) No bank may at any time be required to dispose of any investment made in accordance with this section due to the fact that the bank is not then authorized to acquire such

investment, if such investment was lawfully acquired by the bank at the time of acquisition.

(6) The supervisor shall limit the amount that may be invested in a single project or investment and may adopt any rule necessary to the safe and sound exercise of powers granted by this section. [1985 c 329 § 5.]

Legislative intent—1985 c 329: See note following RCW 30.60.010.

Severability—Effective date—1985 c 329: See RCW 30.60.900 and 30.60.901.

Adoption of rules: RCW 30.60.030.

30.04.214 Qualifying community investments. (1)

An amount equal to ten percent of the aggregate amount invested in real estate in accordance with RCW 30.04.212 shall be placed in qualifying community investments as defined in subsection (2) of this section.

(2) "Qualifying community investment" means any direct or indirect investment or extension of credit made by a bank in projects or programs designed to develop or redevelop areas in which persons with low or moderate incomes reside, designed to meet the credit needs of such low or moderate-income areas, or that primarily benefits low and moderate-income residents of such areas. The term includes, but is not limited to, any of the following within the state of Washington:

(a) Investments in governmentally insured, guaranteed, subsidized, or otherwise sponsored programs for housing, small farms, or businesses that address the needs of the low and moderate-income areas.

(b) Investments in residential mortgage loans, home improvements loans, housing rehabilitation loans, and small business or small farm loans originated in low and moderate-income areas, or the purchase of such loans originated in low and moderate-income areas.

(c) Investments for the preservation or revitalization of urban or rural communities in low and moderate-income areas.

The term does not include personal installment loans, loans made to purchase, or loans secured by an automobile.

(3) A qualifying community investment made by an entity that wholly owns a bank, is wholly owned by a bank, or is wholly owned by an entity that wholly owns the bank is deemed to have been made by a bank to satisfy the requirements of subsection (1) of this section. [1985 c 329 § 6.]

Legislative intent—1985 c 329: See note following RCW 30.60.010.

Severability—Effective date—1985 c 329: See RCW 30.60.900 and 30.60.901.

Adoption of rules: RCW 30.60.030.

30.04.215 Engaging in other business activities. (1)

Notwithstanding any other provisions of law, in addition to all powers enumerated by this title, and those necessarily implied therefrom, a bank may engage in other business activities that have been determined by the board of governors of the federal reserve system or by the United States Congress to be closely related to the business of banking, as of June 11, 1986. At least thirty days before investment in corporations or other entities under this chapter, notification by letter shall be made to the supervisor in accordance with

such terms and conditions as the supervisor might establish by rule.

(2) A bank that desires to perform an activity that is not expressly authorized by subsection (1) of this section shall first apply to the supervisor for authorization to conduct such activity. Within thirty days of the receipt of this application, the supervisor shall determine whether the activity is closely related to the business of banking, whether the public convenience and advantage will be promoted, whether the activity is apt to create an unsafe or unsound practice by the bank and whether the applicant is capable of performing such an activity. If the supervisor finds the activity to be closely related to the business of banking and the bank is otherwise qualified, he shall forthwith inform the applicant that the activity is authorized. If the supervisor determines that such activity is not closely related to the business of banking or the bank is not otherwise qualified, he shall forthwith inform the applicant in writing. The applicant shall have the right to appeal from an unfavorable determination in accordance with the procedures of the Administrative Procedure Act, chapter 34.05 RCW. In determining whether a particular activity is closely related to the business of banking, the supervisor shall be guided by the rulings of the board of governors of the federal reserve system and the comptroller of the currency in making determinations in connection with the powers exercisable by bank holding companies, and the activities performed by other commercial banks or their holding companies. Any activity which may be performed by a bank, except the taking of deposits, may be performed by a corporation, all of the outstanding stock of which is owned by the bank.

(3) In addition to all powers enumerated by this title, and those necessarily implied therefrom, a bank may engage in other business activities that are determined by the supervisor, by regulation adopted pursuant to chapter 34.05 RCW, to be closely related to the business of banking, or necessary or convenient thereto, and the exercise thereof will promote the public convenience and advantage. Provided, however, that such other business activities shall also have been determined by the board of governors of the federal reserve system or by the United States congress to be closely related to the business of banking. [1986 c 279 § 10; 1983 c 157 § 8; 1969 c 136 § 7.]

Severability—1983 c 157: See note following RCW 30.04.235.

30.04.220 Corporations existing under former laws.

Every corporation, which on March 10, 1917, was actually and publicly engaged in banking or trust business in this state in full compliance with the laws hereof, which were in force immediately prior to March 10, 1917, may, if it otherwise complies with the provisions of this title, continue its said business, subject to the terms and regulations hereof and without amending its articles of incorporation, although its name and the amount of its capital stock, the number or length of terms of its directors or the form of its articles of incorporation do not comply with the requirements of this title: **PROVIDED,**

(1) That any such bank, which was by the supervisor lawfully permitted to operate, although its capital stock was not fully paid in, shall pay in the balance of its capital stock

at such times and in such amounts as the supervisor may require;

(2) That, except with written permission of the supervisor, any bank or trust company which shall amend its articles of incorporation must in such event comply with all the requirements of this title. [1955 c 33 § 30.04.220. Prior: 1937 c 31 § 1; 1917 c 80 § 78; RRS § 3285.]

30.04.225 Contributions and gifts. In the absence of an express prohibition in its articles of incorporation, the making of contributions or gifts for the public welfare, or for charitable, scientific, or educational purposes by a state bank or trust company is within its powers and shall be deemed to inure to the benefit of the bank. [1986 c 279 § 11.]

30.04.230 Authority of corporation or association to acquire stock of bank, trust company, or national banking association. (1) A corporation or association organized under the laws of this state or licensed to transact business in the state may acquire any or all shares of stock of any bank, trust company, or national banking association. Nothing in this section shall be construed to prohibit the merger, consolidation, or reorganization of a bank or trust company in accordance with this title.

(2) Unless the terms of this section or RCW 30.04.232 are complied with, an out-of-state bank holding company shall not acquire more than five percent of the shares of the voting stock or all or substantially all of the assets of a bank, trust company, or national banking association the principal operations of which are conducted within this state.

(3) As used in this section a "bank holding company" means a company that is a bank holding company as defined by the Bank Holding Company Act of 1956, as amended (12 U.S.C. Sec. 1841 et seq.). An "out-of-state bank holding company" is a bank holding company that principally conducts its operations outside this state, as measured by total deposits held or controlled by its bank subsidiaries on the date on which it became a holding company. A "domestic bank holding company" is a bank holding company that principally conducts its operations within this state, as measured by total deposits held or controlled by its bank subsidiaries on the date on which it became a bank holding company.

(4) Any such acquisition referred to under subsection (2) of this section by an out-of-state bank holding company requires the express written approval of the supervisor of banking. Approval shall not be granted unless and until the following conditions are met:

(a) An out-of-state bank holding company desiring to make an acquisition referred to under subsection (2) of this section and the bank, trust company, national banking association, or domestic bank holding company parent thereof, if any, proposed to be acquired shall file an application in writing with the supervisor of banking. The supervisor shall by rule establish the fee schedule to be collected from the applicant in connection with the application. The fee shall not exceed the cost of processing the application. The application shall contain such information as the supervisor of banking may prescribe by rule as necessary or appropriate for the purpose of making a determination under this section. The application and supporting information and

all examination reports and information obtained by the supervisor and the supervisor's staff in conducting its investigation shall be confidential and privileged and not subject to public disclosure under chapter 42.17 RCW. The application and information may be disclosed to federal bank regulatory agencies and to officials empowered to investigate criminal charges, subject to legal process, valid search warrant, or subpoena. In any civil action in which such application or information is sought to be discovered or used as evidence, any party may, upon notice to the supervisor and other parties, petition for an in camera review. The court may permit discovery and introduction of only those portions that are relevant and otherwise unobtainable by the requesting party. The application and information shall be discoverable in any judicial action challenging the approval of an acquisition by the supervisor as arbitrary and capricious or unlawful.

(b) The supervisor of banking shall find that:

(i) The bank, trust company, or national banking association that is proposed to be acquired or the domestic bank holding company controlling such bank, trust company, or national banking association is in such a liquidity or financial condition as to be in danger of closing, failing, or insolvency. In making any such determination the supervisor shall be guided by the criteria developed by the federal regulatory agencies with respect to emergency acquisitions under the provisions of 12 U.S.C. Sec. 1828(c);

(ii) There is no state bank, trust company, or national banking association doing business in the state of Washington or domestic bank holding company with sufficient resources willing to acquire the entire bank, trust company, or national banking association on at least as favorable terms as the out-of-state bank holding company is willing to acquire it;

(iii) The applicant out-of-state bank holding company has provided all information and documents requested by the supervisor in relation to the application; and

(iv) The applicant out-of-state bank holding company has demonstrated an acceptable record of meeting the credit needs of its entire community, including low and moderate income neighborhoods, consistent with the safe and sound operation of such institution.

(c) The supervisor shall consider:

(i) The financial institution structure of this state; and

(ii) The convenience and needs of the public of this state.

(5) Nothing in this section may be construed to prohibit, limit, restrict, or subject to further regulation the ownership by a bank of the stock of a bank service corporation or a banker's bank. [1987 c 420 § 2. Prior: 1985 c 310 § 2; 1985 c 305 § 4; 1983 c 157 § 9; 1982 c 196 § 7; 1981 c 89 § 2; 1973 1st ex.s. c 92 § 1; 1961 c 69 § 1; 1955 c 33 § 30.04.230; prior: 1933 c 42 § 10; RRS § 3243-1.]

Construction—Effective date—1985 c 310: See notes following RCW 30.04.232.

Severability—1983 c 157: See note following RCW 30.04.235.

Severability—1982 c 196: See note following RCW 30.04.550.

Severability—1981 c 89: See note following RCW 30.04.180.

30.04.232 Additional authority of out-of-state holding company to acquire stock or assets of bank, trust

company, or national banking association. (1) In addition to an acquisition pursuant to RCW 30.04.230, an out-of-state bank holding company may acquire more than five percent of the voting stock or all or substantially all of the assets of a bank, trust company, or national banking association, the principal operations of which are conducted within this state, if the following terms or conditions are fulfilled:

(a) The bank, trust company, or national banking association, the voting stock of which is to be acquired, shall have been conducting business for a period of not less than three years;

(b) The laws of the state in which the out-of-state bank holding company principally conducts its operations permit a domestic bank holding company to acquire more than five percent of the shares of the voting stock or all or substantially all of the assets of a bank, trust company, or national banking association, the principal operations of which are conducted within that state, and permit the operation of the acquired bank, trust company, or national banking association within that state on terms and conditions no less favorable than other banks, trust companies, or national banking associations doing a banking business within that state;

(c) The supervisor of banking, upon the request of any person, shall adopt a rule making a determination whether the law, of a particular state or states meets the qualifications of (b) of this subsection.

(2) As used in this section, the terms "bank holding company," "domestic bank holding company," and "out-of-state bank holding company" shall have the meanings provided in RCW 30.04.230. [1985 c 310 § 1.]

Construction—1985 c 310: "Nothing in this act shall be deemed to expand or limit the power of a bank holding company or bank to engage in the insurance business." [1985 c 310 § 3.]

Effective date—1985 c 310: "This act shall take effect July 1, 1987." [1985 c 310 § 4.]

30.04.235 Purchase of stock of bank or bank holding company authorized—Conditions—Limitations. A bank or trust company may purchase for its own account shares of stock of a bank or a holding company that owns or controls a bank if the stock of the bank or company is owned exclusively, except to the extent directly qualifying shares are required by law, by depository institutions and the bank or company and all subsidiaries thereof are engaged exclusively in providing services for other depository institutions and their officers, directors, and employees. In no event may the total amount of such stock held by a bank or trust company in any bank or bank holding company exceed at any time ten percent of its capital stock and paid-in and unimpaired surplus, and in no event may the purchase of such stock result in a bank or trust company acquiring more than twenty-five percent of any class of voting securities of such bank or company. Such a bank or bank holding company shall be called a "banker's bank." [1983 c 157 § 1.]

Severability—1983 c 157: "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 157 § 12.]

30.04.238 Purchase of own capital stock authorized.

(1) Notwithstanding any other provision of this title, a bank, with the prior approval of the supervisor, may purchase shares of its own capital stock.

(2) When a bank purchases such shares, its capital accounts shall be reduced appropriately. The shares shall be held as authorized but unissued shares. [1986 c 279 § 12; 1985 c 305 § 1.]

30.04.240 Trust business to be kept separate—Authorized deposit of securities.

(1) Every corporation doing a trust business shall maintain in its office a trust department in which it shall keep books and accounts of its trust business, separate and apart from its other business. Such books and accounts shall specify the cash, securities and other properties, real and personal, held in each trust, and such securities and properties shall be at all times segregated from all other securities and properties except as otherwise provided in this section. Any person connected with a bank or trust company who, contrary to this section or any other provision of law, commingle any funds or securities of any kind held by such corporation in trust, for safekeeping or as agent for another, with the funds or assets of the corporation shall be guilty of a felony.

(2) Notwithstanding any other provisions of law, any fiduciary holding securities in its fiduciary capacity or any state bank, national bank, or trust company holding securities as fiduciary or as custodian for a fiduciary is authorized to deposit or arrange for the deposit of such securities: (a) In a clearing corporation (as defined in Article 8 of the Uniform Commercial Code, chapter 62A.8 RCW); (b) within another state bank, national bank, or trust company having trust power whether located inside or outside of this state; or (c) within itself. When such securities are so deposited, certificates representing securities of the same class of the same issuer may be merged and held in bulk in the name of the nominee of such clearing corporation or state bank, national bank, or trust company holding the securities as the depository, with any other such securities deposited in such clearing corporation or depository by any person, regardless of the ownership of such securities, and certificates of small denomination may be merged into one or more certificates of larger denomination. The records of such fiduciary and the records of such state bank, national bank, or trust company as a fiduciary or as custodian for a fiduciary shall at all times show the name of the party for whose account the securities are so deposited. Ownership of, and other interests in, such securities may be transferred by bookkeeping entries on the books of such clearing corporation, state bank, national bank, or trust company without physical delivery or alteration of certificates representing such securities. A state bank, national bank, or trust company so depositing securities pursuant to this section shall be subject to such rules and regulations as, in the case of state chartered banks and trust companies, the supervisor of banking and, in the case of national banking associations, the comptroller of the currency may from time to time issue. A state bank, national bank, or trust company acting as custodian for a fiduciary shall, on demand by the fiduciary, certify in writing to the fiduciary the securities so deposited by such state bank, national bank, or trust company in such

clearing corporation or state bank, national bank, or trust company acting as such depository for the account of such fiduciary. A fiduciary shall, on demand by any party to a judicial proceeding for the settlement of such fiduciary's account or on demand by the attorney for such party, certify in writing to such party the securities deposited by such fiduciary in such clearing corporation or state bank, national bank, or trust company acting as such depository for its account as such fiduciary.

This subsection shall apply to any fiduciary holding securities in its fiduciary capacity, and to any state bank, national bank, or trust company holding securities as a custodian, managing agent, or custodian for a fiduciary, acting on March 14, 1973 or who thereafter may act regardless of the date of the agreement, instrument, or court order by which it is appointed and regardless of whether or not such fiduciary, custodian, managing agent, or custodian for a fiduciary owns capital stock of such clearing corporation. [1979 c 45 § 1; 1973 c 99 § 1; 1955 c 33 § 30.04.240. Prior: 1919 c 209 § 16; 1917 c 80 § 49; RRS § 3256.]

30.04.250 Deposits in other banks. A bank or trust company shall not deposit any of its funds in another bank or trust company, except a federal reserve bank, unless such other bank or trust company shall have been appointed a depository for its funds by vote of a majority of the directors of the depositing bank. [1955 c 33 § 30.04.250. Prior: 1933 c 42 § 19; RRS § 3253-2.]

30.04.260 Legal services, advertising of—Penalty. No trust company or other corporation which advertises that it will furnish legal advice, construct or prepare wills, or do other legal work for its customers, shall be permitted to act as executor, administrator, or guardian; and any trust company or other corporation whose officers or agents shall solicit legal business shall be ineligible for a period of one year thereafter to be appointed executor, administrator or guardian in any of the courts of this state.

Any trust company or other corporation which advertises that it will furnish legal advice, construct or prepare wills, or do other legal work for its customers, and any officer, agent, or employee of any trust company or corporation who shall solicit legal business shall be guilty of a gross misdemeanor. [1974 ex.s. c 117 § 43; 1955 c 33 § 30.04.260. Prior: 1929 c 72 § 4, part; 1923 c 115 § 6, part; 1921 c 94 § 1, part; 1917 c 80 § 24, part; RRS § 3231, part.]

Application, construction—Severability—Effective date—1974 ex.s. c 117: See RCW 11.02.080 and notes following.

30.04.270 Official communications. Each official communication, directed by the supervisor or by one of his deputies to any bank, trust company, mutual savings bank or industrial loan company or to any officer thereof relating to an investigation or examination conducted by the banking department or containing suggestions or recommendations relative to the conduct of the business of the bank, trust company, mutual savings bank or industrial loan company shall be submitted by the officer receiving it to the board of directors at the next meeting of such board and shall be duly noted in the minutes of the meeting of such board. [1955 c

33 § 30.04.270. Prior: 1931 c 8 § 1, RRS § 3265-1; 1915 c 175 § 40, RRS § 3369.]

30.04.280 Compliance enjoined—Banking, trust business, branches. No person shall engage in banking except in compliance with and subject to the provisions of this title, except it be a national bank or except insofar as it may be authorized so to do by the laws of this state relating to mutual savings banks, nor shall any corporation engage in a trust business except in compliance with and subject to the provisions of this title, nor shall any bank engage in a trust business except as herein authorized, nor shall any bank or trust company establish any branch except in accordance with the provisions of this title. The practice of collecting or receiving deposits or cashing checks at any place or places other than the place where the usual business of a bank or trust company and its operations of discount and deposit are carried on shall be held and construed to be establishing a branch. [1955 c 33 § 30.04.280. Prior: 1933 c 42 § 3, part; 1919 c 209 § 7, part; 1917 c 80 § 15, part; RRS § 3222, part.]

30.04.290 Foreign companies—Authority to do business. A foreign corporation, whose name contains the words "bank," "banker," "banking," or "trust," or whose articles of incorporation empower it to do a banking or trust business and which desires to engage in the business of loaning money on mortgage securities or in buying and selling exchange, coin, bullion or securities in this state may do so, but only upon filing with the supervisor and with the secretary of state a certified copy of a resolution of its governing board to the effect that it will not engage in banking or trust business in this state, which copy shall be duly attested by its president and secretary. Such corporation shall also comply with the general corporation laws of this state relating to foreign corporations doing business herein. Nothing herein shall prevent operations by an alien bank in this state in conformance with chapter 30.42 RCW, RCW 30.04.290 and 30.40.020; nor after July 16, 1973 authorize the transaction of business in this state by an alien bank in any manner except in accordance with the provisions of chapter 30.42 RCW, RCW 30.04.290 and 30.40.020. [1973 1st ex.s. c 53 § 36; 1961 c 20 § 1; 1955 c 33 § 30.04.290. Prior: 1919 c 209 § 14; 1917 c 80 § 40; RRS § 3247.]

Severability—1973 1st ex.s. c 53: See RCW 30.42.900.

30.04.300 Foreign branch banks. A branch of any foreign bank or banker actually and publicly engaged in banking in this state on March 10, 1917, in full compliance with the laws hereof, which were in force immediately prior to March 10, 1917, and which branch has a capital not less in amount than that required for the organization of a state bank as provided in this title at the time and place when and where such branch was established, may continue its said business, subject to all of the regulations and supervision provided for banks. The amount upon which it pays taxes shall be prima facie evidence of the amount and existence of such capital. No such bank or banker shall set forth on its or his stationery or in any manner advertise in this state a greater capital, surplus and undivided profits than are

actually maintained at such branch. Every foreign corporation, bank and banker, and every officer, agent and employee thereof who violates any provision of this section or which violates the terms of the resolution filed as required by RCW 30.04.290 shall for each violation forfeit and pay to the state of Washington the sum of one thousand dollars. A civil action for the recovery of any such sum may be brought by the attorney general in the name of the state. [1955 c 33 § 30.04.300. Prior: 1917 c 80 § 41; RRS § 3248.]

30.04.310 Penalty—General. Every bank or trust company which violates or fails to comply with any provision of chapters 30.04 through 30.22, 30.44, and 11.100 RCW or any lawful direction or requirement of the supervisor shall be subject, in addition to any penalty now provided, to a penalty of not more than one hundred dollars for each offense, to be recovered by the attorney general in a civil action in the name of the state. Each day's continuance of the violation shall be a separate and distinct offense. [1988 c 25 § 1; 1985 c 30 § 137. Prior: 1984 c 149 § 173; 1955 c 33 § 30.04.310; prior: 1923 c 115 § 13; RRS § 3286a.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

30.04.330 Saturday closing authorized. Any bank, which term for the purpose of this section shall include but not be limited to any state bank, national bank or association, mutual savings bank, savings and loan association, trust company, federal reserve bank, federal home loan bank, and federal savings and loan association, federal credit union, and state credit union doing business in this state, may remain closed on Saturdays and any Saturday on which a bank remains closed shall be, with respect to such bank, a holiday and not a business day. Any act, authorized, required or permitted to be performed at or by or with respect to any bank, as herein defined, on a Saturday, may be performed on the next succeeding business day, and no liability or loss of rights of any kind shall result from such closing. [1955 c 33 § 30.04.330. Prior: 1947 c 221 § 1; Rem. Supp. 1947 § 3292a.]

30.04.370 Investment of agricultural commodity commission funds in savings or time deposits of banks, trust companies and mutual savings banks. Any funds of any agricultural commodity commission may be invested in savings or time deposits in banks, trust companies and mutual savings banks which are doing business in this state, up to the amount of insurance afforded such accounts by the Federal Deposit Insurance Corporation. This section shall apply to all funds which may be lawfully so invested, which in the judgment of any agricultural commodity commission are not required for immediate expenditure. The authority granted by this section is not exclusive and shall be construed to be cumulative and in addition to other authority provided by law for the investment of such funds. [1967 ex.s. c 54 § 2.]

30.04.375 Investment in stock, participation certificates, and other evidences of participation. Any bank or

trust company may invest in the stock or participation certificates of production credit associations, federal intermediate credit banks and the stock or other evidences of participation of federal land banks in amounts consistent with safe and sound practice in conducting the business of the trust company or bank. [1982 c 86 § 1.]

30.04.380 Investment in paid-in capital stock and surplus of banks or corporations engaged in international or foreign banking. Any bank or trust company may invest an amount not exceeding ten per centum of its paid-in capital stock and surplus in the stock of one or more banks or corporations chartered under the laws of the United States, or of any state thereof, and principally engaged in international or foreign banking, or banking in a dependency or insular possession of the United States, either directly or through the agency, ownership or control of local institutions in foreign countries, or in such dependencies or insular possessions. [1986 c 279 § 13; 1973 1st ex.s. c 104 § 9.]

30.04.390 Acquisition of stock of banks organized under laws of foreign country, etc. Any bank or trust company may acquire and hold, directly or indirectly, stock or other evidence of indebtedness or ownership in one or more banks organized under the law of a foreign country or a dependency or insular possession of the United States. [1986 c 279 § 14; 1973 1st ex.s. c 104 § 10.]

30.04.395 Continuing authority for investments. Any investment by a bank other than a loan, if legal and authorized when made, may continue to be held by the bank notwithstanding a change in circumstances or change in the law. [1986 c 279 § 16.]

30.04.400 Bank acquisition or control—Definitions. As used in RCW 30.04.400 through 30.04.410, the following words shall have the following meanings:

(1) "Control" means directly or indirectly alone or in concert with others to own, control, or hold the power to vote twenty-five percent or more of the outstanding stock or voting power of the "controlled" entity;

(2) "Acquiring party" means the person acquiring control of a bank through the purchase of stock; and

(3) "Person" means any individual, corporation, partnership, association, business trust, or other organization. [1977 ex.s. c 246 § 1.]

30.04.405 Bank acquisition or control—Notice or application—Registration statement—Violations—Penalties. (1) It is unlawful for any person to acquire control of a bank until thirty days after filing with the supervisor a copy of the notice of change of control required to be filed with the federal deposit insurance corporation or a completed application. The notice or application shall be under oath and contain substantially all of the following information plus any additional information that the supervisor may prescribe as necessary or appropriate in the particular instance for the protection of bank depositors, borrowers, or shareholders and the public interest:

(a) The identity, banking and business experience of each person by whom or on whose behalf acquisition is to be made;

(b) The financial and managerial resources and future prospects of each person involved in the acquisition;

(c) The terms and conditions of any proposed acquisition and the manner in which the acquisition is to be made;

(d) The source and amount of the funds or other consideration used or to be used in making the acquisition, and a description of the transaction and the names of the parties if any part of these funds or other consideration has been or is to be borrowed or otherwise obtained for the purpose of making the acquisition;

(e) Any plan or proposal which any person making the acquisition may have to liquidate the bank, to sell its assets, to merge it with any other bank, or to make any other major change in its business or corporate structure for management;

(f) The identification of any person employed, retained, or to be compensated by the acquiring party, or by any person on its behalf, who makes solicitations or recommendations to shareholders for the purpose of assisting in the acquisition and a brief description of the terms of the employment, retainer, or arrangement for compensation; and

(g) Copies of all invitations for tenders or advertisements making a tender offer to shareholders for the purchase of their stock to be used in connection with the proposed acquisition.

(2) Notwithstanding any other provision of this section, a bank or domestic bank holding company as defined in RCW 30.04.230 need only notify the supervisor of an intent to acquire control and the date of the proposed acquisition of control at least thirty days before the date of the acquisition of control.

(3) When a person, other than an individual or corporation, is required to file an application under this section, the supervisor may require that the information required by subsection (1)(a), (b), and (f) of this section be given with respect to each person, as defined in RCW 30.04.400(3), who has an interest in or controls a person filing an application under this subsection.

(4) When a corporation is required to file an application under this section, the supervisor may require that information required by subsection (1)(a), (b), and (f) of this section be given for the corporation, each officer and director of the corporation, and each person who is directly or indirectly the beneficial owner of twenty-five percent or more of the outstanding voting securities of the corporation.

(5) If any tender offer, request, or invitation for tenders or other agreements to acquire control is proposed to be made by means of a registration statement under the Securities Act of 1933 (48 Stat. 74, 15 U.S.C., Sec. 77(a)), as amended, or in circumstances requiring the disclosure of similar information under the Securities Exchange Act of 1934 (48 Stat. 881, 15 U.S.C., Sec. 78(a)), as amended, the registration statement or application may be filed with the supervisor in lieu of the requirements of this section.

(6) Any acquiring party shall also deliver a copy of any notice or application required by this section to the bank proposed to be acquired within two days after the notice or application is filed with the supervisor.

(7) Any acquisition of control in violation of this section shall be ineffective and void.

(8) Any person who wilfully or intentionally violates this section or any rule adopted pursuant thereto is guilty of a gross misdemeanor pursuant to chapter 9A.20 RCW. Each day's violation shall be considered a separate violation, and any person shall upon conviction be fined not more than one thousand dollars for each day the violation continues. [1986 c 279 § 15; 1985 c 305 § 5; 1977 ex.s. c 246 § 2.]

30.04.410 Bank acquisition or control—Disapproval by supervisor—Change of officers. (1) The supervisor may disapprove the acquisition of a bank or trust company within thirty days after the filing of a complete application pursuant to RCW 30.04.405 or an extended period not exceeding an additional fifteen days if:

(a) The poor financial condition of any acquiring party might jeopardize the financial stability of the bank or might prejudice the interests of the bank depositors, borrowers, or shareholders;

(b) The plan or proposal of the acquiring party to liquidate the bank, to sell its assets, to merge it with any person, or to make any other major change in its business or corporate structure or management is not fair and reasonable to the bank's depositors, borrowers, or stockholders or is not in the public interest;

(c) The banking and business experience and integrity of any acquiring party who would control the operation of the bank indicates that approval would not be in the interest of the bank's depositors, borrowers, or shareholders;

(d) The information provided by the application is insufficient for the supervisor to make a determination or there has been insufficient time to verify the information provided and conduct an examination of the qualification of the acquiring party; or

(e) The acquisition would not be in the public interest.

(2) An acquisition may be made prior to expiration of the disapproval period if the supervisor issues written notice of intent not to disapprove the action.

(3) The supervisor shall set forth the basis for disapproval of any proposed acquisition in writing and shall provide a copy of such findings and order to the applicants and to the bank involved. Such findings and order shall not be disclosed to any other party and shall not be subject to public disclosure under chapter 42.17 RCW unless the findings and/or order are appealed pursuant to chapter 34.05 RCW.

(4) Whenever such a change in control occurs, each party to the transaction shall report promptly to the supervisor any changes or replacement of its chief executive officer, or of any director, that occurs in the next twelve-month period, including in its report a statement of the past and present business and professional affiliations of the new chief executive officer or directors. [1989 c 180 § 3; 1977 ex.s. c 246 § 3.]

30.04.450 Violations or unsafe or unsound practices—Notice of charges—Contents—Hearing—Cease and desist order. (1) The supervisor may issue and serve upon a bank or trust company a notice of charges if in the opinion of the supervisor any bank or trust company:

(a) Is engaging or has engaged in an unsafe or unsound practice in conducting the business of the bank or trust company;

(b) Is violating or has violated the law, rule, or any condition imposed in writing by the supervisor in connection with the granting of any application or other request by the bank or trust company or any written agreement made with the supervisor; or

(c) Is about to do the acts prohibited in (a) or (b) of this subsection when the opinion that the threat exists is based upon reasonable cause.

(2) The notice shall contain a statement of the facts constituting the alleged violation or violations or the practice or practices and shall fix a time and place at which a hearing will be held to determine whether an order to cease and desist should issue against the bank or trust company. The hearing shall be set not earlier than ten days nor later than thirty days after service of the notice unless a later date is set by the supervisor at the request of the bank or trust company.

Unless the bank or trust company shall appear at the hearing by a duly authorized representative it shall be deemed to have consented to the issuance of the cease and desist order. In the event of this consent or if upon the record made at the hearing the supervisor finds that any violation or practice specified in the notice of charges has been established, the supervisor may issue and serve upon the bank or trust company an order to cease and desist from the violation or practice. The order may require the bank or trust company and its directors, officers, employees, and agents to cease and desist from the violation or practice and may require the bank to take affirmative action to correct the conditions resulting from the violation or practice.

(3) A cease and desist order shall become effective at the expiration of ten days after the service of the order upon the bank or trust company concerned except that a cease and desist order issued upon consent shall become effective at the time specified in the order and shall remain effective as provided therein unless it is stayed, modified, terminated, or set aside by action of the supervisor or a reviewing court. [1977 ex.s. c 178 § 1.]

Severability—1977 ex.s. c 178: "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 178 § 11.]

30.04.455 Violations or unsafe or unsound practices—Temporary cease and desist order—Issuance. Whenever the supervisor determines that the acts specified in RCW 30.04.450 or their continuation is likely to cause insolvency or substantial dissipation of assets or earnings of the bank or trust company or to otherwise seriously prejudice the interests of its depositors, the supervisor may also issue a temporary order requiring the bank or trust company to cease and desist from the violation or practice. The order shall become effective upon service on the bank or trust company and shall remain effective unless set aside, limited, or suspended by a court in proceedings under RCW 30.04.460 pending the completion of the administrative proceedings under the notice and until such time as the supervisor shall dismiss the charges specified in the notice or until the effective date of a cease and desist order issued

against the bank or trust company under RCW 30.04.450. [1977 ex.s. c 178 § 2.]

Severability—1977 ex.s. c 178: See note following RCW 30.04.450.

30.04.460 Violations or unsafe or unsound practices—Injunction to set aside, limit, or suspend temporary order. Within ten days after a bank or trust company has been served with a temporary cease and desist order, the bank or trust company may apply to the superior court in the county of its principal place of business for an injunction setting aside, limiting, or suspending the order pending the completion of the administrative proceedings pursuant to the notice served under RCW 30.04.455.

The superior court shall have jurisdiction to issue the injunction. [1977 ex.s. c 178 § 3.]

Severability—1977 ex.s. c 178: See note following RCW 30.04.450.

30.04.465 Violations or unsafe or unsound practices—Injunction to enforce temporary order. In the case of a violation or threatened violation of a temporary cease and desist order issued under RCW 30.04.455, the supervisor may apply to the superior court of the county of the principal place of business of the bank or trust company for an injunction to enforce the order, and the court shall issue an injunction if it determines that there has been a violation or threatened violation. [1977 ex.s. c 178 § 4.]

Severability—1977 ex.s. c 178: See note following RCW 30.04.450.

30.04.470 Violations or unsafe or unsound practices—Removal of officer or employee or prohibiting participation in bank or trust company affairs—Administrative hearing or judicial review. (1) Any administrative hearing provided in RCW 30.04.450 or 30.12.042 may be held at such place as is designated by the supervisor and shall be conducted in accordance with chapter 34.05 RCW. The hearing shall be private unless the supervisor determines that a public hearing is necessary to protect the public interest after fully considering the views of the party afforded the hearing.

Within sixty days after the hearing the supervisor shall render a decision which shall include findings of fact upon which the decision is based and shall issue and serve upon each party to the proceeding an order or orders consistent with RCW 30.04.450 or 30.12.042, as the case may be.

Unless a petition for review is timely filed in the superior court of the county of the principal place of business of the affected bank or trust company under subsection (2) of this section and until the record in the proceeding has been filed as therein provided, the supervisor may at any time modify, terminate, or set aside any order upon such notice and in such manner as he shall deem proper. Upon filing the record, the supervisor may modify, terminate, or set aside any order only with permission of the court.

The judicial review provided in this section for an order shall be exclusive.

(2) Any party to the proceeding or any person required by an order issued under RCW 30.04.450, 30.04.455, 30.04.465, or 30.12.042 to refrain from any of the violations or practices stated therein may obtain a review of any order served under subsection (1) of this section other than one

issued upon consent by filing in the superior court of the county of the principal place of business of the affected bank or trust company within ten days after the date of service of the order a written petition praying that the order of the supervisor be modified, terminated, or set aside. A copy of the petition shall be immediately served upon the supervisor and the supervisor shall then file in the court the record of the proceeding. The court shall have jurisdiction upon the filing of the petition, which jurisdiction shall become exclusive upon the filing of the record to affirm, modify, terminate, or set aside in whole or in part the order of the supervisor except that the supervisor may modify, terminate, or set aside an order with the permission of the court. The judgment and decree of the court shall be final, except that it shall be subject to appellate review under the rules of court.

(3) The commencement of proceedings for judicial review under subsection (2) of this section shall not operate as a stay of any order issued by the supervisor unless specifically ordered by the court.

(4) Service of any notice or order required to be served under RCW 30.04.450, 30.04.455, 30.12.040 or 30.12.042 shall be accomplished in the same manner as required for the service of process in civil actions in superior courts of this state. [1977 ex.s. c 178 § 8.]

Severability—1977 ex.s. c 178: See note following RCW 30.04.450.

30.04.475 Violations or unsafe or unsound practices—Removal of officer or employee or prohibiting participation in bank or trust company affairs—Jurisdiction of courts in enforcement or issuance of orders, injunctions or judicial review. The supervisor may apply to the superior court of the county of the principal place of business of the bank or trust company affected for the enforcement of any effective and outstanding order issued under RCW 30.04.450, 30.04.455, 30.04.465, or 30.12.042, and the court shall have jurisdiction to order compliance therewith.

No court shall have jurisdiction to affect by injunction or otherwise the issuance or enforcement of any order or to review, modify, suspend, terminate, or set aside any order except as provided in RCW 30.04.460 and 30.04.470. [1977 ex.s. c 178 § 9.]

Severability—1977 ex.s. c 178: See note following RCW 30.04.450.

30.04.500 Fairness in lending act—Short title. RCW 30.04.505 through 30.04.515 shall be known and may be cited as the "fairness in lending act". [1977 ex.s. c 301 § 10.]

Unfair practices of financial institutions: RCW 49.60.175.

30.04.505 Fairness in lending act—Definitions. As used in RCW 30.04.505 through 30.04.515:

(1) "Financial institution" means any bank or trust company, mutual savings bank, credit union, mortgage company, or savings and loan association which operates or has a place of business in this state whether regulated by the state or federal government.

(2) "Particular type of loan" refers to a class of loans which is substantially similar with respect to the following:

(a) FHA, VA, or conventional as defined in *RCW 19.106.030(2);

(b) Uniform or nonuniform payment;

(c) Uniform or nonuniform rate of interest;

(d) Purpose; and

(e) The location of the real estate offered as security for the loan as being inside or outside of that financial institution's lending area.

(3) "Varying the terms of a loan" includes, but is not limited to the following practices:

(a) Requiring a greater down payment than is usual for the particular type of a loan involved;

(b) Requiring a shorter period of amortization than is usual for the particular type of loan involved;

(c) Charging a higher interest rate than is usual for the particular type of loan involved;

(d) A deliberate underappraisal of the value of the property offered as security. [1977 ex.s. c 301 § 11.]

***Reviser's note:** RCW 19.106.030 expired on January 1, 1981. See 1977 ex.s. c 301 § 9.

30.04.510 Fairness in lending act—Unlawful practices. Subject to RCW 30.04.515, it shall be unlawful for any financial institution, in processing any application for a loan to be secured by a single-family residence to:

(1) Deny or vary the terms of a loan on the basis that a specific parcel of real estate offered as security is located in a specific geographical area, unless building, remodeling, or continued habitation in such specific geographical area is prohibited or restricted by any local, state, or federal law or rules or regulations promulgated thereunder.

(2) Utilize lending standards that have no economic basis. [1977 ex.s. c 301 § 12.]

30.04.515 Fairness in lending act—Sound underwriting practices not precluded. Nothing contained in RCW 30.04.505 through 30.04.510 shall preclude a financial institution from considering sound underwriting practices in processing any application for a loan to any person. Such practices shall include the following:

(1) The willingness and the financial ability of the borrower to repay the loan.

(2) The market value of any real estate and of any other item of property proposed as security for any loan.

(3) Diversification of the financial institution's investment portfolio. [1977 ex.s. c 301 § 13.]

30.04.550 Reorganization as subsidiary of bank holding company—Authority. A state banking corporation may, with the approval of the supervisor of banking and the affirmative vote of the shareholders of such corporation owning at least two-thirds of each class of shares entitled to vote under the terms of such shares, be reorganized to become a subsidiary of a bank holding company or a company that will, upon consummation of such reorganization, become a bank holding company, as defined in the federal bank holding company act of 1956, as amended. [1986 c 279 § 40; 1982 c 196 § 1.]

Severability—1982 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." [1982 c 196 § 11.]

30.04.555 Reorganization as subsidiary of bank holding company—Procedure. A reorganization authorized under RCW 30.04.550 shall be carried out in the following manner:

(1) A plan of reorganization specifying the manner in which the reorganization shall be carried out must be approved by a majority of the entire board of directors of the banking corporation. The plan shall specify the name of the acquiring corporation, the amount of cash, securities of the bank holding company, other consideration, or any combination thereof to be paid to the shareholders of the reorganizing corporation in exchange for their shares of the stock of the corporation. The plan shall also specify the exchange date or the manner in which such exchange date shall be determined, the manner in which the exchange shall be carried out, and such other matters, not inconsistent with this chapter, as shall be determined by the board of directors of the corporation.

(2) The plan of reorganization shall be submitted to the shareholders of the reorganizing corporation at a meeting to be held on the call of the directors. Notice of the meeting of shareholders at which the plan shall be considered shall be given by certified mail at least twenty days before the date of the meeting, to each stockholder of record of the banking corporation. The notice shall state that dissenting shareholders will be entitled to payment of the value of only those shares which are voted against approval of the plan. [1986 c 279 § 41; 1982 c 196 § 2.]

Severability—1982 c 196: See note following RCW 30.04.550.

30.04.560 Reorganization as subsidiary of bank holding company—Dissenter's rights—Conditions. If the shareholders approve the reorganization by a two-thirds vote of each class of shares entitled to vote under the terms of such shares, and if it is thereafter approved by the supervisor and consummated, any shareholder of the banking corporation who has voted shares against such reorganization at such meeting or has given notice in writing at or prior to such meeting to the banking corporation that he or she dissents from the plan of reorganization and has not voted in favor of the reorganization, shall be entitled to receive the value of the shares determined as provided in RCW 30.04.565. Such dissenter's rights must be exercised by making written demand which shall be delivered to the corporation at any time within thirty days after the date of shareholder approval, accompanied by the surrender of the appropriate stock certificates. [1986 c 279 § 42; 1982 c 196 § 3.]

Severability—1982 c 196: See note following RCW 30.04.550.

30.04.565 Reorganization as subsidiary of bank holding company—Valuation of shares of dissenting shareholders. The value of the shares of a dissenting shareholder who has properly perfected dissenter's rights shall be ascertained as of the day prior to the date of the shareholder action approving such reorganization by three appraisers, one to be selected by the owners of two-thirds of the dissenting shares, one by the board of directors of the acquiring bank holding company, and the third by the two so chosen. The valuation agreed upon by any two appraisers shall govern. If the appraisal is not completed within ninety

days after the effective date of the reorganization, the supervisor of banking shall cause an appraisal to be made which shall be final and binding upon all parties. [1982 c 196 § 4.]

Severability—1982 c 196: See note following RCW 30.04.550.

30.04.570 Reorganization as subsidiary of bank holding company—Approval of supervisor of banking—Certificate of reorganization—Exchange of shares. The reorganization and exchange authorized by RCW 30.04.550 through 30.04.570 shall become effective as follows:

(1) If the board of directors and shareholders of the state banking corporation and the board of directors of the acquiring corporation approve the plan of reorganization, then both corporations shall apply for the approval of the supervisor of banking, providing such information as the supervisor by regulation may prescribe.

(2) If the supervisor approves the reorganization, the supervisor shall issue a certificate of reorganization to the state banking corporation.

(3) Upon the issuance of a certificate of reorganization by the supervisor, or on such later date as shall be provided for in the plan of reorganization, the shares of the state banking corporation shall be deemed to be exchanged in accordance with the plan of reorganization, subject to the rights of dissenters under RCW 30.04.560 and 30.04.565. [1982 c 196 § 5.]

Severability—1982 c 196: See note following RCW 30.04.550.

30.04.575 Public hearing prior to approval of reorganization—Request. Prior to the approval of the reorganization, the supervisor, upon request of the board of directors of the bank, or not less than ten percent of its shareholders, shall hold a public hearing at which bank shareholders and other interested parties may appear. Notice of the public hearing shall be sent to each shareholder and otherwise publicized in accordance with the administrative procedure act, chapter 34.05 RCW.

The approval of the reorganization by the supervisor of banking shall be conditioned on a finding that the terms of the reorganization are fair to the shareholders and other interested parties. [1986 c 279 § 44.]

30.04.600 Shareholders—Actions authorized without meetings—Written consent. Any action required by this title to be taken at a meeting of the shareholders of a corporation, or any action that may be taken at a meeting of the shareholders, may be taken without a meeting if a consent in writing, setting forth the action so taken, is signed by all of the shareholders entitled to vote with respect to the subject matter thereof.

The consent shall have the same force and effect as a unanimous vote of shareholders and may be stated as such in any articles or documents filed under this title. [1986 c 279 § 46.]

30.04.605 Directors, committees—Actions authorized without meetings—Written consent. Unless otherwise provided by the articles of incorporation or bylaws, any action required by this title to be taken at a meeting of the directors of a bank or trust company, or any action which

may be taken at any meeting of the directors or of a committee, may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all of the directors, or all of the members of the committee, as the case may be. Such consent shall have the same effect as a unanimous vote. [1986 c 279 § 47.]

30.04.610 Directors, committees—Meetings authorized by conference telephone or similar communications equipment. Except as may be otherwise restricted by the articles of incorporation or bylaws, members of the board of directors or any committee designated by the board of directors may participate in a meeting of the board or committee by means of a conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other at the same time. Participation by such means shall constitute presence, in person, at a meeting. [1986 c 279 § 48.]

30.04.900 Study on financial institution structure.

(1) The director of general administration shall study the financial institution structure in the state and report to the governor and the appropriate standing committees of the house of representatives and the senate on changes which should be made to enable state chartered financial institutions to remain safe and sound and yet be competitive with other federally chartered and nonchartered financial institutions. In conducting the study the director shall consider:

(a) The powers which financial institutions under state regulatory authority should be entitled to exercise;

(b) The level of supervision that is necessary to assure safe and sound financial institutions without unnecessarily restricting the operation of the institutions;

(c) Whether the distinction among commercial banks, savings banks, and savings and loan associations should be retained, and if so, whether there should continue to be differences in their powers;

(d) The general corporate powers that should be authorized for financial institutions; and

(e) Any other matters deemed by the director to be relevant.

(2) The director, in conducting the study required by subsection (1) of this section shall consult with the supervisor of banking, with the supervisor of savings and loans and with representatives from all types of financial institutions, including large and small, urban and rural, commercial banks, savings banks, and savings and loan associations and credit unions. The director shall also advise the appropriate standing committees of the house of representatives and the senate of all meetings held to consider the study conducted under this section.

(3) The director shall submit the report required by subsection (1) of this section not later than November 1, 1987. [1987 c 498 § 2; 1986 c 279 § 54.]

Chapter 30.08

ORGANIZATION AND POWERS

Sections

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30.08.010 Incorporators—Paid-in capital stock, surplus, and undivided profits—Requirements. When authorized by the supervisor, as hereinafter provided, five or more natural persons, citizens of the United States, may incorporate a bank or trust company in the manner herein prescribed. No bank or trust company shall incorporate for less amount nor commence business unless it has a paid-in capital stock, surplus and undivided profits in the amount as may be determined by the supervisor after consideration of the proposed location, management, and the population and economic characteristics for the area, the nature of the proposed activities and operation of the bank or trust company, and other factors deemed pertinent by the supervisor. Each bank and trust company shall before commencing business have subscribed and paid into it in the same manner as is required for capital stock, an amount equal to at least ten percent of the capital stock above required, that shall be carried in the undivided profit account and may be used to defray organization and operating expenses of the company. Any sum not so used shall be transferred to the surplus fund of the company before any dividend shall be declared to the stockholders. [1986 c 279 § 17; 1973 1st ex.s. c 104 § 3; 1969 c 136 § 3; 1955 c 33 § 30.08.010. Prior: 1947 c 131

§ 1; 1929 c 72 § 4; 1923 c 115 § 2; 1917 c 80 § 19; Rem. Supp. 1947 § 3226.]

30.08.020 Notice of intention to organize—Proposed articles of incorporation—Contents. Persons desiring to incorporate a bank or trust company shall file with the supervisor a notice of their intention to organize a bank or trust company in such form and containing such information as the supervisor shall prescribe by regulation, together with proposed articles of incorporation, which shall be submitted for examination to the supervisor at his office in Olympia.

The proposed articles of incorporation shall state:

- (1) The name of such bank or trust company.
- (2) The city, village or locality and county where the head office of such corporation is to be located.
- (3) The nature of its business, whether that of a commercial bank, or a trust company.
- (4) The amount of its capital stock, which shall be divided into shares of a par or no par value as may be provided in the articles of incorporation.
- (5) The names and places of residence and mailing addresses of the persons who as directors are to manage the corporation until the first annual meeting of its stockholders.
- (6) If there is to be preferred or special classes of stock, a statement of preferences, voting rights, if any, limitations and relative rights in respect of the shares of each class; or a statement that the shares of each class shall have the attributes as shall be determined by the bank's board of directors from time to time with the approval of the supervisor.
- (7) Any provision granting the shareholders the preemptive right to acquire additional shares of the bank and any provision granting shareholders the right to cumulate their votes.
- (8) Any provision, not inconsistent with law, which the incorporators elect to set forth in the articles of incorporation for the regulation of the internal affairs of the corporation, including any provision restricting the transfer of shares and any provision which under this title is required or permitted to be set forth in the bylaws.
- (9) Any provision the incorporators elect to set forth, not inconsistent with law or the purposes for which the bank is organized, or any provision limiting any of the powers granted in this title.

It shall not be necessary to set forth in the articles of incorporation any of the corporate powers granted in this title. The articles of incorporation shall be signed by all of the incorporators and acknowledged before an officer to take acknowledgments. [1986 c 279 § 18; 1981 c 73 § 1; 1973 1st ex.s. c 104 § 4; 1959 c 118 § 1; 1957 c 248 § 1; 1955 c 33 § 30.08.020. Prior: (i) 1923 c 115 § 3; 1917 c 80 § 20; RRS § 3227. (ii) 1929 c 174 § 1; 1923 c 115 § 4; 1917 c 80 § 21; RRS § 3228.]

Effective date—1981 c 73: "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 73 § 3.]

30.08.030 Investigation. When the notice of intention to organize and proposed articles of incorporation complying with the foregoing requirements have been received by the supervisor, together with the fees required by law, he shall

ascertain from the best source of information at his command and by such investigation as he may deem necessary, whether the character, responsibility and general fitness of the persons named in such articles are such as to command confidence and warrant belief that the business of the proposed bank or trust company will be honestly and efficiently conducted in accordance with the intent and purpose of this title, whether the resources in the neighborhood of such place and in the surrounding country afford a reasonable promise of adequate support for the proposed bank and whether the proposed bank or trust company is being formed for other than the legitimate objects covered by this title. [1973 1st ex.s. c 104 § 5; 1955 c 33 § 30.08.030. Prior: 1929 c 72 § 3, part; 1923 c 115 § 5, part; 1917 c 80 § 22, part; RRS § 3229, part.]

30.08.040 Notice to file articles—Articles approved or refused—Hearing. After the supervisor shall have satisfied himself of the above facts, and, within six months of the date the notice of intention to organize has been received in his office, he shall notify the incorporators to file executed and acknowledged articles of incorporation with him in triplicate. Unless the supervisor otherwise consents in writing, such articles shall be in the same form and shall contain the same information as the proposed articles and shall be filed with him within ten days of such notice. Within thirty days after the receipt of such articles of incorporation, he shall endorse upon each of the triplicates thereof, over his official signature, the word "approved," or the word "refused," with the date of such endorsement. In case of refusal he shall forthwith return one of the triplicates, so endorsed, together with a statement explaining the reason for refusal to the person from whom the articles were received, which refusal shall be conclusive, unless the incorporators, within ten days of the issuance of such notice of refusal, shall request a hearing pursuant to the Administrative Procedure Act, chapter 34.05 RCW, as now or hereafter amended. [1981 c 302 § 15; 1973 1st ex.s. c 104 § 6; 1955 c 33 § 30.08.040. Prior: 1929 c 72 § 3, part; 1923 c 115 § 5, part; 1917 c 80 § 22, part; RRS § 3229, part.]

Severability—1981 c 302: See note following RCW 19.76.100.

30.08.050 Approved articles to be filed and recorded—Organization complete. In case of approval the supervisor shall forthwith give notice thereof to the proposed incorporators and file one of the triplicate articles of incorporation in his own office, and shall transmit another triplicate to the secretary of state, and the last to the incorporators. Upon receipt from the proposed incorporators of the same fees as are required for filing and recording other articles of incorporation the secretary of state shall file such articles and record the same. Upon the filing of articles of incorporation approved as aforesaid by the supervisor, with the secretary of state, all persons named therein and their successors shall become and be a corporation, which shall have the powers and be subject to the duties and obligations prescribed by this title, and whose existence shall continue from the date of the filing of such articles until terminated pursuant to law; but such corporation shall not transact any business except as is necessarily preliminary to its organization until it has

received a certificate of authority as provided herein. [1986 c 279 § 19; 1981 c 302 § 16; 1957 c 248 § 2; 1955 c 33 § 30.08.050. Prior: 1929 c 72 § 3, part; 1923 c 115 § 5, part; 1917 c 80 § 22, part; RRS § 3229, part.]

Severability—1981 c 302: See note following RCW 19.76.100.

30.08.060 Certificate of authority—Issuance—Contents. Before any bank or trust company shall be authorized to do business, and within ninety days after approval of the articles of incorporation or such other time as the supervisor may allow, it shall furnish proof satisfactory to the supervisor that such corporation has a paid-in capital in the amount determined by the supervisor, that the requisite surplus or reserve fund has been accumulated or paid in cash, and that it has in good faith complied with all the requirements of law and fulfilled all the conditions precedent to commencing business imposed by this title. If so satisfied, and within thirty days after receipt of such proof, the supervisor shall issue under his hand and official seal, in triplicate, a certificate of authority for such corporation. The certificate shall state that the corporation therein named has complied with the requirements of law, that it is authorized to transact the business of a bank or trust company, or both, as the case may be: **PROVIDED, HOWEVER,** That the supervisor may make his issuance of the certificate to a bank or trust company authorized to accept deposits, conditional upon the granting of deposit insurance by the federal deposit insurance corporation, and in such event, shall set out such condition in a written notice which shall be delivered to the corporation.

One of the triplicate certificates shall be transmitted by the supervisor to the corporation and one of the other two shall be filed by the supervisor in the office of the secretary of state and shall be attached to said articles of incorporation: **PROVIDED, HOWEVER,** That if the issuance of the certificate is made conditional upon the granting of deposit insurance by the federal deposit insurance corporation, the supervisor shall not transmit or file the certificate until such condition is satisfied. [1986 c 279 § 20; 1981 c 302 § 17; 1973 1st ex.s. c 104 § 7; 1955 c 33 § 30.08.060. Prior: 1929 c 72 § 3, part; 1923 c 115 § 5, part; 1917 c 80 § 22, part; RRS § 3229, part.]

Severability—1981 c 302: See note following RCW 19.76.100.

30.08.070 Failure to commence business—Effect—Extension of time. Every corporation heretofore or hereafter authorized by the laws of this state to do business as a bank or trust company, which corporation shall have failed to organize and commence business within six months after certificate of authority to commence business has been issued by the supervisor, shall forfeit its rights and privileges as such corporation, which fact the supervisor shall certify to the secretary of state, and such certificate of forfeiture shall be filed and recorded in the office of the secretary of state in the same manner as the certificate of authority: **PROVIDED,** That the supervisor may, upon showing of cause satisfactory to him, issue an order under his hand and seal extending for not more than three months the time within which such organization may be effected and business commenced, such order to be transmitted to the office of the secretary of state and filed and recorded therein. [1986 c

279 § 21; 1981 c 302 § 18; 1955 c 33 § 30.08.070. Prior: 1931 c 9 § 1; RRS § 3229-1; 1915 c 175 § 41; RRS § 3370.]

Severability—1981 c 302: See note following RCW 19.76.100.

30.08.080 Extension of existence—Application—Investigation—Order—Appeal—Winding up for failure to continue existence. At any time not less than one year prior to the expiration of the time of the existence of any bank, trust company or mutual savings bank, it may by written application to the supervisor, signed and verified by a majority of its directors and approved in writing by the owners of not less than two-thirds of its capital stock, apply to the supervisor for leave to file amended articles of incorporation, extending its time of existence. Prior to acting upon such application, the supervisor shall make such investigation of the applicant as he deems necessary. If he determines that the applicant is in sound condition, that it is conducting its business in a safe manner and in compliance with law and that no reason exists why it should not be permitted to continue, he shall issue to the applicant a certificate authorizing it to file amended articles of incorporation extending the time of its existence until such time as it be dissolved by the act of its shareholders owning not less than two-thirds of its stock, or until its certificate of authority becomes revoked or forfeited by reason of violation of law, or until its affairs be taken over by the supervisor for legal cause and finally wound up by him. Otherwise he shall notify the applicant that he refuses to grant such certificate. The applicant may appeal from such refusal in the same manner as in the case of a refusal to grant an original certificate of authority. Otherwise the determination of the supervisor shall be conclusive.

Upon receiving a certificate, as hereinabove provided, the applicant may file amended articles of incorporation, extending the time of its existence for the term authorized, to which shall be attached a copy of the certificate of the supervisor. Such articles shall be filed in the same manner and upon payment of the same fees as for original articles of incorporation.

Should any bank, trust company or mutual savings bank fail to continue its existence in the manner herein provided and be not previously dissolved, the supervisor shall at the end of its original term of existence immediately take possession thereof and wind up the same in the same manner as in the case of insolvency. [1961 c 280 § 1; 1955 c 33 § 30.08.080. Prior: 1943 c 148 § 1; 1917 c 80 § 27; Rem. Supp. 1943 § 3234.]

30.08.082 Authority to issue preferred or special classes of stock. (1) Notwithstanding any other provisions of law and if so authorized by its articles of incorporation or amendments thereto made in the manner provided in the case of a capital increase, any bank or trust company may, pursuant to action taken by its board of directors from time to time with the approval of the supervisor, issue shares of preferred or special classes of stock with the attributes and in such amounts and with such par value, if any, as shall be determined by the board of directors from time to time with the approval of the supervisor. No increase of preferred stock shall be valid until the amount thereof shall have been

subscribed and actually paid in and a certificate of increase is received from the supervisor.

(2) If provided in its articles of incorporation, a bank or trust company may issue shares of preferred or special classes having any one or several of the following provisions:

(a) Subjecting the shares to the right of the bank or trust company to repurchase or retire any such shares at the price fixed by the articles of incorporation for the repurchase or retirement thereof;

(b) Entitling the holders thereof to cumulative, noncumulative, or partially cumulative dividends;

(c) Having preference over any other class or classes of shares as to the payment of dividends;

(d) Having preference in the assets of the bank or trust company over any other class or classes of shares upon the voluntary or involuntary liquidation of the bank or trust company;

(e) Having voting or nonvoting rights; and

(f) Being convertible into shares of any other class or into shares of any series of the same or any other class, except a class having prior or superior rights and preferences as to dividends or distribution of assets upon liquidation. [1986 c 279 § 22; 1981 c 89 § 4.]

Severability—1981 c 89: See note following RCW 30.04.180.

30.08.083 Authority to divide classes into series—Rights and preferences—Filing of statement. (1) If the articles of incorporation shall expressly vest authority in the board of directors, then, to the extent that the articles of incorporation shall not have established series, and fixed and determined the variations in the relative rights and preferences as between series, the board of directors have authority to divide any or all of the classes into series and, within the limitation set forth in this section and in the articles of incorporation, fix and determine the relative rights and preferences of the shares of any series so established.

(2) In order for the board of directors to establish a series, where authority to do so is contained in the articles of incorporation, the board of directors shall adopt a resolution setting forth the designation of the series and fixing and determining the relative rights and preferences thereof, or so much thereof as is not fixed and determined by the articles of incorporation.

(3) Prior to the issue of any shares of a series established by resolution adopted by the board of directors, the corporation shall file and execute in the manner provided in this section a statement setting forth:

(a) The name of the bank;

(b) A copy of the resolution establishing and designating the series, and fixing and determining the relative rights and preferences thereof;

(c) The date of adoption of such resolution; and

(d) That the resolution was duly adopted by the board of directors.

(4) The statement shall be executed in triplicate by the bank by one of its officers and shall be delivered to the supervisor. If the supervisor finds that the statement conforms to law, the supervisor shall, when all fees have been paid as provided in this title:

(a) Endorse on each of the triplicate originals the word "Filed," and the effective date of the filing thereof;

(b) File two of the originals; and

(c) Return the other original to the bank or its representative.

(5) Upon the filing of the statement by the supervisor with the secretary of state, the resolution establishing and designating the series and fixing and determining the relative rights and preferences thereof shall become effective and shall constitute an amendment of the articles of incorporation. [1986 c 279 § 23.]

30.08.084 Rights of holders of preferred or special classes of stock—Preference in dividends and liquidation. Notwithstanding any other provisions of law, whether relating to restriction upon the payment of dividends upon capital stock or otherwise, the holders of shares of preferred or special classes of stock shall be entitled to receive such dividends on the purchase price received by the bank or trust company for such stock as may be provided by the articles of incorporation or by the board of directors of the bank or trust company with the approval of the supervisor.

No dividends shall be declared or paid on common stock until cumulative dividends, if any, on the shares of preferred or special classes of stock shall have been paid in full; and, if the supervisor takes possession of a bank or trust company for purposes of liquidation, no payments shall be made to the holders of the common stock until the holders of the shares of preferred or special classes of stock shall have been paid in full such amount as may be provided under the terms of said shares plus all accumulated dividends, if any. [1986 c 279 § 24; 1981 c 89 § 5.]

Severability—1981 c 89: See note following RCW 30.04.180.

30.08.086 Determination of capital impairment when capital consists of preferred stock. If any part of the capital of a bank and trust company consists of preferred stock, the determination of whether or not the capital of such bank is impaired and the amount of such impairment shall be based on the value of its stock as established at the time it was issued, or its par value, if any, even though the amount which the holders of such preferred stock shall be entitled to receive in the event of retirement or liquidation shall be in excess of the originally established value or the par value of such preferred stock. [1986 c 279 § 25; 1981 c 89 § 6.]

Severability—1981 c 89: See note following RCW 30.04.180.

30.08.087 Authorized but unissued shares of capital stock—Issuance—Consideration. Any bank or trust company may provide in its articles of incorporation or amendments thereto for authorized but unissued shares of its capital stock. The shares may be issued for such consideration as shall be established by the board from time to time but for not less than the par value, if any, and all consideration received therefor shall be allocated to the capital stock or surplus of the corporation. [1986 c 279 § 26; 1979 c 106 § 1; 1965 c 140 § 1.]

30.08.088 Authorized but unissued shares of capital stock—When shares become part of capital stock—Notice of proposed issuance—Approval. The authorized but

unissued shares shall not become a part of the capital stock until they have been issued and paid for. Prior to the issuance of authorized but unissued stock, the bank shall notify the supervisor of the proposed issuance and the consideration to be received therefor and receive the supervisor's approval thereof, except that such notification and such approval shall not be required if the authorized but unissued stock is issued to employees of the bank pursuant to approved stock option, stock purchase, stock bonus or other similar plans approved by the supervisor. [1986 c 279 § 27; 1979 c 106 § 2; 1965 c 140 § 2.]

30.08.090 Amendment of articles—Procedure. Any bank or trust company may amend its articles of incorporation, in any manner not inconsistent with the provisions of this title, by a vote of the stockholders representing two-thirds of each class of shares entitled to vote under the terms of the shares at any regular meeting, or special meeting duly called for that purpose in the manner prescribed by its bylaws. A certificate of the fact and the terms of the amendment shall be executed by a majority of the directors and filed as required herein for articles of incorporation. No amendment shall be made whereby a bank becomes a trust company unless such bank shall first receive permission from the supervisor. [1987 c 420 § 3; 1986 c 279 § 28; 1965 c 140 § 3; 1955 c 33 § 30.08.090. Prior: 1923 c 115 § 7; 1917 c 80 § 26; RRS § 3233.]

30.08.092 Increase or decrease of capital stock authorized—Authorized but unissued stock—Statements of condition—Certification. A bank or trust company may increase or decrease its capital stock by amendment to its articles of incorporation. No issuance of capital stock shall be valid, until the amount thereof shall have been actually paid in and a certificate of increase is received from the supervisor. No reduction of the capital stock shall be made to an amount less than is required for capital by the supervisor.

Banks having authorized but unissued stock shall disclose on all statements of condition the amount of authorized stock, and the amount of issued and paid-in stock, as certified by the supervisor. The supervisor shall certify to each bank having authorized but unissued stock the amount of its issued and paid-in capital stock, and this amount shall be used in all statements of condition and in computing the capital of the bank for purposes of determining loan or investment limits until a new certificate is issued by the supervisor. In cases where a bank issued authorized but unissued stock as permitted by this title, a new certificate need not be requested upon each stock issue. However, if the bank so requests and the supervisor approves, a certificate of issued and paid-in capital stock shall be issued by the supervisor. A new certificate must be requested at such time as any increase of paid-in capital stock represents five percent of the authorized capital stock and at such time as there is no remaining authorized but unissued stock. [1987 c 420 § 4.]

30.08.095 Schedule of fees to be established. The supervisor shall collect in advance fees for the following services:

For filing application for certificate of authority and attendant investigation as outlined in the law;

For filing application for certificate conferring trust powers upon a state or national bank;

For filing articles of incorporation, or amendments thereof, or other certificates required to be filed in his office;

For filing merger agreement and attendant investigation;

For filing application to relocate main office or branch and attendant investigation;

For issuing a certificate of increase or decrease of capital stock;

For issuing each certificate of authority;

For furnishing copies of papers filed in his office, per page.

The supervisor shall establish the amount of the fee for each of the above transactions, and for other services rendered by the division of banking by rules and regulations promulgated pursuant to the Administrative Procedure Act, chapter 34.05 RCW, as now or hereafter amended.

Every bank or trust company shall also pay to the secretary of state for filing any instrument with him or her the same fees as are required of general corporations for filing corresponding instruments, and also the same license fees as are required of general corporations. [1981 c 302 § 19; 1973 1st ex.s. c 104 § 8; 1969 c 136 § 4; 1955 c 33 § 30.08.095. Prior: 1929 c 72 § 1; 1923 c 115 § 1; 1917 c 80 § 12; RRS § 3219. Formerly RCW 30.04.080.]

Severability—1981 c 302: See note following RCW 19.76.100.

Indemnification of directors, officers, employees, etc. by corporation authorized: RCW 23B.08.320, 23B.08.500 through 23B.08.580, 23B.08.600, and 23B.17.030.

30.08.110 National bank may do trust business. A national bank located within this state and having a paid-up capital of fifty thousand dollars or more, when authorized or permitted so to do, by or under any act of the congress of the United States, may exercise any of the powers conferred upon trust companies by this title. [1955 c 33 § 30.08.110. Prior: 1917 c 80 § 16; RRS § 3223.]

30.08.120 Trust business of national bank subject to state regulations. Before any such national bank shall engage in such trust business, it shall file a certificate with the supervisor, wherein it agrees to conform to all the regulations and restrictions of this title relating to trust companies and trust business, including the examination of its trust business by the supervisor and the payment of the fees therefor, herein prescribed for the examination of banks and trust companies. Upon the filing of such a certificate in a form to be approved by the supervisor, such national bank shall be subject to all the regulations and restrictions of this title relative to trust companies and trust business. [1955 c 33 § 30.08.120. Prior: 1917 c 80 § 17; RRS § 3224.]

30.08.140 Corporate powers of banks. Upon the issuance of a certificate of authority to a bank, the persons named in the articles of incorporation and their successors shall thereupon become a corporation and shall have power:

- (1) To adopt and use a corporate seal.
- (2) To have perpetual succession.
- (3) To make contracts.

(4) To sue and be sued, the same as a natural person.

(5) To elect directors who, subject to the provisions of the corporation's bylaws, shall have power to appoint such officers as may be necessary or convenient, to define their powers and duties and to dismiss them at pleasure, and who shall also have general supervision and control of the affairs of such corporation.

(6) To make and alter bylaws, not inconsistent with its articles of incorporation or with the laws of this state, for the administration and regulation of its affairs.

(7) To invest and reinvest its funds in marketable obligations evidencing the indebtedness of any person, copartnership, association, or corporation in the form of bonds, notes, or debentures commonly known as investment securities except as may by regulation be limited by the supervisor.

(8) To discount and negotiate promissory notes, drafts, bills of exchange and other evidences of debt, to receive deposits of money and commercial paper, to lend money secured or unsecured, to issue all forms of letters of credit, to buy and sell bullion, coins and bills of exchange.

(9) To take and receive as bailee for hire upon terms and conditions to be prescribed by the corporation, for safekeeping and storage, jewelry, plate, money, specie, bullion, stocks, bonds, mortgages, securities and valuable paper of any kind and other valuable personal property, and to rent vaults, safes, boxes and other receptacles for safekeeping and storage of personal property.

(10) If the bank be located in a city of not more than five thousand inhabitants, to act as insurance agent. A bank exercising this power may continue to act as an insurance agent notwithstanding a change of the population of the city in which it is located.

(11) To accept drafts or bills of exchange drawn upon it having not more than six months sight to run, which grow out of transactions involving the importation or exportation of goods; or which grow out of transactions involving the domestic shipment of goods, providing shipping documents conveying or securing title are attached at the time of acceptance; or which are secured at the time of acceptance by a warehouse receipt or other such document conveying or securing title to readily marketable staples. No bank shall accept, either in a foreign or a domestic transaction, for any one person, company, firm or corporation, to an amount equal at any one time in the aggregate to more than ten percent of its paid up and unimpaired capital stock and surplus unless the bank is secured by attached documents or by some other actual security growing out of the same transaction as the acceptance; and no bank shall accept such bills to an amount equal at any time in the aggregate to more than one-half of its paid up and unimpaired capital stock and surplus: PROVIDED, HOWEVER, That the supervisor, under such general regulations applicable to all banks irrespective of the amount of capital or surplus, as he may prescribe may authorize any bank to accept such bills to an amount not exceeding at any time in the aggregate one hundred percent of its paid up and unimpaired capital stock and surplus: PROVIDED, FURTHER, That the aggregate of acceptances growing out of domestic transactions shall in no event exceed fifty percent of such capital stock and surplus.

(12) To accept drafts or bills of exchange drawn upon it, having not more than three months sight to run, drawn

under regulations to be prescribed by the supervisor by banks or bankers in foreign countries or dependencies or insular possessions of the United States for the purpose of furnishing dollar exchange as required by the usages of trade in the respective countries, dependencies or insular possessions. Such drafts or bills may be acquired by banks in such amounts and subject to such regulations, restrictions and limitations as may be provided by the supervisor: PROVIDED, HOWEVER, That no bank shall accept such drafts or bills of exchange referred to in this subdivision for any one bank to an amount exceeding in the aggregate ten percent of the paid up and unimpaired capital and surplus of the accepting bank unless the draft or bill of exchange is accompanied by documents conveying or securing title or by some other adequate security, and that no such drafts or bills of exchange shall be accepted by any bank in an amount exceeding at any time the aggregate of one-half of its paid up and unimpaired capital and surplus: PROVIDED FURTHER, That compliance by any bank which is a member of the federal reserve system of the United States with the rules, regulations and limitations adopted by the federal reserve board thereof with respect to the acceptance of drafts or bills of exchange by members of such federal reserve system shall be a sufficient compliance with the requirements of this subdivision or paragraph relating to rules, regulations and limitations prescribed by the supervisor.

(13) To have and exercise all powers necessary or convenient to effect its purposes.

(14) To serve as custodian of an individual retirement account and pension and profit sharing plans qualified under internal revenue code section 401(a), the assets of which are invested in deposits of the bank or trust company or are invested, pursuant to directions from the customer owning the account, in securities traded on a national securities market: PROVIDED, That the bank or trust company shall accept no investment responsibilities over the account unless it is granted trust powers by the supervisor.

(15) To be a limited partner in a limited partnership that engages in only such activities as are authorized for the bank. [1986 c 279 § 29; 1957 c 248 § 3; 1955 c 33 § 30.08.140. Prior: 1931 c 127 § 1; 1919 c 209 § 8; 1917 c 80 § 23; RRS § 3230.]

30.08.150 Corporate powers of trust companies.

Upon the issuance of a certificate of authority to a trust company, the persons named in the articles of incorporation and their successors shall thereupon become a corporation and shall have power:

(1) To execute all the powers and possess all the privileges conferred on banks.

(2) To act as fiscal or transfer agent of the United States or of any state, municipality, body politic or corporation and in such capacity to receive and disburse money.

(3) To transfer, register and countersign certificates of stock, bonds or other evidences of indebtedness and to act as attorney in fact or agent of any corporation, foreign or domestic, for any purpose, statutory or otherwise.

(4) To act as trustee under any mortgage, or bonds, issued by any municipality, body politic, or corporation, foreign or domestic, or by any individual, firm, association

or partnership, and to accept and execute any municipal or corporate trust.

(5) To receive and manage any sinking fund of any corporation upon such terms as may be agreed upon between such corporation and those dealing with it.

(6) To collect coupons on or interest upon all manner of securities, when authorized so to do, by the parties depositing the same.

(7) To accept trusts from and execute trusts for married persons in respect to their separate property and to be their agent in the management of such property and to transact any business in relation thereto.

(8) To act as receiver or trustee of the estate of any person, or to be appointed to any trust by any court, to act as assignee under any assignment for the benefit of creditors of any debtor, whether made pursuant to statute or otherwise, and to be the depository of any moneys paid into court.

(9) To be appointed and to accept the appointment of executor of, or trustee under, the last will and testament, or administrator with or without the will annexed, of the estate of any deceased person and to be appointed and to act as guardian of the estate of lunatics, idiots, persons of unsound mind, minors and habitual drunkards: PROVIDED, HOWEVER, That the power hereby granted to trust companies to act as guardian or administrator, with or without the will annexed, shall not be construed to deprive parties of the prior right to have issued to them letters of guardianship, or of administration, as such right now exists under the law of this state.

(10) To execute any trust or power of whatever nature or description that may be conferred upon or entrusted or committed to it by any person or by any court or municipality, foreign or domestic corporation and any other trust or power conferred upon or entrusted or committed to it by grant, assignment, transfer, devise, bequest or by any other authority and to receive, take, use, manage, hold and dispose of, according to the terms of such trusts or powers any property or estate, real or personal, which may be the subject of any such trust or power.

(11) Generally to execute trusts of every description not inconsistent with law.

(12) To purchase, invest in and sell promissory notes, bills of exchange, bonds, debentures and mortgages and when moneys are borrowed or received for investment, the bonds or obligations of the company may be given therefor, but no trust company hereafter organized shall issue such bonds: PROVIDED, That no trust company which receives money for investment and issues the bonds of the company therefor shall engage in the business of banking or receiving of either savings or commercial deposits: AND PROVIDED, That it shall not issue any bond covering a period of more than ten years between the date of its issuance and its maturity date: AND PROVIDED FURTHER, That if for any cause, the holder of any such bond upon which one or more annual rate installments have been paid, shall fail to pay the subsequent annual rate installments provided in said bond such holder shall, on or before the maturity date of said bond, be paid not less than the full sum which he has paid in on account of said bond. [1973 1st ex.s. c 154 § 48; 1955 c 33 § 30.08.150. Prior: 1929 c 72 § 4, part; 1923 c 115 § 6, part; 1921 c 94 § 1, part; 1917 c 80 § 24, part; RRS § 3231, part.]

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

30.08.160 Report of bond liability—Collateral. Any trust company receiving moneys for investment, and for which it shall give its bonds as in RCW 30.08.150(12) provided, shall within ten days after any regular report is called for from banks or trust companies by the supervisor, make a statement of its total liability, on all bonds issued and then in force, certified by its board of directors, and shall at the same time deposit with the state treasurer, for the benefit of the holders of such bonds or obligations, sufficient securities or money so that it will have on deposit with said state treasurer a sufficient amount of said securities, which may be exchanged for other securities as necessity may require, or money to, at any time, pay all of said liability. In the event of its failure to make such deposits, it shall cease doing such business: PROVIDED, That whenever money shall have been deposited with the treasurer, it may be withdrawn at any time upon a like amount of securities being deposited in its stead: AND PROVIDED FURTHER, That the securities deposited shall consist of such securities as are by this title permitted for the investment of trust funds. [1955 c 33 § 30.08.160. Prior: 1917 c 80 § 25; RRS § 3232.]

30.08.170 Securities may be held in name of nominee. Any trust company incorporated under the laws of this state and any national banking association authorized to act in a fiduciary capacity in this state, when acting in a fiduciary capacity, either alone or jointly with an individual or individuals, may, with the consent of such individual fiduciary or fiduciaries, who are hereby authorized to give such consent, cause any stocks, securities, or other property now held or hereafter acquired to be registered and held in the name of a nominee or nominees of such corporate or association fiduciary without mention of the fiduciary relationship. Any such fiduciary shall be liable for any loss occasioned by the acts of any of its nominees with respect to such stocks, securities or other property so registered. [1955 c 33 § 30.08.170. Prior: 1947 c 146 § 1; Rem. Supp. 1947 § 3292b.]

30.08.180 Reports of resources and liabilities—Publication. Every bank and trust company shall make at least three regular reports each year to the supervisor, as of the dates which he shall designate, according to form prescribed by him, verified by the president, manager or cashier and attested by at least two directors, which shall exhibit under appropriate heads the resources and liabilities of such corporation. The dates designated by the supervisor shall be the dates designated by the comptroller of the currency of the United States for reports of national banking associations. Each such report in condensed form, to be prescribed by the supervisor, shall be published once in a newspaper of general circulation, published in a place where the corporation is located, or if there be no newspaper published in such place, then in some newspaper published in the same county.

Every such corporation shall also make such special reports as the supervisor shall call for. [1955 c 33 §

30.08.180. Prior: 1919 c 209 § 4; 1917 c 80 § 5; RRS § 3212.]

30.08.190 Time of filing—Penalty. Every regular report shall be filed with the supervisor within thirty days from the date of issuance of the notice therefor and proof of publication of such report shall be filed with the supervisor within forty days from such date. Every special report shall be filed with the supervisor within such time as shall be specified by him in the notice therefor.

Every bank and trust company which fails to file any report, required to be filed as aforesaid, or to file proof of publication of any report required to be published, within the time herein specified, shall be subject to a penalty of fifty dollars per day for each day's delay. A civil action for the recovery of any such penalty may be brought by the attorney general in the name of the state. [1977 c 38 § 1; 1955 c 33 § 30.08.190. Prior: 1917 c 80 § 6; RRS § 3213.]

30.08.200 May act as trustee for crop credit notes. See RCW 31.16.250.

Chapter 30.12

OFFICERS, EMPLOYEES, AND STOCKHOLDERS

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30.12.010 Directors—Election—Meetings—Oath—Vacancies. Every bank and trust company shall be managed by not less than five directors, who need not be residents of this state. Directors shall be elected by the stockholders and hold office for such term as is specified in the articles of incorporation, not exceeding three years, and until their successors are elected and have qualified. In the first instance the directors shall be those named in the articles of incorporation and afterwards, those elected at the annual meeting of the stockholders to be held at least once each year on a day to be specified by the bank's or trust company's bylaws. Shareholders may not cumulate their votes unless the articles of incorporation specifically so provide. If for any cause no election is held at that time, it may be held at an adjourned meeting or at a subsequent meeting called for that purpose in the manner prescribed by the corporation's bylaws. The directors shall meet at least once each quarter and whenever required by the supervisor. A majority of the then serving board of directors shall constitute a quorum for the transaction of business. At all stockholders' meetings, each share shall be entitled to one vote, unless the articles of incorporation provide otherwise. Any stockholder may vote in person or by written proxy.

Immediately upon election, each director shall take, subscribe, swear to, and file with the supervisor an oath that he will, so far as the duty devolves upon him, diligently and honestly administer the affairs of such corporation and will not knowingly violate or willingly permit to be violated any provision of law applicable to such corporation. Vacancies in the board of directors shall be filled by the board. [1987 c 420 § 1; 1986 c 279 § 30; 1982 c 196 § 8; 1981 c 89 § 3; 1975 c 35 § 1; 1969 c 136 § 8; 1957 c 190 § 1; 1955 c 33 § 30.12.010. Prior: 1947 c 129 § 1; 1917 c 80 § 30; Rem. Supp. 1947 § 3237.]

Severability—1982 c 196: See note following RCW 30.04.550.

Severability—1981 c 89: See note following RCW 30.04.180.

30.12.020 Meetings, where held—Corporate records. All meetings of the stockholders of any bank or trust company, except organization meetings, and meetings held with the consent of all stockholders, must be held in the county in which the head office or any branch of the corporation is located. Meetings of the directors of any bank or trust company may be held either within or without this state. Every such corporation shall keep records in which shall be recorded the names and residences of the stockholders thereof, the number of shares held by each, and also the transfers of stock, showing the time when made, the number of shares and by whom transferred. In all actions, suits and proceedings, said records shall be prima facie proof of the facts shown therein. All of the corporate books, including the certificate book, stockholders' ledger and minute book or a copy thereof shall be kept at the corporation's principal place of business. Any books, record, and minutes may be in written form or any other form capable of being converted to written form within a reasonable time. [1986 c 279 § 31; 1969 c 136 § 9; 1955 c 33 § 30.12.020. Prior: 1927 c 179 § 1; 1917 c 80 § 31; RRS § 3238.]

30.12.025 Rights of shareholder to examine and make extracts of records—Penalty—Financial statements. Any person who has been a shareholder of record at least six months immediately preceding his or her demand or who is the holder of record of at least five percent of all the outstanding shares of a bank or trust company, upon written demand stating the purpose thereof, has the right to examine, in person, or by agent or attorney, at any reasonable time or times, for any proper purpose, the bank or trust company's minutes of the proceedings of its shareholders, its shareholder records, and its existing publicly available records. The person is entitled to make extracts therefrom, except that the person is not entitled to view or make extracts of any portion of minutes that refer or relate to information which is confidential.

Any officer or agent who, or a bank or trust company that, refuses to allow any such shareholder or his or her agent or attorney, to examine and make extracts from its minutes of the proceedings of its shareholders, record of shareholders, or existing publicly available books and records, for any proper purpose, shall be liable to the shareholder for actual damages or other remedy afforded the shareholder by law.

It is a defense to any action for penalties under this section that the person suing therefor has, within two years: (1) Sold or offered for sale any list of shareholders for shares of such bank or trust company or any other bank or trust company; (2) aided or abetted any person in procuring any list of shareholders for any such purpose; (3) improperly used any information secured through any prior examination of existing publicly available books and records, or minutes, or record of shareholders of such bank or trust company or any other bank or trust company; or (4) not acted in good faith or for a proper purpose in making his or her demand.

Nothing in this section impairs the power of any court of competent jurisdiction, upon proof by a shareholder of proper purpose, irrespective of the period of time during which the shareholder has been a shareholder of record, and irrespective of the number of shares held by him or her, to compel the production for examination by the shareholder of the existing publicly available books and records, minutes, and record of shareholders of a bank or trust company.

Upon the written request of any shareholder of a bank or trust company, the bank or trust company shall mail to the shareholder its most recent financial statements showing in reasonable detail its assets and liabilities and the results of its operations. As used in this section, "shareholder" includes the holder of voting trust certificates for shares. [1986 c 279 § 32.]

30.12.030 Fidelity bonds—Casualty insurance. (1) Except as otherwise permitted by the supervisor under specified terms and conditions, the board of directors of each bank and trust company shall direct and require good and sufficient surety company fidelity bonds issued by a company authorized to engage in the insurance business in the state of Washington on all active officers and employees, whether or not they draw salary or compensation, which bonds shall provide for indemnity to such bank or trust company, on account of any losses sustained by it as the result of any dishonest, fraudulent or criminal act or omission committed

or omitted by them acting independently or in collusion or combination with any person or persons. Such bonds may be individual, schedule or blanket form, and the premiums therefor shall be paid by the bank or trust company.

(2) The said directors shall also direct and require suitable insurance protection to the bank or trust company against burglary, robbery, theft and other similar insurance hazards to which the bank or trust company may be exposed in the operations of its business on the premises or elsewhere.

The said directors shall be responsible for prescribing at least once in each year the amount or penal sum of such bonds or policies and the sureties or underwriters thereon, after giving due consideration to all known elements and factors constituting such risk or hazard. Such action shall be recorded in the minutes of the board of directors. [1986 c 279 § 33; 1955 c 33 § 30.12.030. Prior: 1947 c 132 § 1; 1927 c 224 § 1; 1917 c 80 § 32; Rem. Supp. 1947 § 3239.]

30.12.040 Removal of delinquent officer or employee or prohibiting participation in bank or trust company affairs—Grounds—Notice. The supervisor may serve upon a director, officer, or employee of any bank or trust company a written notice of the supervisor's intention to remove the person from office or to prohibit the person from participation in the conduct of the affairs of the bank or trust company, or both, whenever:

(1) In the opinion of the supervisor any director, officer, or employee of any bank or trust company has committed or engaged in:

(a) Any violation of law or rule or of a cease and desist order which has become final;

(b) Any unsafe or unsound practice in connection with the bank or trust company; or

(c) Any act, omission, or practice which constitutes a breach of his fiduciary duty as director, officer, or employee; and

(2) The supervisor determines that:

(a) The bank or trust company has suffered or may suffer substantial financial loss or other damage; or

(b) The interests of its depositors could be seriously prejudiced by reason of the violation or practice or breach of fiduciary duty; and

(c) The violation or practice or breach of fiduciary duty is one involving personal dishonesty, recklessness, or incompetence on the part of the director, officer, or employee. [1977 ex.s. c 178 § 5; 1955 c 33 § 30.12.040. Prior: 1933 c 42 § 1; 1917 c 80 § 10; RRS § 3217.]

Severability—1977 ex.s. c 178: See note following RCW 30.04.450.

30.12.042 Removal of delinquent officer or employee or prohibiting participation in bank or trust company affairs—Notice contents—Hearing—Order of removal or prohibition. A notice of an intention to remove a director, officer, or employee from office or to prohibit his participation in the conduct of the affairs of a bank or trust company shall contain a statement of the facts which constitute grounds therefor and shall fix a time and place at which a hearing will be held. The hearing shall be set not earlier than ten days nor later than thirty days after the date of service of the notice unless an earlier or later date is set by

the supervisor at the request of the director, officer, or employee for good cause shown or of the attorney general of the state.

Unless the director, officer, or employee appears at the hearing personally or by a duly authorized representative, the person shall be deemed to have consented to the issuance of an order of removal or prohibition or both. In the event of such consent or if upon the record made at the hearing the supervisor finds that any of the grounds specified in the notice have been established, the supervisor may issue such orders of removal from office or prohibition from participation in the conduct of the affairs of the bank or trust company as the supervisor may consider appropriate.

Any order shall become effective at the expiration of ten days after service upon the bank and the director, officer, or employee concerned except that an order issued upon consent shall become effective at the time specified in the order.

An order shall remain effective except to the extent it is stayed, modified, terminated, or set aside by the supervisor or a reviewing court. [1977 ex.s. c 178 § 6.]

Severability—1977 ex.s. c 178: See note following RCW 30.04.450.

30.12.044 Removal of delinquent officer or employee or prohibiting participation in bank or trust company affairs—Effect upon quorum—Procedure. If at any time because of the removal of one or more directors under this chapter there shall be on the board of directors of a bank or trust company less than a quorum of directors, all powers and functions vested in or exercisable by the board shall vest in and be exercisable by the director or directors remaining until such time as there is a quorum on the board of directors. If all of the directors of a bank or trust company are removed under this chapter, the supervisor shall appoint persons to serve temporarily as directors until such time as their respective successors take office. [1977 ex.s. c 178 § 7.]

Severability—1977 ex.s. c 178: See note following RCW 30.04.450.

30.12.045 Removal of delinquent officer or employee or prohibiting participation in bank or trust company affairs—Administrative hearing—Judicial review. See RCW 30.04.470.

30.12.046 Removal of delinquent officer or employee or prohibiting participation in bank or trust company affairs—Jurisdiction of courts in enforcement or issuance of orders, injunctions or judicial review. See RCW 30.04.475.

30.12.047 Removal of delinquent officer or employee or prohibiting participation in bank or trust company affairs—Violation of final order—Penalty. Any present or former director, officer, or employee of a bank or trust company or any other person against whom there is outstanding an effective final order served upon the person and who participates in any manner in the conduct of the affairs of the bank or trust company involved; or who directly or indirectly solicits or procures, transfers or attempts to transfer, or votes or attempts to vote any proxies, consents, or authorizations with respect to any voting rights in the

bank or trust company; or who, without the prior approval of the supervisor, votes for a director or serves or acts as a director, officer, employee, or agent of any bank or trust company shall upon conviction for a violation of any order, be guilty of a gross misdemeanor punishable as prescribed under chapter 9A.20 RCW, as now or hereafter amended. [1977 ex.s. c 178 § 10.]

Severability—1977 ex.s. c 178: See note following RCW 30.04.450.

30.12.050 Purchase of assets by officer, etc. A director, officer, employee or other agent of any bank shall not purchase, or be interested in the purchase, directly or indirectly, of any of its assets without the previous consent of a majority of disinterested directors of the bank: PROVIDED, That if the fair market value of the asset or assets exceed ten thousand dollars, not less than ten days' prior notice of the sale shall be given to the supervisor. [1986 c 279 § 34; 1955 c 33 § 30.12.050. Prior: 1933 c 42 § 23; RRS § 3260-1.]

30.12.060 Loans to officers or employees. (1) Any bank or trust company shall be permitted to make loans to any employee of such corporation, or to purchase, discount or acquire, as security or otherwise, the obligation or debt of any employee to any other person, to the same extent as if the employee were in no way connected with the corporation. Any bank or trust company shall be permitted to make loans to any officer of such corporation, or to purchase, discount or acquire, as security or otherwise, the obligation or debt of any officer to any other person: PROVIDED, That the total value of the loans made and obligation acquired for any one officer shall not exceed such amount as shall be prescribed by the supervisor of banking pursuant to regulations adopted in accordance with the Administrative Procedure Act, chapter 34.05 RCW, as now or hereafter amended: AND PROVIDED FURTHER, That no such loan shall be made, or obligation acquired, in excess of five percent of a bank's capital and unimpaired surplus or twenty-five thousand dollars, whichever is larger, unless a resolution authorizing the same shall be adopted by a vote of a majority of the board of directors of such corporation prior to the making of such loan or discount, and such vote and resolution shall be entered in the corporate minutes. In no event shall the loan or obligation acquired exceed five hundred thousand dollars in the aggregate without prior approval by a majority of the corporation's board of directors. No loan in excess of five percent of a bank's capital and unimpaired surplus or twenty-five thousand dollars, whichever is larger, shall be made by any bank or trust company to any director of such corporation nor shall the note or obligation in excess of five percent of a bank's capital and unimpaired surplus or twenty-five thousand dollars, whichever is larger, of such director be discounted by any such corporation, or by any officer or employee thereof in its behalf, unless a resolution authorizing the same shall be adopted by a vote of a majority of the entire board of directors of such corporation exclusive of the vote of such interested director, and such vote and resolution shall be entered in the corporate minutes. In no event may the loan or obligation acquired exceed five hundred thousand dollars

in the aggregate without prior approval by a majority of the corporation's board of directors.

Each bank or trust company shall at such times and in such form as may be required by the supervisor, report to the supervisor all outstanding loans to directors of such bank or trust company.

The amount of any endorsement or agreement of suretyship or guaranty of any such director to the corporation shall be construed to be a loan within the provisions of this section. Any modification of the terms of an existing obligation (excepting only such modifications as merely extend or renew the indebtedness) shall be construed to be a loan within the meaning of this section.

(2) "Unimpaired surplus," as used in this section, consists of the sum of the following amounts:

- (a) Fifty percent of the reserve for possible loan losses;
- (b) Subordinated notes and debentures;
- (c) Surplus;
- (d) Undivided profits; and
- (e) Reserve for contingencies and other capital reserves, excluding accrued dividends on preferred stock. [1985 c 305 § 6; 1969 c 136 § 5; 1959 c 165 § 1; 1955 c 33 § 30.12.060. Prior: 1947 c 147 § 1, part; 1933 c 42 § 22, part; 1917 c 80 § 52, part; Rem. Supp. 1947 § 3259, part.]

30.12.070 Unsafe loans and discounts to directors.

The supervisor may at any time, if in his judgment excessive, unsafe or improvident loans are being made or are likely to be made by a bank or trust company to any of its directors, or to any corporation, copartnership or association of which such director is a stockholder, member, co-owner, or in which such director is financially interested, or like discounts of the notes or obligations of any such director, corporation, copartnership or association are being made or are likely to be made, require such bank or trust company to submit to him for approval all proposed loans to, or discounts of the note or obligation of, any such director, corporation, copartnership or association, and thereafter such proposed loans and discounts shall be reported upon such forms and with such information concerning the desirability and safety of such loans or discounts and of the responsibility and financial condition of the person, corporation, copartnership or association to whom such loan is to be made or whose note or obligation is to be discounted and of the amount and value of any collateral that may be offered as security therefor, as the supervisor may require, and no such loan or discount shall be made without his written approval thereon. [1955 c 33 § 30.12.070. Prior: 1947 c 147 § 1, part; 1933 c 42 § 22, part; 1917 c 80 § 52, part; Rem. Supp. 1947 § 3259, part.]

30.12.090 False entries, statements, etc.—Penalty.

Every person who shall knowingly subscribe to or make or cause to be made any false statement or false entry in the books of any bank or trust company or shall knowingly subscribe to or exhibit any false or fictitious paper or security, instrument or paper, with the intent to deceive any person authorized to examine into the affairs of any bank or trust company or shall make, state or publish any false statement of the amount of the assets or liabilities of any

bank or trust company shall be guilty of a felony. [1955 c 33 § 30.12.090. Prior: 1917 c 80 § 56; RRS § 3263.]

30.12.100 Destroying or secreting records—Penalty.

Every officer, director or employee or agent of any bank or trust company who, for the purpose of concealing any fact or suppressing any evidence against himself, or against any other person, abstracts, removes, mutilates, destroys or secretes any paper, book or record of any bank or trust company, or of the supervisor, or of anyone connected with his office, shall be guilty of a felony. [1955 c 33 § 30.12.100. Prior: 1917 c 80 § 56; RRS § 3264.]

30.12.110 Commission, etc., for procuring loan—

Penalty. No officer, director, agent, employee or stockholder of any bank or trust company shall, directly or indirectly, receive a bonus, commission, compensation, remuneration, gift, speculative interest or gratuity of any kind from any person, firm or corporation other than the bank or as allowed by RCW 30.12.115 for granting, procuring or endeavoring to procure, for any person, firm or corporation, any loan by or out of the funds of such bank or trust company or the purchase or sale of any securities or property for or on account of such bank or trust company or for granting or procuring permission for any person, firm or corporation to overdraw any account with such bank or trust company. Any person violating this section shall be guilty of a gross misdemeanor. [1986 c 279 § 35; 1955 c 33 § 30.12.110. Prior: 1919 c 209 § 20; RRS § 3290.]

30.12.115 Transactions in which director or officer has an interest. (1) If a transaction is fair to a corporation at the time it is authorized, approved, or ratified, the fact that a director or an officer had a direct or indirect interest in the transaction is not grounds for either invalidating the transaction or imposing liability on the director or officer.

(2) In any proceeding seeking to invalidate a transaction with the corporation in which a director or an officer had a direct or indirect interest in a transaction with the corporation, the person asserting the validity of the transaction has the burden of proving fairness unless:

(a) The material facts of the transaction and the director's or officer's interest was disclosed or known to the board of directors, or a committee of the board, and the board or committee authorized, approved, or ratified the transaction; or

(b) The material facts of the transaction and the director's or officer's interest was disclosed or known to the shareholders entitled to vote, and they authorized, approved, or ratified the transaction.

(3) For purposes of this section, a director or an officer of a corporation has an indirect interest in a transaction with the corporation if:

(a) Another entity in which the director or officer has a material financial interest, or in which such person is a general partner, is a party to the transaction; or

(b) Another entity of which the director or officer is a director, officer, or trustee is a party to the transaction, and the transaction is or should be considered by the board of directors of the corporation.

(4) For purposes of subsection (3)(a) of this section, a transaction is authorized, approved, or ratified only if it receives the affirmative vote of a majority of the directors on the board of directors or on the committee who have no direct or indirect interest in the transaction. If a majority of the directors who have no direct or indirect interest in the transaction vote to authorize, approve, or ratify the transaction, a quorum is present for the purpose of taking action under this section. The presence of, or a vote cast by, a director with a direct or indirect interest in the transaction does not affect the validity of any action taken under subsection (3)(a) of this section if the transaction is otherwise authorized, approved, or ratified as provided in that subsection.

(5) For purposes of subsection (3)(b) of this section, a transaction is authorized, approved, or ratified only if it receives the vote of a majority of shares entitled to be counted under this subsection. All outstanding shares entitled to vote under this title or the articles of incorporation are entitled to be counted under this subsection except shares owned by or voted under the control of a director or an officer who has a direct or indirect interest in the transaction. Shares owned by or voted under the control of an entity described in subsection (3)(a) of this section shall not be counted to determine whether shareholders have authorized, approved, or ratified a transaction for purposes of subsection (3)(b) of this section. The vote of the shares owned by or voted under the control of a director or an officer who has a direct or indirect interest in the transaction and shares owned by or voted under the control of an entity described in subsection (3)(a) of this section, however, shall be counted in determining whether the transaction is approved under other sections of this title and for purposes of determining a quorum. [1986 c 279 § 36.]

30.12.120 Loans to officers or employees from trust funds—Penalty. No corporation doing a trust business shall make any loan to any officer, or employee from its trust funds, nor shall it permit any officer, or employee to become indebted to it in any way out of its trust funds. Every officer, director, or employee of any such corporation, who knowingly violates any provision of this section, or who aids or abets any other person in any such violation, shall be guilty of a felony. [1955 c 33 § 30.12.120. Prior: 1917 c 80 § 53; RRS § 3260.]

30.12.130 Trust company as legal representative—Oath by officer. When any trust company shall be appointed executor, administrator, or trustee of any estate or guardian of the estate of any infant or other incompetent, it shall be lawful for any duly authorized officer of such corporation to take and subscribe for such corporation any and all oaths or affirmations required of such an appointee. [1955 c 33 § 30.12.130. Prior: 1917 c 80 § 50; RRS § 3257.]

30.12.180 Levy of assessments. Whenever the supervisor shall notify the board of directors of a bank or trust company to levy an assessment upon the stock of such corporation and the holders of two-thirds of the stock shall consent thereto, such board shall, within ten days from the

issuance of such notice, adopt a resolution for the levy of such assessment, and shall immediately upon the adoption of such resolution serve notice upon each stockholder, personally or by mail, at his last known address, to pay such assessment; and that if the same be not paid within twenty days from the date of the issuance of such notice, his stock will be subject to sale and all amounts previously paid thereon shall be subject to forfeiture. If any stockholder fail within said twenty days to pay the assessment as provided in this section, it shall be the duty of the board of directors to cause a sufficient amount of the capital stock of such stockholder to be sold to make good the deficiency. The sale shall be held at such time and place as shall be designated by the board of directors and shall be either public or private, as the board shall deem best. At any time after the expiration of sixty days from the expiration of said twenty-day period the supervisor may require any stock upon which the assessment remains unpaid to be canceled and deducted from the capital of the corporation. If such cancellation shall reduce the capital of the corporation below the minimum required by this title or its articles of incorporation the capital shall, within thirty days thereafter be increased to the required amount by original subscription, in default of which the supervisor may take possession of such corporation in the manner provided by law in case of insolvency. [1955 c 33 § 30.12.180. Prior: 1923 c 115 § 8; 1917 c 80 § 34; RRS § 3241.]

Supervisor may order levy of assessment: RCW 30.44.020.

30.12.190 General penalty—Effect of conviction. Every person who shall violate, or knowingly aid or abet the violation of any provision of RCW 30.04.010, 30.04.030, 30.04.050, 30.04.060, 30.04.070, 30.04.075, 30.04.111, 30.04.120, 30.04.130, 30.04.180, 30.04.210, 30.04.220, 30.04.280, 30.04.290, 30.04.300, 30.08.010, 30.08.020, 30.08.030, 30.08.040, 30.08.050, 30.08.060, 30.08.080, 30.08.090, 30.08.095, 30.08.110, 30.08.120, 30.08.140, 30.08.150, 30.08.160, 30.08.180, 30.08.190, 30.12.010, 30.12.020, 30.12.030, 30.12.060, 30.12.070, 30.12.130, 30.12.180, 30.12.190, 30.16.010, 30.20.060, 30.40.010, 30.44.010, 30.44.020, 30.44.030, 30.44.040, 30.44.050, 30.44.060, 30.44.070, 30.44.080, 30.44.090, 30.44.100, 30.44.130, 30.44.140, 30.44.150, 30.44.160, 30.44.170, 30.44.240, 30.44.250, 43.19.020, 43.19.030, 43.19.050, and 43.19.090, and every person who fails to perform any act which it is therein made his duty to perform, shall be guilty of a misdemeanor. No person who has been convicted for the violation of the banking laws of this or any other state or of the United States shall be permitted to engage in or become an officer or official of any bank or trust company organized and existing under the laws of this state. [1989 c 220 § 2; 1983 c 3 § 47; 1955 c 33 § 30.12.190. Prior: 1919 c 209 § 18; 1917 c 80 § 80; RRS § 3287.]

30.12.205 Stock purchase options—Incentive bonus contracts, stock purchase or bonus plans, and profit sharing plans. Subject to any restrictions in its articles of incorporation and in accordance with and subject to the provisions of RCW 30.08.088, the board of directors of a bank or trust company may grant options entitling the holders thereof to purchase from the corporation shares of

any class of its stock. The instrument evidencing the option shall state the terms upon which, the time within which, and the price at which such shares may be purchased from the corporation upon the exercise of such option. If any such options are granted by contract, or are to be granted pursuant to a plan, to officers or employees of the bank or trust company, then the contract or the plan shall require the approval, within twelve months of its approval by the board of directors, of the holders of a majority of its voting capital stock. Subsequent amendments to any such contract or plan which do not change the price or duration of any option, the maximum number of shares which may be subject to options, or the class of employees eligible for options may be made by the board of directors without further shareholder approval.

Subject to any restrictions in its articles of incorporation, the board of directors of a bank or trust company shall have the authority to enter into any plans or contracts providing for compensation for its officers and employees, including, but not being limited to, incentive bonus contracts, stock purchase or bonus plans and profit sharing plans. [1986 c 279 § 37.]

30.12.220 Preemptive rights of shareholders to acquire unissued shares—Articles of incorporation may limit or permit—Later acquisition. The articles of incorporation of any bank or trust company organized under this title may limit or permit the preemptive rights of a shareholder to acquire unissued shares of the corporation and may thereafter by amendment limit, deny, or grant to shareholders of any class of stock the preemptive right to acquire additional shares of the corporation whether then or thereafter authorized. [1979 c 106 § 8.]

30.12.230 Immunity of shareholders of bank insured by the federal deposit insurance corporation. The shareholders of a banking corporation organized under the laws of this state and the deposits of which are insured by the federal deposit insurance corporation shall not be liable for any debts or obligations of the bank. [1986 c 279 § 50.]

30.12.240 Violations—Director liability. If the directors of any bank shall knowingly violate, or knowingly permit any of the officers, agents, or servants of the bank to violate any of the provisions of this title or any lawful regulation or directive of the supervisor of banking, and if the directors are aware that such facts and circumstances constitute such violations, then each director who participated in or assented to the violation is personally and individually liable for all damages which the state or any insurer of the deposits sustains due to the violation. [1989 c 180 § 7.]

Chapter 30.16 CHECKS

Sections

30.16.010 Certification—Effect—Penalty.

Negotiable instruments: Title 62A RCW.

30.16.010 Certification—Effect—Penalty. No director, officer, agent or employee of any bank or trust company shall certify a check unless the amount thereof actually stands to the credit of the drawer on the books of such corporation and when certified must be charged to the account of the drawer. Every violation of this provision shall be a gross misdemeanor. Any such check so certified by a duly authorized person shall be a good and valid obligation of the bank or trust company in the hands of an innocent holder. [1955 c 33 § 30.16.010. Prior: 1917 c 80 § 44; RRS § 3251.]

Chapter 30.20 DEPOSITS

Sections

30.20.005 Deposits by individuals governed by chapter 30.22 RCW.

30.20.060 Deposits and accounts—Regulations—Passbooks or records—Deposit contract.

30.20.090 Adverse claim to a deposit to be accompanied by court order or bond—Exceptions.

Payment to slayers: RCW 11.84.110.

Receiving deposits after insolvency prohibited: State Constitution Art. 12 § 12.

30.20.005 Deposits by individuals governed by chapter 30.22 RCW. Deposits made by individuals in a national bank, state bank, trust company, or other banking institution subject to the supervision of the supervisor of banking are governed by chapter 30.22 RCW. [1981 c 192 § 23.]

Effective date—1981 c 192: See RCW 30.22.900.

30.20.060 Deposits and accounts—Regulations—Passbooks or records—Deposit contract. A bank or trust company shall repay all deposits to the depositor or his lawful representative when required at such time or times and with such interest as the regulations of the corporation shall prescribe. Such regulations shall be prescribed by the directors of the bank or trust company and may contain provisions with respect to the terms and conditions upon which any account or deposit will be maintained by said bank or trust company. Such regulations and any amendments thereto shall be posted in a conspicuous place in a room where the deposit business of the bank or trust company shall be transacted and shall remain available to depositors upon request. All such rules and regulations and all amendments thereto from time to time in effect shall be binding upon all depositors. At the option of the bank, a passbook shall be issued to each savings account depositor, or a record maintained in lieu of a passbook. A deposit contract may be adopted by the bank or trust company in lieu of or in addition to account rules and regulations and shall be enforceable and amendable in the same manner as

provided herein for account rules and regulations or as provided in the deposit contract. A copy of such contract shall be provided to the depositor. [1986 c 279 § 38; 1961 c 280 § 3; 1959 c 106 § 5; 1955 c 33 § 30.20.060. Prior: 1945 c 69 § 1; 1935 c 93 § 1; 1917 c 80 § 38; Rem. Supp. 1945 § 3244a.]

30.20.090 Adverse claim to a deposit to be accompanied by court order or bond—Exceptions. Notice to any national bank, state bank, trust company, mutual savings bank or bank under the supervision of the supervisor of banking, doing business in this state of an adverse claim to a deposit standing on its books to the credit of any person may be disregarded without liability by said bank or trust company unless said adverse claimant shall also either procure a restraining order, injunction or other appropriate process against said bank or trust company from a court of competent jurisdiction in a cause therein instituted by him wherein the person to whose credit the deposit stands is made a party and served with summons or shall execute to said bank or trust company, in form and with sureties acceptable to it, a bond, in an amount which is double either the amount of said deposit or said adverse claim, whichever is the lesser, indemnifying said bank or trust company from any and all liability, loss, damage, costs and expenses, for and on account of the payment of such adverse claim or the dishonor of the check or other order of the person to whose credit the deposit stands on the books of said bank or trust company: PROVIDED, That where the person to whose credit the deposit stands is a fiduciary for such adverse claimant, and the facts constituting such relationship, and also the facts showing reasonable cause of belief on the part of said claimant that the said fiduciary is about to misappropriate said deposit, are made to appear by the affidavit of such claimant, the bank or trust company shall without liability refuse to deliver such property for a period of not more than five business days from the date that the bank received the adverse claimant's affidavit, without liability for the sufficiency or truth of the facts alleged in the affidavit, after which time the claim shall be treated as any other claim under this section.

This section shall not apply to accounts subject to chapter 30.22 RCW. [1981 c 192 § 25; 1979 c 143 § 1; 1961 c 280 § 4.]

Effective date—1981 c 192: See RCW 30.22.900.

Chapter 30.22

FINANCIAL INSTITUTION INDIVIDUAL ACCOUNT DEPOSIT ACT

Sections

30.22.010	Short title.
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30.22.030	Construction.
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30.22.170	Payment to agents of depositors.
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30.22.190	Payment to heirs and creditors of a deceased depositor.
30.22.200	Payment to foreign personal representative—Release of financial institution.
30.22.210	Authority to withhold payment.
30.22.220	Adverse claim bond.
30.22.900	Effective date—1981 c 192.

30.22.010 Short title. This chapter shall be known and may be cited as the financial institution individual account deposit act. [1981 c 192 § 1.]

30.22.020 Purposes. The purposes of this chapter are:

(1) To provide a consistent law applicable to all financial institutions authorized to accept deposits from individuals with respect to payments by the institutions to individuals claiming rights to the deposited funds; and

(2) To qualify and simplify the law concerning the respective ownership interests of individuals to funds held on deposit by financial institutions, both as to the relationship between the individual depositors and beneficiaries of an account, and to the financial institution-depositor-beneficiary relationships; and

(3) To simplify and make consistent the law pertaining to payments by financial institutions of deposited funds both before and after the death of a depositor or depositors, including provisions for the validity and effect of certain nontestamentary transfers of deposits upon the death of one or more depositors. [1981 c 192 § 2.]

30.22.030 Construction. When construing sections and provisions of this chapter, the sections and provisions shall:

(1) Be liberally construed and applied to promote the purposes of the chapter; and

(2) Be considered part of a general act which is intended as unified coverage of the subject matter, and no part of the chapter shall be deemed impliedly repealed by subsequent legislation if such construction can be reasonably avoided; and

(3) Not be held invalid because of the invalidity of other sections or provisions of the chapter as long as the section or provision in question can be given effect without regard to the invalid section or provision, and to this end the sections and provisions of this chapter are declared to be severable; and

(4) Not be construed by reference to section or subsection headings as used in the chapter since these do not constitute any part of the law; and

(5) Not be deemed to alter the community or separate property nature of any funds held on deposit by a financial institution or any individual's community or separate property rights thereto, and a depositor's community and/or separate property rights to funds on deposit shall not be affected by the form of the account; and

(6) Not be construed as authorizing or extending the authority of any financial institution to accept deposits or to

permit a financial institution to accept deposits from such persons or entities or upon such terms as would contravene any other applicable federal or state law. [1981 c 192 § 3.]

30.22.040 Definitions. Unless the context of this chapter otherwise requires, the terms contained in this section have the meanings indicated.

(1) "Account" means a contract of deposit between a depositor or depositors and a financial institution; the term includes a checking account, savings account, certificate of deposit, savings certificate, share account, savings bond, and other like arrangements.

(2) "Actual knowledge" means written notice to a manager of a branch of a financial institution, or an officer of the financial institution in the course of his employment at the branch, pertaining to funds held on deposit in an account maintained by the branch received within a period of time which affords the financial institution a reasonable opportunity to act upon the knowledge.

(3) "Individual" means a human being; "person" includes an individual, corporation, partnership, limited partnership, joint venture, trust, or other entity recognized by law to have separate legal powers.

(4) "Agent" means a person designated by a depositor or depositors in a contract of deposit or other document to have the authority to deposit and to make payments from an account in the name of the depositor or depositors.

(5) "Agency account" means an account to which funds may be deposited and from which payments may be made by an agent designated by a depositor. In the event there is more than one depositor named on an account, each depositor may designate the same or a different agent for the purpose of depositing to or making payments of funds from a depositor's account.

(6) "Single account" means an account in the name of one depositor only.

(7) "Joint account without right of survivorship" means an account in the name of two or more depositors and which contains no provision that the funds of a deceased depositor become the property of the surviving depositor or depositors.

(8) "Joint account with right of survivorship" means an account in the name of two or more depositors and which provides that the funds of a deceased depositor become the property of one or more of the surviving depositors.

(9) "Trust and P.O.D. accounts" means accounts payable on request to a depositor during the depositor's lifetime, and upon the depositor's death to one or more designated beneficiaries, or which are payable to two or more depositors during their lifetimes, and upon the death of all depositors to one or more designated beneficiaries. The term "trust account" does not include deposits by trustees or other fiduciaries where the trust or fiduciary relationship is established other than by a contract of deposit with a financial institution.

(10) "Trust or P.O.D. account beneficiary" means a person or persons, other than a codepositor, who has or have been designated by a depositor or depositors to receive the depositor's funds remaining in an account upon the death of a depositor or all depositors.

(11) "Depositor", when utilized in determining the rights of individuals to funds in an account, means an individual

who owns the funds. When utilized in determining the rights of a financial institution to make or withhold payment, and/or to take any other action with regard to funds held under a contract of deposit, "depositor" means the individual or individuals who have the current right to payment of funds held under the contract of deposit without regard to the actual rights of ownership thereof by these individuals. A trust or P.O.D. account beneficiary becomes a depositor only when the account becomes payable to the beneficiary by reason of having survived the depositor or depositors named on the account, depending upon the provisions of the contract of deposit.

(12) "Financial institution" means a bank, trust company, mutual savings bank, savings and loan association, or credit union authorized to do business and accept deposits in this state under state or federal law.

(13) "Depositor's funds" or "funds of a depositor" means the amount of all deposits belonging to or made for the benefit of a depositor, less all withdrawals of the funds by the depositor or by others for the depositor's benefit, plus the depositor's prorated share of any interest or dividends included in the current balance of the account and any proceeds of deposit life insurance added to the account by reason of the death of a depositor.

(14) "Payment(s)" of sums on deposit includes withdrawal, payment by check or other directive of a depositor or his agent, any pledge of sums on deposit by a depositor or his agent, any set-off or reduction or other disposition of all or part of an account balance, and any payments to any person under RCW 30.22.120, 30.22.140, 30.22.150, 30.22.160, 30.22.170, 30.22.180, 30.22.190, 30.22.200, and 30.22.220.

(15) "Proof of death" means a certified or authenticated copy of a death certificate, or photostatic copy thereof, purporting to be issued by an official or agency of the jurisdiction where the death purportedly occurred, or a certified or authenticated copy of a record or report of a governmental agency, domestic or foreign, that a person is dead. In either case, the proofs constitute prima facie proof of the fact, place, date, and time of death, and identity of the decedent and the status of the dates, circumstances, and places disclosed by the record or report.

(16) "Request" means a request for withdrawal, or a check or order for payment, which complies with all conditions of the account, including special requirements concerning necessary signatures and regulations of the financial institution; but if the financial institution conditions withdrawal or payment on advance notice, for purposes of this chapter the request for withdrawal or payment is treated as immediately effective and a notice of intent to withdraw is treated as a request for withdrawal.

(17) "Withdrawal" means payment to a person pursuant to check or other directive of a depositor. [1981 c 192 § 4.]

Powers of attorney or agent in probate and trust banking transactions: RCW 11.94.030.

30.22.050 Types of accounts which financial institution may establish. The types of accounts in which funds may be deposited with a financial institution include, but are not limited to, the following:

- (1) A single account;
- (2) A joint account without right of survivorship;

- (3) A joint account with right of survivorship;
- (4) An agency account;
- (5) A trust or P.O.D. account; and
- (6) Any compatible combination of the foregoing.

In each case, the type of account shall be determined by the terms of the contract of deposit between the depositor and the financial institution. The financial institution shall describe to a potential depositor the various types of accounts available. [1981 c 192 § 5.]

30.22.060 Requirements of contract of deposit. The contract of deposit shall be in writing and signed by all individuals who have a current right to payment of funds from an account. The designation of an agent, or trust or P.O.D. account beneficiary by a depositor of a joint account without right of survivorship, or the designation of an agent by a depositor of a joint account with right of survivorship or by a depositor of a trust or P.O.D. account does not require the signature of a codepositor. A financial institution may insert such additional terms and conditions in a contract of deposit as it deems appropriate. [1981 c 192 § 6.]

30.22.070 Accounts of minors and incompetents. A minor or incompetent may enter into a valid and enforceable contract of deposit with the financial institution and any account in the name of a minor or incompetent shall, in the absence of clear and convincing evidence of a different intention at the time it is created, be held for the exclusive right and benefit of the minor or incompetent free from the control of all other persons. [1981 c 192 § 7.]

30.22.080 Accounts of married persons. A financial institution may enter into a contract of deposit without regard to whether the depositor is married and without regard as to whether the funds on deposit are the community or separate property of the depositor. [1981 c 192 § 8.]

30.22.090 Ownership of funds during lifetime of depositor. Subject to community property rights, during the lifetime of a depositor, or the joint lifetimes of depositors:

- (1) Funds on deposit in a single account belong to the depositor.
- (2) Funds on deposit in a joint account without right of survivorship and in a joint account with right of survivorship belong to the depositors in proportion to the net funds owned by each depositor on deposit in the account, unless the contract of deposit provides otherwise or there is clear and convincing evidence of a contrary intent at the time the account was created.
- (3) Funds on deposit in a trust or P.O.D. account belong to the depositor and not to the trust or P.O.D. account beneficiary or beneficiaries; if two or more depositors are named on the trust or P.O.D. account, their rights of ownership to the funds on deposit in the account are governed by subsection (2) of this section.
- (4) Ownership of funds on deposit in an agency account shall be determined in accordance with subsections (1), (2), and (3) of this section depending upon whether the principal is a depositor on a single account, joint account, joint account with right of survivorship, or trust or P.O.D. account. [1981 c 192 § 9.]

30.22.100 Ownership of funds after death of a depositor. Subject to community property rights and subject to the terms and provisions of any community property agreement, upon the death of a depositor:

- (1) Funds which remain on deposit in a single account belong to the depositor's estate.
- (2) Funds belonging to a deceased depositor which remain on deposit in a joint account without right of survivorship belong to the depositor's estate, unless the depositor has also designated a trust or P.O.D. account beneficiary of the depositor's interest in the account.
- (3) Funds belonging to a deceased depositor which remain on deposit in a joint account with right of survivorship belong to the surviving depositors unless there is clear and convincing evidence of a contrary intent at the time the account was created. If there is more than one individual having right of survivorship, the funds belong equally to the surviving depositors unless the contract of deposit otherwise provides. If there is more than one surviving depositor, the rights of survivorship shall continue between the surviving depositors.

(4) Funds remaining on deposit in a trust or P.O.D. account belong to the trust or P.O.D. account beneficiary designated by the deceased depositor unless the account has also been designated as a joint account with right of survivorship, in which event the funds remaining on deposit in the account do not belong to the trust or P.O.D. account beneficiary until the death of the last surviving depositor and the rights of the surviving depositors shall be determined by subsection (3) of this section. If the deceased depositor has designated more than one trust or P.O.D. account beneficiary, and more than one of the beneficiaries survive the depositor, the funds belong equally to the surviving beneficiaries unless the depositor has specifically designated a different method of distribution in the contract of deposit; if two or more beneficiaries survive, there is no right of survivorship as between them unless the terms of the account or deposit agreement expressly provide for rights of survivorship between the beneficiaries.

(5) Upon the death of a depositor of an agency account, the agency shall terminate and any funds remaining on deposit belonging to the deceased depositor shall become the property of the depositor's estate or such other persons who may be entitled thereto, depending upon whether the account was a single account, joint account, joint account with right of survivorship, or a trust or P.O.D. account.

Any transfers to surviving depositors or to trust or P.O.D. account beneficiaries pursuant to the terms of this section are declared to be effective by reason of the provisions of the account contracts involved and this chapter and are not to be considered as testamentary dispositions. The rights of survivorship and of trust and P.O.D. account beneficiaries arise from the express terms of the contract of deposit and cannot, under any circumstances, be changed by the will of a depositor. [1981 c 192 § 10.]

30.22.110 Controversies between owners. RCW 30.22.090 and 30.22.100 are intended to establish ownership of funds on deposit in the accounts stated, as between depositors and/or trust or P.O.D. account beneficiaries, and the provisions thereof are relevant only as to controversies

between such persons and their creditors, and other successors, and have no bearing on the power of any person to receive payment of funds maintained in the accounts or the right of a financial institution to make payments to any person as provided by the terms of the contract of deposit. [1981 c 192 § 11.]

30.22.120 Right to rely on form of account—Discharge of financial institutions. In making payments of funds deposited in an account, a financial institution may rely conclusively and entirely upon the form of the account and the terms of the contract of deposit at the time the payments are made. A financial institution is not required to inquire as to either the source or the ownership of any funds received for deposit to an account, or to the proposed application of any payments made from an account. Unless a financial institution has actual knowledge of the existence of dispute between depositors, beneficiaries, or other persons claiming an interest in funds deposited in an account, all payments made by a financial institution from an account at the request of any depositor to the account and/or the agent of any depositor to the account in accordance with this section and RCW 30.22.140, 30.22.150, 30.22.160, 30.22.170, 30.22.180, 30.22.190, 30.22.200, and 30.22.220 shall constitute a complete release and discharge of the financial institution from all claims for the amounts so paid regardless of whether or not the payment is consistent with the actual ownership of the funds deposited in an account by a depositor and/or the actual ownership of the funds as between depositors and/or the beneficiaries of P.O.D. and trust accounts, and/or their heirs, successors, personal representatives, and assigns. [1981 c 192 § 12.]

30.22.130 Rights as between individuals preserved. The protection accorded to financial institutions under RCW 30.22.120, 30.22.140, 30.22.150, 30.22.160, 30.22.170, 30.22.180, 30.22.190, 30.22.200, 30.22.210, and 30.22.220 shall have no bearing on the actual rights of ownership to deposited funds by a depositor, and/or between depositors, and/or by and between beneficiaries of trust and P.O.D. accounts, and their heirs, successors, personal representatives, and assigns. [1981 c 192 § 13.]

30.22.140 Payment of funds to a depositor. Payments of funds on deposit in a single account may be made by a financial institution to or for the depositor regardless of whether the depositor is, in fact, the actual owner of the funds. Payments of funds on deposit in an account having two or more depositors may be made by a financial institution to or for any one or more of the depositors named on the account without regard to the actual ownership of the funds by or between the depositors, and without regard to whether any other depositor or depositors so named are deceased or incompetent at the time the payments are made. [1981 c 192 § 14.]

30.22.150 Payment to minors and incompetents. Financial institutions may make payments of funds on deposit in an account established by a depositor who is a minor or incompetent without regard to whether it has actual knowledge of the minority or incompetency of the depositor

unless the branch of the financial institution at which the account is maintained has received written notice to withhold payment to the minor or incompetent by the guardian of his estate and had a reasonable opportunity to act upon the notice. [1981 c 192 § 15.]

30.22.160 Payment to trust and P.O.D. account beneficiaries. Financial institutions may pay any funds remaining on deposit in an account to a trust or P.O.D. account beneficiary or beneficiaries when the financial institution has received proofs of death of all depositors to the account who pursuant to the terms of the contract of deposit were required to predecease the beneficiary. If there is more than one trust or P.O.D. account beneficiary, financial institutions shall not, unless the contract of deposit otherwise provides, pay to any one such beneficiary more than that amount which is obtained by dividing the total of the funds on deposit in the account by the number of trust or P.O.D. account beneficiaries. [1981 c 192 § 16.]

30.22.170 Payment to agents of depositors. Any funds on deposit in an account may be paid by a financial institution to or upon the order of any agent of any depositor. The contract of deposit or other document creating such agency may provide, in accordance with chapter 11.94 RCW, that any such agent's powers to receive payments and make withdrawals from an account continues in spite of, or arises by virtue of, the incompetency of a depositor, in which event the agent's powers to make payments and withdrawals from an account on behalf of a depositor is not affected by the incompetency of a depositor. Except as provided in this section, the authority of an agent to receive payments or make withdrawals from an account terminates with the death or incompetency of the agent's principal: PROVIDED, That a financial institution is not liable for any payment or withdrawal made to or by an agent for a deceased or incompetent depositor unless the financial institution making the payment or permitting the withdrawal had actual knowledge of the incompetency or death at the time payment was made. [1981 c 192 § 17.]

30.22.180 Payment to personal representatives. Financial institutions may pay any funds remaining on deposit in an account which belongs to a deceased depositor to the personal representative of the depositor's estate under any of the following circumstances:

(1) When the decedent was the depositor on a single account; or

(2) When the decedent was a depositor on a joint account without right of survivorship or the only surviving depositor on a joint account with right of survivorship, and has not designated a trust or P.O.D. account beneficiary of the decedent's interest, and the financial institution has received the proofs of death necessary to establish the deaths of the other depositors named on the account; or

(3) When the decedent was a beneficiary of a P.O.D. or trust account and the financial institution has received proofs of death of the beneficiary and all depositors to the account who, pursuant to the terms of the contract of deposit, were required to predecease the beneficiary; or

(4) When consent to the payment has been given in writing by all depositors and beneficiaries of the account; or

(5) When so ordered or directed by a superior court of the state or other court having jurisdiction over the matter. [1981 c 192 § 18.]

30.22.190 Payment to heirs and creditors of a deceased depositor. In each case, where it is provided in RCW 30.22.180 that a financial institution may make payment of funds deposited in an account to the personal representative of the estate of a deceased depositor or beneficiary, the financial institution may make payment of the funds to the following persons under the circumstances provided:

(1) In those instances where the deceased depositor left a surviving spouse, and the deceased depositor and the surviving spouse shall have executed a community property agreement which by its terms would include funds of the deceased depositor remaining in the account, a financial institution may make payment of all funds in the name of the deceased spouse to the surviving spouse upon receipt of a certified copy of the community property agreement as recorded in the office of a county auditor of the state and an affidavit of the surviving spouse that the community property agreement was validly executed and in full force and effect upon the death of the depositor.

(2) In those instances where the balance of the funds in the name of a deceased depositor does not exceed two thousand five hundred dollars, payment of the decedent's funds remaining in the account may be made to the surviving spouse, next of kin, funeral director, or other creditor who may appear to be entitled thereto upon receipt of proof of death and an affidavit to the effect that no personal representative has been appointed for the deceased depositor's estate. As a condition to the payment, a financial institution may require such waivers, indemnity, receipts, and acquittance and additional proofs as it may consider proper.

(3) In those instances where the person entitled presents an affidavit which meets the requirements of chapter 11.62 RCW.

A person receiving a payment from a financial institution pursuant to subsections (2) and (3) of this section is answerable and accountable therefor to any personal representative of the deceased depositor's estate wherever and whenever appointed. [1989 c 220 § 3; 1981 c 192 § 19.]

30.22.200 Payment to foreign personal representative—Release of financial institution. In each case where it is provided in this chapter that payment may be made to the personal representative of the estate of a deceased depositor or trust or P.O.D. account beneficiary, financial institutions may make payment of the funds on deposit in a deceased depositor's or beneficiary's account to the personal representative of the decedent's estate appointed under the laws of any other state or territory or country after:

(1) At least sixty days have elapsed since the date of the deceased depositor's death; and

(2) Upon receipt of the following:

(a) Proof of death of the deceased depositor or beneficiary;

(b) Proof of the appointment and continuing authority of the personal representative requesting payment;

(c) The personal representative's, or its agent's, affidavit to the effect that to the best of his or her knowledge no personal representative has been or will be appointed under the laws of this state; and

(d) Receipt of either an estate tax release from the department of revenue or the personal representative's, or its agent's, affidavit that the estate is not subject to Washington estate tax. However, if a personal representative of the deceased depositor's or beneficiary's estate is appointed and qualified as such under the laws of this state, and delivers proof of the appointment and qualification to the office or branch of the financial institution in which the deposit is maintained prior to the transmissions of the sums on deposit to the foreign personal representative, then the funds shall be paid to the personal representative of the deceased depositor's or beneficiary's estate who has been appointed and qualified in this state.

(3) The financial institution paying, delivering, transferring, or issuing funds on deposit in a deceased depositor's or beneficiary's account in accordance with the provisions of this section is discharged and released to the same extent as if such person has dealt with a personal representative of the decedent, unless at the time of such payment, delivery, transfer, or issuance such institution had actual knowledge of the falsity of any statement or affidavit required to be provided under this section. Such institution is not required to see to the application of funds, or to inquire into the truth of any matter specified in any statement or affidavit required to be provided under this section. [1988 c 29 § 9; 1981 c 192 § 20.]

30.22.210 Authority to withhold payment. Nothing contained in this chapter shall be deemed to require any financial institution to make any payment from an account to a depositor, or any trust or P.O.D. account beneficiary, or any other person claiming an interest in any funds deposited in the account, if the financial institution has actual knowledge of the existence of a dispute between the depositors, beneficiaries, or other persons concerning their respective rights of ownerships to the funds contained in, or proposed to be withdrawn, or previously withdrawn from the account, or in the event the financial institution is otherwise uncertain as to who is entitled to the funds pursuant to the contract of deposit. In any such case, the financial institution may, without liability, notify, in writing, all depositors, beneficiaries, or other persons claiming an interest in the account of either its uncertainty as to who is entitled to the distributions or the existence of any dispute, and may also, without liability, refuse to disburse any funds contained in the account to any depositor, and/or trust or P.O.D. account beneficiary thereof, and/or other persons claiming an interest therein, until such time as either:

(1) All such depositors and/or beneficiaries have consented, in writing, to the requested payment; or

(2) The payment is authorized or directed by a court of proper jurisdiction. [1981 c 192 § 21.]

30.22.220 Adverse claim bond. Notwithstanding RCW 30.22.210, a financial institution may, without liability,

pay or permit withdrawal of any funds on deposit in an account to a depositor and/or agent of a depositor and/or trust or P.O.D. account beneficiary, and/or other person claiming an interest therein, even when the financial institution has actual knowledge of the existence of the dispute, if the adverse claimant shall execute to the financial institution, in form and with security acceptable to it, a bond in an amount which is double either the amount of the deposit or the adverse claim, whichever is the lesser, indemnifying the financial institution from any and all liability, loss, damage, costs, and expenses, for and on account of the payment of the adverse claim or the dishonor of the check or other order of the person in whose name the deposit stands on the books of the financial institution: PROVIDED, That where the person in whose name the deposit stands is a fiduciary for the adverse claimant, and the facts constituting such relationship, and also the facts showing reasonable cause of belief on the part of the claimant that the fiduciary is about to misappropriate the deposit, are made to appear by the affidavit of the claimant, the financial institution shall, without liability, refuse to deliver the property for a period of not more than five business days from the date that the financial institution receives the adverse claimant's affidavit, without liability for the sufficiency or truth of the facts alleged in the affidavit, after which time the claim shall be treated as any other claim under this section. [1981 c 192 § 22.]

30.22.900 Effective date—1981 c 192. This act shall take effect on July 1, 1982. [1981 c 192 § 34.]

Chapter 30.24

INVESTMENT OF TRUST FUNDS

Sections

- 30.24.080 Securities in default ineligible.
Fiduciary bonds, premium as lawful expense: RCW 48.28.020.
Investment of trust funds generally: Chapter 11.100 RCW.
Release of powers of appointment: Chapter 11.95 RCW.

30.24.080 Securities in default ineligible. Nothing in this chapter shall be construed as authorizing any fiduciary to invest funds held in trust, in any bonds, mortgages, notes or other securities, during any default in payment of either principal or interest thereof. [1955 c 33 § 30.24.080. Prior: 1947 c 100 § 8; 1941 c 41 § 16; Rem. Supp. 1947 § 3255-16.]

Chapter 30.32

DEALINGS WITH FEDERAL LOAN AGENCIES

Sections

- 30.32.010 Membership in federal reserve system—Investment in stock of Federal Deposit Insurance Corporation.
 30.32.020 Investment in federal home loan bank stock or bonds.
 30.32.030 May borrow from home loan bank.
 30.32.040 Federal home loan bank as depository.

30.32.010 Membership in federal reserve system—Investment in stock of Federal Deposit Insurance Corpo-

ration. Any bank, trust company or mutual savings bank may become a member of the federal reserve system of the United States and to that end may comply with all laws of the United States and all rules, regulations and requirements promulgated pursuant thereto, including the investment of its funds in the stock of a federal reserve bank; and any bank, trust company or mutual savings bank, whether a member of the federal reserve system or not, may invest its funds in the stock of the Federal Deposit Insurance Corporation created by the act of congress approved June 16, 1933, and may participate in the insurance of bank deposits and obligate itself for the cost of such participation by assessments or otherwise in accordance with the laws of the United States. [1955 c 33 § 30.32.010. Prior: 1933 ex.s. c 9 § 1; RRS § 3235-1.]

30.32.020 Investment in federal home loan bank stock or bonds. Any savings and loan association, building and loan association, bank, trust company, savings bank, or mutual savings bank may become a member of and invest its funds in the bonds and/or the capital stock of a federal home loan bank, and vote such stock in the manner prescribed by its board of directors. [1955 c 33 § 30.32.020. Prior: 1933 c 105 § 1; RRS § 3294-1.]

30.32.030 May borrow from home loan bank. Any such bank, trust company, insurance company, or association, may borrow from any home loan bank and as security for borrowing may pledge therewith the notes, mortgages, trust deeds which it holds as shall be required by federal law, and under such rules and regulations as shall be adopted by a federal home loan bank. [1955 c 33 § 30.32.030. Prior: 1933 c 105 § 2; RRS § 3294-2.]

30.32.040 Federal home loan bank as depository. Any such bank, trust company, insurance company or association, may designate a federal home loan bank as a depository for its funds. [1955 c 33 § 30.32.040. Prior: 1933 c 105 § 3; RRS § 3294-3.]

Chapter 30.36

CAPITAL NOTES OR DEBENTURES

Sections

- 30.36.010 Definitions.
 30.36.020 Issuance and sale—Status—Conversion rights.
 30.36.030 Stock at less than par—Impairment.
 30.36.040 Impairment to be corrected before retirement of notes or debentures.
 30.36.050 Not subject to assessments—Liability of holders.

30.36.010 Definitions. Capital notes or debentures, where used in this chapter, shall mean notes or other obligations issued by a bank, trust company or mutual savings bank, for money obtained and used as additional capital or to replace impaired capital stock: PROVIDED, Such notes or other obligations are subordinate to the rights of depositors and other creditors.

The term "capital" where used in this chapter shall mean capital stock and/or capital notes. [1955 c 33 § 30.36.010. Prior: 1935 c 42 § 1; RRS § 3295-1.]

30.36.020 Issuance and sale—Status—Conversion rights. With the approval of the supervisor, any bank, trust company or mutual savings bank may at any time, through action of its board of directors or trustees, issue and sell its capital notes or debentures. Such capital notes or debentures shall be subordinate to the claims of depositors and other creditors. The holders of capital notes or debentures issued by a bank or trust company shall have such conversion rights as may be provided in the articles of incorporation with the approval of the supervisor. [1979 c 106 § 5; 1955 c 33 § 30.36.020. Prior: 1935 c 42 § 2; RRS 3295-2.]

30.36.030 Stock at less than par—Impairment. Where any bank, trust company or mutual savings bank has issued and has outstanding capital notes or debentures, it may carry its capital stock on its books at a sum less than par, and it shall not be considered impaired so long as the amount of such capital notes or debentures equals or exceeds the impairment as found by the supervisor. [1955 c 33 § 30.36.030. Prior: 1935 c 42 § 3; RRS § 3295-3.]

30.36.040 Impairment to be corrected before retirement of notes or debentures. Before such capital notes or debentures are retired or paid by the bank, trust company or mutual savings bank, any existing impairment of its capital stock must be overcome or corrected to the satisfaction of the supervisor. [1955 c 33 § 30.36.040. Prior: 1935 c 42 § 4; RRS § 3295-4.]

30.36.050 Not subject to assessments—Liability of holders. Such capital notes or debentures shall in no case be subject to any assessment. The holders of such capital notes or debentures shall not be held individually responsible, as such holders, for any debts, contracts or engagements of such institution, and as such holders, shall not be held liable for assessments to restore impairments in the capital of such institution. [1955 c 33 § 30.36.050. Prior: 1935 c 42 § 5; RRS § 3295-5.]

Chapter 30.40 BRANCH BANKS

Sections

- 30.40.010 Establishment of branch.
30.40.020 Branches authorized.

30.40.010 Establishment of branch. See RCW 30.04.280.

30.40.020 Branches authorized. A bank or trust company may, with the approval of the supervisor, establish and operate branches anywhere within the state. A bank having a paid-in capital of not less than one million dollars may, with the approval of the supervisor, establish and operate branches in any foreign country. The supervisor's approval of a branch within this state shall be conditioned on a finding that the resources in the neighborhood of the proposed location and in the surrounding country offer a reasonable promise of adequate support for the proposed branch and that the proposed branch is not being formed for

other than the legitimate objects covered by this title. The supervisor's approval of a branch in a foreign country shall be conditioned on a finding that the proposed location offers a reasonable promise of adequate support for the proposed branch, [and] that the proposed branch is not being formed for other than the legitimate objects covered by this title. [1986 c 279 § 39; 1981 c 73 § 2; 1973 1st ex.s. c 53 § 35; 1969 c 136 § 6; 1955 c 33 § 30.40.020. Prior: 1933 c 42 § 5; RRS § 3231-1.]

Effective date—1981 c 73: See note following RCW 30.08.020.

Severability—1973 1st ex.s. c 53: See RCW 30.42.900.

Chapter 30.42 ALIEN BANKS

Sections

- 30.42.010 Purpose.
30.42.020 Definitions.
30.42.030 Authorization and compliance with chapter required.
30.42.040 More than one office prohibited.
30.42.050 Acquisition or serving on board of directors or trustees of other financial institutions prohibited.
30.42.060 Conditions to be met before opening office in state.
30.42.070 Allocated paid-in capital—Requirements.
30.42.080 Separate assets—Books and records—Priority as to assets.
30.42.090 Approval of application—Criteria—Reciprocity.
30.42.100 Notice of approval—Filing—Time period for commencing business.
30.42.105 Power to make loans and to guarantee obligations.
30.42.115 Solicitation and acceptance of deposits.
30.42.120 Requirements for accepting deposits or transacting business.
30.42.130 Taking possession by supervisor—Reasons—Disposition of deposits—Claims—Priorities.
30.42.140 Investigations—Examinations.
30.42.145 Examination reports and information—Confidential—Privileged—Penalty.
30.42.150 Loans subject to usury laws.
30.42.155 Powers and activities.
30.42.160 Powers as to real estate.
30.42.170 Advertising, status of federal insurance on deposits to be included—Gifts for new deposits.
30.42.180 Approved agencies—Powers and activities.
30.42.190 Bonding requirements for officers and employees.
30.42.200 Books and accounts—English language.
30.42.210 Bureaus—Application procedure.
30.42.220 Bureaus—Approval—Certificate of authority—Time limit for commencing business.
30.42.230 Bureaus—Number—Powers.
30.42.240 Bureaus—Examinations.
30.42.250 Temporary facilities at trade fairs, etc.
30.42.260 Reports.
30.42.270 Taxation.
30.42.280 Directors, officers, and employees—Duties, responsibilities and restrictions—Removal.
30.42.290 Compliance—Violations—Penalties.
30.42.300 Suspension or revocation of certificate to operate—Grounds.
30.42.310 Change of location.
30.42.320 Rules and regulations.
30.42.330 Fees.
30.42.340 Alien banks or branches in business on or before effective date.
30.42.900 Severability—1973 1st ex.s. c 53.

30.42.010 Purpose. The purpose of this chapter is to establish a legal and regulatory framework for operation by alien banks in the state of Washington that will:

(1) Create a financial climate which will benefit the economy of the state of Washington;

(2) Provide a well regulated and supervised financial system to assist the movement of foreign capital into Washington state for the support and diversification of the local industrial base;

(3) Assist the development of the economy of the state of Washington without disrupting business relationships of state and federal financial institutions. [1973 1st ex.s. c 53 § 1.]

30.42.020 Definitions. For the purposes of this chapter, the following terms shall be defined as follows:

(1) "Alien bank" means a bank organized under the laws of a foreign country and having its principal place of business in that country, the majority of the beneficial ownership and control of which is vested in citizens of countries other than the United States of America.

(2) "Office" means a branch or agency of an alien bank carrying on business in this state pursuant to this chapter.

(3) "Branch" means an office of an alien bank that is exercising the powers authorized by RCW 30.42.105, 30.42.115, and 30.42.155.

(4) "Agency" means an office of an alien bank that is exercising the powers authorized by RCW 30.42.180.

(5) "Bureau" means an alien bank's operation in this state exercising the powers authorized by RCW 30.42.230.

(6) "Supervisor" means the supervisor of banking of the state of Washington. [1983 c 3 § 48; 1973 1st ex.s. c 53 § 2.]

30.42.030 Authorization and compliance with chapter required. An alien bank shall not establish and operate an office or bureau in this state unless it is authorized to do so by the supervisor and unless it first complies with all of the provisions of this chapter and then only to the extent expressly permitted by this chapter. [1973 1st ex.s. c 53 § 3.]

30.42.040 More than one office prohibited. An alien bank shall not be permitted to have more than one office in this state. [1973 1st ex.s. c 53 § 4.]

30.42.050 Acquisition or serving on board of directors or trustees of other financial institutions prohibited. An alien bank shall not take over or acquire an existing federal or state-chartered bank, trust company, mutual savings bank, savings and loan association, or credit union or any branch of any such bank, trust company, mutual savings bank, savings and loan association, or credit union in this state; nor shall any designee, officer, agent or employee of an alien bank serve on the board of directors of any federal or state bank, trust company, savings and loan association, or credit union, or the board of trustees of a mutual savings bank. [1973 1st ex.s. c 53 § 5.]

30.42.060 Conditions to be met before opening office in state. An alien bank shall not hereafter open an office in this state until it has met the following conditions:

(1) It has filed with the supervisor an application in such form and containing such information as shall be prescribed by the supervisor.

(2) It has designated the supervisor by a duly executed instrument in writing, its agent, upon whom process in any action or proceeding arising out of a transaction with the Washington office may be served. Such service shall have the same force and effect as if the alien bank were a Washington corporation and had been lawfully served with process within the state. The supervisor shall forward by mail, postage prepaid, a copy of every process served upon him under the provisions of this subdivision, addressed to the manager or agent of such bank at its office in this state.

(3) It has allocated and assigned to its office within this state paid-in capital of not less than two hundred thousand dollars or such larger amounts as the supervisor in his discretion may require.

(4) It has filed with the supervisor a letter from its chief executive officer guaranteeing that the alien bank's entire capital and surplus is and shall be available for all liabilities and obligations of its office doing business in this state.

(5) It has paid the fees required by law and established by the supervisor pursuant to RCW 30.08.095.

(6) It has received from the supervisor his certificate authorizing the transaction of business in conformity with this chapter. [1973 1st ex.s. c 53 § 6.]

30.42.070 Allocated paid-in capital—Requirements. The capital allocated as required in RCW 30.42.060(3) shall be maintained within this state at all times in cash or in supervisor approved interest bearing bonds, notes, debentures, or other obligations: (1) Of the United States or of any agency or instrumentality thereof, or guaranteed by the United States; or (2) of this state, or of a city, county, town, or other municipal corporation, or instrumentality of this state or guaranteed by this state, or such other assets as the supervisor may approve. Such capital shall be deposited with a bank qualified to do business in and having its principal place of business within this state, or in a national bank qualified to engage in banking in this state. Such bank shall issue a written receipt addressed and delivered to the supervisor reciting that such deposit is being held for the sole benefit of the United States domiciled creditors of such alien bank's Washington office and that the same is subject to his order without offset for the payment of such creditors. For the purposes of this section, the term "creditor" shall not include any other offices, branches, subsidiaries, or affiliates of such alien bank. Subject to the approval of the supervisor, reasonable arrangements may be made for substitution of securities. So long as it shall continue business in this state in conformance with this chapter and shall remain solvent, such alien bank shall be permitted to collect all interest and/or income from the assets constituting such allocated capital.

Should any securities so depreciate in market value and/or quality as to reduce the deposit below the amount required, additional money or securities shall be deposited promptly in amounts sufficient to meet such requirements. The supervisor may make an investigation of the market value and of the quality of any security deposited at the time such security is presented for deposit or at any time thereafter. The supervisor may make such charge as may be reasonable and proper for such investigation. [1982 c 95 § 1; 1979 c 106 § 6; 1973 1st ex.s. c 53 § 7.]

Effective date—1982 c 95: "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, 1982." [1982 c 95 § 9.]

30.42.080 Separate assets—Books and records—Priority as to assets. Every alien bank maintaining an office in this state shall keep the assets of its Washington office entirely separate and apart from the assets of its other operations as though the Washington office was conducted as a separate and distinct entity. Every such alien bank shall keep separate books of account and records for its Washington office and shall observe with respect to such office the applicable requirements of this chapter and the applicable rules and regulations of the supervisor. The United States domiciled creditors of such alien bank's Washington office shall be entitled to priority with respect to the assets of its Washington office before such assets may be used or applied for the benefit of its other creditors or transferred to its general business. [1973 1st ex.s. c 53 § 8.]

30.42.090 Approval of application—Criteria—Reciprocity. The supervisor may give or withhold his approval of an application by an alien bank to establish an office in this state at his discretion. His decision shall be based on the information submitted to his office in the application required by RCW 30.42.060 and such additional investigation as the supervisor deems necessary or appropriate. Prior to granting approval to said application, he shall have ascertained to his satisfaction that all of the following are true:

- (1) The proposed location offers a reasonable promise of adequate support for the proposed office;
- (2) The proposed office is not being formed for other than legitimate objects;
- (3) The proposed officers of the proposed office have sufficient banking experience and ability to afford reasonable promise of successful operation;
- (4) The reputation and financial standing of the alien bank is such as to command the confidence and warrant belief that the business of the proposed office will be conducted honestly and efficiently in accordance with the intent and purpose of this chapter, as set forth in RCW 30.42.010;
- (5) The principal purpose of establishing such office shall be within the intent of this chapter.

The supervisor shall not grant an application for an office of an alien bank unless the law of the foreign country under which laws the alien bank is organized permits a bank with its principal place of business in this state to establish in that foreign country a branch, agency or similar operation. [1973 1st ex.s. c 53 § 9.]

30.42.100 Notice of approval—Filing—Time period for commencing business. If the supervisor approves the application, he shall notify the alien bank of his approval and shall file certified copies of its charter, certificate or other authorization to do business with the secretary of state. Upon such filing, the supervisor shall issue a certificate of authority stating that the alien bank is authorized to conduct business through a branch or agency in this state at the place designated in accordance with this chapter. Each such

certificate shall be conspicuously displayed at all times in the place of business specified therein.

The office of the alien bank must commence business within six months after the issuance of the supervisor's certificate: PROVIDED, That the supervisor for good cause shown may extend such period for an additional time not to exceed three months. [1985 c 305 § 7; 1973 1st ex.s. c 53 § 10.]

30.42.105 Power to make loans and to guarantee obligations. An approved branch of an alien bank shall have the same power to make loans and guarantee obligations as a state bank chartered pursuant to Title 30 RCW: PROVIDED, HOWEVER, That the base for computing the applicable loan limitation shall be the entire capital and surplus of the alien bank. The supervisor may adopt rules and regulations limiting the amount of loans to full-time employees of the branch. [1982 c 95 § 4.]

Effective date—1982 c 95: See note following RCW 30.42.070.

30.42.115 Solicitation and acceptance of deposits. (1) Any branch of an alien bank that received approval of its branch application pursuant to RCW 30.42.090, or that had filed its branch application pursuant to RCW 30.42.060, on or before July 27, 1978, and any approved branch of an alien bank that has designated Washington as its home state pursuant to section 5 of the International Banking Act of 1978, shall have the same power to solicit and accept deposits as a state bank chartered pursuant to Title 30 RCW, except that acceptance of initial deposits of less than one hundred thousand dollars shall be limited to deposits of the following:

(a) Any business entity, including any corporation, partnership, association, or trust, that engages in commercial activity for profit: PROVIDED, That there shall be excluded from this category any such business entity that is organized under the laws of any state or the United States, is majority-owned by United States citizens or residents, and has total assets, including assets of majority owned subsidiaries, of less than one million five hundred thousand dollars as of the date of the initial deposit;

(b) Any governmental unit, including the United States government, any state government, any foreign government and any political subdivision or agency of the foregoing;

(c) Any international organization which is composed of two or more nations;

(d) Any draft, check, or similar instrument for the transmission of funds issued by the branch;

(e) Any depositor who is not a citizen of the United States and who is not a resident of the United States at the time of the initial deposit;

(f) Any depositor who established a deposit account on or before July 1, 1982, and who has continuously maintained the deposit account since that date: PROVIDED, That this subparagraph (f) of this subsection shall be effective only until July 1, 1985;

(g) Any other person: PROVIDED, That the amount of deposits under this subparagraph (g) of this subsection may not exceed four percent of the average of the branch's deposits for the last thirty days of the most recent calendar quarter, excluding deposits in the branch of other offices,

branches, agencies, or wholly owned subsidiaries of the alien bank.

(2) As used in subsection (1) of this section, "initial deposit" means the first deposit transaction between a depositor and the branch. Different deposit accounts that are held by a depositor in the same right and capacity may be added together for purposes of determining the dollar amount of that depositor's initial deposit.

(3) Approved branches of alien banks, other than those described in subsection (1) of this section, may solicit and accept deposits only from foreign governments and their agencies and instrumentalities, persons, or entities conducting business principally at their offices or establishments abroad, and such other deposits that:

(a) Are to be transmitted abroad;

(b) Consist of collateral or funds to be used for payment of obligations to the branch;

(c) Consist of the proceeds of collections abroad that are to be used to pay for exported or imported goods or for other costs of exporting or importing or that are to be periodically transferred to the depositor's account at another financial institution;

(d) Consist of the proceeds of extensions of credit by the branch; or

(e) Represent compensation to the branch for extensions of credit or services to the customer.

(4) A branch may accept deposits, subject to the limitations set forth in subsections (1) and (3) of this section, only upon the same terms and conditions (including nature and extent of such deposits, withdrawal, and the payment of interest thereon) that banks organized under the laws of this state which are members of the Federal Reserve System may accept such deposits. Any branch that is not subject to reserve requirements under regulations of the Federal Reserve Board shall maintain deposit reserves in this state, pursuant to rules adopted by the supervisor, to the same extent they must be maintained by banks organized under the laws of this state which are members of the Federal Reserve System. [1985 c 305 § 8; 1982 c 95 § 6.]

Effective date—1982 c 95: See note following RCW 30.42.070.

30.42.120 Requirements for accepting deposits or transacting business. A branch shall not commence to transact in this state the business of accepting deposits or transact such business thereafter unless it has met the following requirements:

(1) It has obtained federal deposit insurance corporation insurance covering its eligible deposit liabilities within this state, or in lieu thereof, made arrangements satisfactory to the supervisor for maintenance within this state of additional capital equal to not less than five percent of its deposit liabilities, computed on the basis of the average daily net deposit balances covering semimonthly periods as prescribed by the supervisor pursuant to *RCW 30.04.090. Such additional capital shall be deposited in the manner provided in RCW 30.42.070.

(2) It holds in this state currency, bonds, notes, debentures, drafts, bills of exchange, or other evidences of indebtedness or other obligations payable in the United States or in United States funds or, with the approval of the supervisor, in funds freely convertible into United States

funds or such other assets as are approved by the supervisor, in an amount not less than one hundred percent of the aggregate amount of liabilities of such alien bank payable at or through its office in this state. When calculating the value of the assets so held, credit shall be given for the amounts deposited pursuant to RCW 30.42.060(3) and 30.42.120(1), but there shall be excluded all amounts due from the head office and any other branch, agency, or other office or wholly-owned subsidiary of the bank, except those amounts due from such offices or subsidiaries located within the United States and payable in United States dollars.

(3) If deposits are not insured by the federal deposit insurance corporation, then that fact shall be disclosed to all depositors pursuant to rules and regulations of the supervisor.

(4) If the branch conducts an international banking facility, the deposits of which are exempt from reserve requirements of the federal reserve banking system, the liabilities of that facility shall be excluded from the deposit and other liabilities of the branch for the purposes of subsection (1) of this section. [1982 c 95 § 2; 1975 1st ex.s. c 285 § 2; 1973 1st ex.s. c 53 § 12.]

***Reviser's note:** RCW 30.04.090 was repealed by 1981 c 89 § 7.

Effective date—1982 c 95: See note following RCW 30.42.070.

30.42.130 Taking possession by supervisor—Reasons—Disposition of deposits—Claims—Priorities. The supervisor may take possession of the office of an alien bank for the reasons stated and in the manner provided in chapter 30.44 RCW. Upon the supervisor taking such possession of a branch, no deposit liabilities of which are insured by the federal deposit insurance corporation, the amounts deposited pursuant to RCW 30.42.120(1) shall thereupon become the property of the supervisor, free and clear of any and all liens and other claims, and shall be held by him in trust for the United States domiciled depositors of the office in this state of such alien bank. Upon obtaining the approval of the superior court of Thurston county, the supervisor shall reduce such deposited capital to cash and as soon as practicable distribute it to such depositors.

If sufficient cash is available, such distribution shall be in equal amounts to each such depositor: PROVIDED, That no such depositor receives more than the amount of his deposit or an amount equal to the maximum amount insured by the federal deposit insurance corporation, whichever is less. If sufficient cash is not available, such distribution shall be on a pro rata basis to each such depositor: PROVIDED, That no such depositor receives more than the maximum amount insured by the federal deposit insurance corporation. If any cash remains after such distribution, it shall be distributed pro rata to those depositors whose deposits have not been paid in full: PROVIDED, That no depositor receives more than the amount of his deposit. For purposes of this section, the term "depositor" shall not include any other offices, subsidiaries or affiliates of such alien bank.

The term "deposit" as used in this section shall mean the unpaid balance of money or its equivalent received or held by the branch in the usual course of its business and for which it has given or is obligated to give credit, either conditionally or unconditionally to a demand, time or savings

account, or which is evidenced by its certificate of deposit, or a check or draft drawn against a deposit account and certified by the branch, or a letter of credit or traveler's checks on which the branch is primarily liable.

Claims of depositors and creditors shall be made and disposed of in the manner provided in chapter 30.44 RCW in the event of insolvency or inability of the bank to pay its creditors in this state. The capital deposit of the bank shall be available for claims of depositors and creditors. The claims of depositors and creditors shall be paid from the capital deposit in the following order or priority:

- (1) Claims of depositors not paid from the amounts deposited pursuant to RCW 30.42.120(1);
- (2) Claims of Washington domiciled creditors;
- (3) Other creditors domiciled in the United States; and
- (4) Creditors domiciled in foreign countries.

The supervisor shall proceed in accordance with and have all the powers granted by chapter 30.44 RCW. [1973 1st ex.s. c 53 § 13.]

30.42.140 Investigations—Examinations. The supervisor, deputy supervisor, or a bank examiner, without previous notice, shall visit the office of an alien bank doing business in this state pursuant to this chapter at least once in each year, and more often if necessary, for the purpose of making a full investigation into the condition of such office, and for that purpose they are hereby empowered to administer oaths and to examine under oath any director or member of its governing body, officer, employee, or agent of such alien bank or office. The supervisor shall make such other full or partial examination as he deems necessary. The supervisor shall collect, from each alien bank for each examination of the conditions of its office in this state, the estimated actual cost of such examination. [1982 c 95 § 3; 1973 1st ex.s. c 53 § 14.]

Effective date—1982 c 95: See note following RCW 30.42.070.

30.42.145 Examination reports and information—Confidential—Privileged—Penalty. See RCW 30.04.075.

30.42.150 Loans subject to usury laws. Loans made by an office shall be subject to the laws of the state of Washington relating to usury. [1973 1st ex.s. c 53 § 15.]

30.42.155 Powers and activities. (1) In addition to the taking of deposits and making of loans as provided in this chapter, a branch of an alien bank shall have the power only to carry out these other activities:

- (a) Borrow funds from banks and other financial institutions;
- (b) Make investments to the same extent as a state bank chartered pursuant to Title 30 RCW;
- (c) Buy and sell foreign exchange;
- (d) Receive checks, bills, drafts, acceptances, notes, bonds, coupons, and other securities for collection abroad and collect such instruments in the United States for customers abroad;
- (e) Hold securities in safekeeping for, or buy and sell securities upon the order and for the risk of, customers abroad;

(f) Act as paying agent for securities issued by foreign governments or other organizations organized under foreign law and not qualified under the laws of the United States, or of any state or the District of Columbia, to do business in the United States;

(g) In order to prevent loss on debts previously contracted a branch may acquire shares in a corporation: PROVIDED, That the shares are disposed of as soon as practical but in no event later than two years from the date of acquisition;

(h) Issue letters of credit and create acceptances;

(i) Act as paying agent or trustee in connection with revenue bonds issued pursuant to chapter 39.84 RCW, in which the user is: (i) A corporation organized under the laws of a country other than the United States, or a subsidiary or affiliate owned or controlled by such a corporation; or (ii) a corporation, partnership, or other business organization, the majority of the beneficial ownership of which is owned by persons who are citizens of a country other than the United States and who are not residents of the United States, and any subsidiary or affiliate owned or controlled by such an organization; or in which the bank purchases twenty-five percent or more of the bond issue. For the purposes of chapter 39.84 RCW, such an alien bank shall be deemed to possess trust powers.

(2) In addition to the powers and activities expressly authorized by this section, a branch shall have the power to carry on such additional activities which are necessarily incidental to the activities expressly authorized by this section. [1982 c 95 § 5.]

Effective date—1982 c 95: See note following RCW 30.42.070.

30.42.160 Powers as to real estate. An alien bank may purchase, hold and convey real estate for the following purposes and no other:

(1) Such as shall be necessary for the convenient transaction of its business, including with its banking offices other apartments in the same building to rent as a source of income: PROVIDED, That not to exceed thirty percent of its capital and surplus and undivided profits may be so invested without the approval of the supervisor.

(2) Such as shall be purchased or conveyed to it in satisfaction, or on account of, debts previously contracted in the course of business.

(3) Such as it shall purchase at sale under judgments, decrees, liens or mortgage foreclosures, against securities held by it.

(4) Such as it may take title to or for the purpose of investing in real estate conditional sales contracts.

(5) Such as shall be convenient for the residences of its employees.

No real estate except that specified in subsections (1) and (5) of this section may be carried as an asset on the corporation's books for a longer period than five years from the date title is acquired thereto, unless an extension of time be granted by the supervisor. [1975 1st ex.s. c 285 § 3; 1973 1st ex.s. c 53 § 16.]

30.42.170 Advertising, status of federal insurance on deposits to be included—Gifts for new deposits. (1) An alien bank that advertises the services of its branch in the state of Washington shall indicate on all advertising materi-

als whether or not deposits placed with its branch are insured by the federal deposit insurance corporation.

(2) A branch shall not make gifts to a new deposit customer of a greater value than five dollars in total. The value of the gifts shall be the cost to the branch of acquiring said gift. [1973 1st ex.s. c 53 § 17.]

30.42.180 Approved agencies—Powers and activities. An approved agency of an alien bank may engage in the business of making loans and guaranteeing obligations for the financing of the international movement of goods and services and for all operational needs including working capital and short-term operating needs and for the acquisition of fixed assets. Other than such activities, such agency may engage only in the following activities:

(1) Borrow funds from banks and other financial institutions;

(2) Buy and sell foreign exchange;

(3) Receive checks, bills, drafts, acceptances, notes, bonds, coupons, and other securities for collection abroad and collect such instruments in the United States for customers abroad;

(4) Hold securities in safekeeping for, or buy and sell securities upon the order and for the risk of, customers abroad;

(5) Act as paying agent for securities issued by foreign governments or other organizations organized under foreign law and not qualified under the laws of the United States, or any state or the District of Columbia to do business in the United States;

(6) In order to prevent loss on debts previously contracted, an agency may acquire shares in a corporation: PROVIDED, That the shares are disposed of as soon as practical, but in no event later than two years from the date of acquisition;

(7) Issue letters of credit and create acceptances;

(8) In addition to the powers and activities expressly authorized by this section, an agency shall have the power to carry on such additional activities which are necessarily incidental to the activities expressly authorized by this section. [1973 1st ex.s. c 53 § 18.]

30.42.190 Bonding requirements for officers and employees. All officers and employees of an office shall be subject to the same bonding requirements as are officers and employees of banks incorporated under the laws of this state. [1973 1st ex.s. c 53 § 19.]

30.42.200 Books and accounts—English language. The books and accounts of an office and a bureau shall be kept in words and figures of the English language. [1973 1st ex.s. c 53 § 20.]

30.42.210 Bureaus—Application procedure. (1) Application procedure. An alien bank shall not establish and operate a bureau in this state unless it is authorized to do so and unless it has met the following conditions:

(a) It has filed with the supervisor an application in such form and containing such information as shall be prescribed by the supervisor;

(b) It has paid the fee required by law and established by the supervisor pursuant to RCW 30.08.095;

(c) It has received from the supervisor his certificate authorizing the applicant bank to establish and operate a bureau in conformity herewith.

(2) Upon receipt of the bank's application, and the conducting of such examination or investigation as the supervisor deems necessary and appropriate and being satisfied that the opening of such bureau will be consistent with the purposes of this chapter, the supervisor may grant approval for the bureau and issue his certificate authorizing the alien bank to establish and operate a bureau in the state of Washington. [1973 1st ex.s. c 53 § 21.]

30.42.220 Bureaus—Approval—Certificate of authority—Time limit for commencing business. If the supervisor approves the application, he shall notify the alien bank of his approval and shall file certified copies of its charter, certificate, or other authorization to do business with the secretary of state and with the recording officer of the county in which the bureau is to be located. Upon such filing, the supervisor shall issue a certificate of authority stating that the alien bank is authorized to operate a bureau in this state at the place designated in accordance with this chapter. No such certificate shall be transferable or assignable. Such certificate shall be conspicuously displayed at all times in the place of business specified therein.

A bureau of an alien bank must commence business within six months after the issuance of the supervisor's certificate: PROVIDED, That the supervisor for good cause shown may extend such period for an additional time not to exceed three months. [1973 1st ex.s. c 53 § 22.]

30.42.230 Bureaus—Number—Powers. An alien bank may have as many bureaus in this state as the supervisor will authorize. A bureau in this state may provide information about services offered by the alien bank, its subsidiaries and affiliates and may gather and provide business and economic information. A bureau may not take deposits, make loans or transact other commercial or banking business in this state. [1973 1st ex.s. c 53 § 23.]

30.42.240 Bureaus—Examinations. The supervisor is empowered to examine the bureau operations of an alien bank whenever he deems it necessary. The supervisor shall collect from such alien bank the estimated actual cost of such examination. [1973 1st ex.s. c 53 § 24.]

30.42.250 Temporary facilities at trade fairs, etc. An alien bank may operate temporary facilities at trade fairs or other commercial events of short duration without first obtaining the approval of the supervisor: PROVIDED, That the activities of such temporary facility are limited solely to the dissemination of information: AND PROVIDED FURTHER, If an alien bank engages in such activity, it shall notify the supervisor in writing prior to opening of the nature and location of such facility. The supervisor is empowered to investigate the operation of such temporary facility if he deems it necessary, and to collect from the alien bank the estimated actual cost thereof. [1973 1st ex.s. c 53 § 25.]

30.42.260 Reports. (1) An office of an alien bank shall file the following reports with the supervisor within such times and in such form as the supervisor shall prescribe by rule or regulation:

- (a) A statement of condition of the office;
- (b) A capital position report of the office;
- (c) A consolidated statement of condition of an alien bank.

(2) An office of an alien bank shall publish such reports as the supervisor by regulation may prescribe.

(3) An alien bank operating a bureau in this state shall file a copy of the alien bank's annual financial report with the supervisor as soon as possible following the end of each fiscal year and shall file such other material as the supervisor may prescribe by rule or regulation. [1973 1st ex.s. c 53 § 26.]

30.42.270 Taxation. An office of an alien bank shall be taxed on the same basis as are banks incorporated under the laws of this state. [1973 1st ex.s. c 53 § 27.]

30.42.280 Directors, officers, and employees—Duties, responsibilities and restrictions—Removal. The directors or other governing body of an alien bank and the officers and employees of its office in this state shall be subject to all of the duties, responsibilities and restrictions to which the directors, officers and employees of a bank organized under the laws of this state are subject insofar as such duties, responsibilities and restrictions are not inconsistent with the intent of this chapter. An officer or employee of the office of an alien bank doing business in this state pursuant to this chapter may be removed for the reasons stated and in the manner provided in RCW 30.12.040, as now or hereafter amended. [1973 1st ex.s. c 53 § 28.]

30.42.290 Compliance—Violations—Penalties. (1) The supervisor shall have the responsibility for assuring compliance with the provisions of this chapter. An alien bank that conducts business in this state in violation of any provisions of this chapter shall be guilty of a misdemeanor and in addition thereto shall be liable in the sum of one hundred dollars per day that each such offense continues, such sum to be recovered by the attorney general in a civil action in the name of the state.

(2) Every person who shall knowingly subscribe to or make or cause to be made any false entry in the books of any alien bank office or bureau doing business in this state pursuant to this chapter or shall knowingly subscribe to or exhibit any false or fictitious paper or security, instrument or paper, with the intent to deceive any person authorized to examine into the affairs of any such office or bureau or shall make, state or publish any false statement of the amount of the assets or liabilities of any such office or bureau shall be guilty of a felony.

(3) Every director or member of the governing body, officer, employee or agent of such alien bank operating an office or bureau in this state who conceals or destroys any fact or otherwise suppresses any evidence relating to a violation of this chapter is guilty of a felony.

(4) Any person who transacts business in this state on behalf of an alien bank which is subject to the provisions of

this chapter, but which is not authorized to transact such business pursuant to this chapter is guilty of a misdemeanor and in addition thereto shall be liable in the sum of one hundred dollars per day for each day that such offense continues, such sum to be recovered by the attorney general in a civil action in the name of the state. [1973 1st ex.s. c 53 § 29.]

30.42.300 Suspension or revocation of certificate to operate—Grounds. If the supervisor finds that any alien bank to which he has issued a certificate to operate an office or bureau in this state pursuant to this chapter has violated any law, rule or regulation, or has conducted its affairs in an unauthorized manner, or has been unresponsive to the supervisor's lawful orders or directions, or is in an unsound or unsafe condition, or cannot with safety and expediency continue business, or if he finds that the alien bank's country is unjustifiably refusing to allow banks qualified to do business in and having their principal office within this state to operate offices or similar operations in such country, the supervisor may suspend or revoke the certificate of such alien bank and notify it of such suspension or revocation. [1973 1st ex.s. c 53 § 30.]

30.42.310 Change of location. An alien bank licensed to maintain an office or bureau in this state pursuant to this chapter may apply to the supervisor for leave to change the location of its office or bureau. Such applications shall be accompanied by an investigation fee as established in accordance with RCW 30.42.330. Leave for a change of location shall be granted if the supervisor finds that the proposed new location offers reasonable promise of adequate support for the office. [1973 1st ex.s. c 53 § 31.]

30.42.320 Rules and regulations. The supervisor shall have power to adopt uniform rules and regulations to govern examination and reports of alien bank offices and bureaus doing business in this state pursuant to this chapter and the form in which they shall report their assets, liabilities, and reserves, charge off bad debts and otherwise keep their records and accounts and otherwise to govern the administration of this chapter. [1973 1st ex.s. c 53 § 32.]

30.42.330 Fees. The supervisor shall collect in advance from an alien bank for filing its application for an office or a bureau and the attendant investigation, and for such other applications, approvals or certificates provided herein, such fee as shall be established by rules and regulations promulgated pursuant to the administrative procedure act, chapter 34.05 RCW, as now or hereafter amended. The alien bank shall also pay to the secretary of state and the county recording officer for filing instruments as required by this chapter the same fees as are charged general corporations for the filing of similar instruments and also the same license fees as are required of foreign corporations doing business in this state. [1973 1st ex.s. c 53 § 33.]

30.42.340 Alien banks or branches in business on or before effective date. (1) Any branch of an alien bank that is conducting business in this state on July 16, 1973 pursuant to RCW 30.04.300 shall not be subject to the

provisions of this chapter, and shall continue to conduct its business pursuant to RCW 30.04.300.

(2) Except as provided in subsection (1) of this section, any alien bank that is conducting business in this state on July 16, 1973 shall be subject to the provisions of this chapter: PROVIDED, That any such alien bank which has operated an agency or similar operation in this state for at least the five years immediately preceding such effective date shall not be denied a certificate to operate an agency. [1973 1st ex.s. c 53 § 34.]

30.42.900 Severability—1973 1st ex.s. c 53. If any provision of this 1973 amendatory act, or its application to any person or circumstance is held invalid, the remainder of this 1973 amendatory act, or the application of the provisions to other persons or circumstances shall not be affected. [1973 1st ex.s. c 53 § 38.]

Chapter 30.43 SATELLITE FACILITIES

Sections

- 30.43.010 Definitions.
- 30.43.020 Satellite facilities authorized.
- 30.43.030 Availability of facility to other commercial banks—Sharing with mutual savings banks, savings and loan associations or credit unions.
- 30.43.040 Sharing of savings and loan association, mutual savings bank, or credit union facility with other financial institutions.
- 30.43.045 Satellite facilities outside the state—Availability of satellite facilities within the state for certain financial institutions without offices in the state—Approval.
- 30.43.050 Antitrust laws—Construction of chapter.

30.43.010 Definitions. As used in this chapter the term "financial institution" means any bank or trust company established in this state pursuant to Title 12, United States Code, chapter 2, or Title 30 RCW, any mutual savings bank established in this state pursuant to Title 32 RCW, any savings and loan association established in this state pursuant to Title 12, United States Code, chapter 12, or Title 33 RCW, and any credit union established in this state pursuant to Title 12, United States Code, chapter 14 or chapters 31.12 and 31.13 RCW.

As used in this chapter, the term "supervisor" means, if applicable to banks, trust companies, or mutual savings banks, the supervisor of banking and, if applicable to savings and loan associations and credit unions, the supervisor of savings and loan associations, or the National Credit Union Administration in the case of federally chartered credit unions.

As used in this chapter, the term "satellite facility" means an unmanned facility at which transactions, including, but not being limited to account transfers, payments, and instructions for deposits and withdrawals may be conducted and which is not a part of a branch or main office of the financial institution: PROVIDED, That such a facility shall not be construed to be the establishment of a branch: PROVIDED FURTHER, That an unmanned facility which is connected to a dispenser of goods or services and that originates or communicates funds transfer instructions for the payment of such goods or services shall not be a "satellite

facility." [1986 c 279 § 45; 1979 c 137 § 1; 1974 ex.s. c 166 § 1.]

Severability—1979 c 137: "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 c 137 § 5.]

30.43.020 Satellite facilities authorized. A financial institution may, subject to the conditions hereof, and with the approval of the appropriate supervisor, provide satellite facilities in addition to its main office and such branches as are authorized by law. The supervisor's approval shall be conditioned on a finding that the public convenience will be served by the proposed satellite facility. A satellite facility may be located anywhere within the state of Washington and, subject to RCW 30.43.045, may be located anywhere outside the state of Washington. [1981 c 83 § 1; 1974 ex.s. c 166 § 2.]

30.43.030 Availability of facility to other commercial banks—Sharing with mutual savings banks, savings and loan associations or credit unions. As a condition to the operation of or the use of any satellite facility in this state, a commercial bank which desires to operate or have its customers able to utilize a satellite facility must agree that such satellite facility will be available for use by customers of any other commercial bank or commercial banks upon the request of said bank or banks to share its use and the agreement of said bank or banks to share all costs in connection with its installation and operation. The owner of the satellite facility, whether a commercial bank or another person (but not a mutual savings bank or savings and loan association or credit union), shall make the satellite facility available for other commercial banks' use on a nondiscriminatory basis, conditioned upon payment of a reasonable proportion of all costs in connection with the satellite facility.

A commercial bank may share a facility with one or more mutual savings banks, one or more savings and loan associations or one or more credit unions. [1979 c 137 § 2; 1974 ex.s. c 166 § 3.]

Severability—1979 c 137: See note following RCW 30.43.010.

30.43.040 Sharing of savings and loan association, mutual savings bank, or credit union facility with other financial institutions. Notwithstanding the provisions of RCW 30.43.030, any savings and loan association or mutual savings bank or credit union may agree to share the use of any satellite facility it owns, operates, or uses or which is owned by any entity owned by one or more savings and loan associations or mutual savings banks or credit unions, with any one or more financial institutions, and sharing with one or more commercial banks shall not require sharing with, or making the facility available for use by the customers of, any other commercial bank. [1979 c 137 § 3; 1974 ex.s. c 166 § 4.]

Severability—1979 c 137: See note following RCW 30.43.010.

30.43.045 Satellite facilities outside the state—Availability of satellite facilities within the state for certain financial institutions without offices in the state—

Approval. Subject to the approval of the appropriate supervisor, a financial institution may operate or use satellite facilities located outside the state of Washington, and, subject to the approval of the appropriate supervisor, satellite facilities located within the state of Washington may be made available to banks, trust companies, mutual savings banks, savings and loan associations, and credit unions which do not have offices in this state.

The supervisor's approval shall be conditioned on a finding that the public convenience will be served by the proposed use or operation of the satellite facility. The supervisor shall not grant approval for the use or operation of satellite facilities by banks, trust companies, mutual savings banks, savings and loan associations, and credit unions which do not have offices in this state unless like facilities located in the jurisdiction in which these institutions are organized are made available on a reciprocal basis for the benefit of financial institutions which have offices in this state.

The supervisor's approval of the use or operation of satellite facilities located within the state of Washington by banks, trust companies, mutual savings banks, savings and loan associations, and credit unions which do not have offices in this state is not approval or authority to conduct or transact any other business in this state by these banks, trust companies, mutual savings banks, savings and loan associations, and credit unions which is not otherwise permitted by the laws of this state. [1981 c 83 § 2.]

30.43.050 Antitrust laws—Construction of chapter. If, but for this chapter, any action by any one or more commercial banks, mutual savings banks, savings and loan associations, or credit unions would be in violation of any of the laws of this state or the United States commonly referred to as the antitrust laws, then this chapter shall be construed so as to permit or require only such action as shall not be in violation of such laws. [1979 c 137 § 4; 1974 ex.s. c 166 § 5.]

Severability—1979 c 137: See note following RCW 30.43.010.

Chapter 30.44

INSOLVENCY AND LIQUIDATION

Sections

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30.44.270	Federal deposit insurance corporation as receiver or liquidator—Appointment—Powers and duties.
30.44.280	Payment or acquisition of deposit liabilities by federal deposit insurance corporation—Not hindered by judicial review—Liability.

30.44.010 Delinquencies, notice to correct—Possession may be taken. Whenever it shall in any manner appear to the supervisor that any bank or trust company has violated any provision of law or is conducting its business in an unsafe manner or that it refuses to submit its books, papers, or concerns to lawful inspection or that any director or officer thereof refuses to submit to examination on oath touching its concerns, or that it has failed to carry out any authorized order or direction of an examiner, the supervisor may give notice to the bank or trust company so offending or delinquent or whose director or officer is thus offending or delinquent to correct such offense or delinquency and if such bank or trust company fails to comply with the terms of such notice within thirty days from the date of its issuance or within such further time as said supervisor may allow, then the supervisor may take possession of such bank or trust company as in case of insolvency. [1955 c 33 § 30.44.010. Prior: 1917 c 80 § 59; 1915 c 98 § 1; RRS § 3266.]

30.44.020 Supervisor may order levy of assessment. Whenever it shall in any manner appear to the supervisor of banking that any offense or delinquency referred to in RCW 30.44.010 renders a bank or trust company in an unsound or unsafe condition to continue its business or that its capital or surplus is reduced or impaired below the amount required by its articles of incorporation or by this title, or that it has suspended payment of its obligations or is insolvent, said supervisor may notify such bank or trust company to levy an assessment on its stock or otherwise to make good such impairment or offense or other delinquency within such time and in such manner as he may specify or if he deems necessary he may take possession thereof without notice.

The board of directors of any such bank or trust company, with the consent of the holders of record of two-thirds of the capital stock expressed either in writing or by vote at a stockholders' meeting called for that purpose, shall have power and authority to levy such assessment upon the stockholders pro rata and to forfeit the stock upon which any such assessment is not paid, in the manner prescribed in RCW 30.12.180. [1955 c 33 § 30.44.020. Prior: 1923 c 115 § 9; 1917 c 80 § 60; RRS § 3267.]

Levy of assessments: RCW 30.12.180.

30.44.030 Supervisor's right to take possession may be contested. Within ten days after the supervisor takes possession thereof, a bank or trust company may serve a notice upon the supervisor to appear before the superior court of the county wherein such corporation is located and at a time to be fixed by said court, which shall not be less

than five nor more than fifteen days from the date of the service of such notice, to show cause why such corporation should not be restored to the possession of its assets. Upon the return day of such notice, or such further day as the matter may be continued to, the court shall summarily hear said cause and shall dismiss the same, if it be found that possession was taken by the supervisor in good faith and for cause, but if it find that no cause existed for the taking possession of such corporation, it shall require the supervisor to restore such bank or trust company to possession of its assets and enjoin him from further interference therewith without cause. [1955 c 33 § 30.44.030. Prior: 1917 c 80 § 68; RRS § 3275.]

30.44.040 Notice of taking possession. Upon taking possession of any bank or trust company, the supervisor shall forthwith give written notice thereof to all persons having possession of any assets of such corporation. No person knowing of the taking of such possession by the supervisor shall have a lien or charge for any payment thereafter advanced or clearance thereafter made or liability thereafter incurred against any of the assets of such corporation. [1955 c 33 § 30.44.040. Prior: 1917 c 80 § 61; 1915 c 98 § 2; RRS § 3268.]

30.44.050 Powers and duties of supervisor. Upon taking possession of any bank or trust company, the supervisor shall proceed to collect the assets thereof and to preserve, administer and liquidate the business and assets of such corporation. With the approval of the superior court of the county in which such corporation is located, he may sell, compound or compromise bad or doubtful debts, and upon such terms as the court shall direct borrow, mortgage, pledge or sell all or any part of the real estate and personal property of such corporation. He shall deliver to each purchaser or lender an appropriate deed, mortgage, agreement of pledge or other instrument of title or security. If real estate is situated outside of said county, a certified copy of the orders authorizing and confirming the sale or mortgage thereof shall be filed for record in the office of the auditor of the county in which such property is situated. He may appoint special deputy supervisors and other necessary agents to assist in the administration and liquidation of such corporation, a certificate of such appointment to be filed with the clerk of the county in which such corporation is located. He shall require each special deputy to give a surety company bond, conditioned as he shall provide, the premium of which shall be paid out of the assets of such corporation. He may also employ an attorney for legal assistance in such administration and liquidation. [1955 c 33 § 30.44.050. Prior: 1933 c 42 § 25; 1917 c 80 § 62; 1915 c 98 § 3; RRS § 3269.]

30.44.060 Notice to creditors—Claims. The supervisor shall publish once a week for four consecutive weeks in a newspaper which he shall select, a notice requiring all persons having claims against such corporation to make proof thereof at the place therein specified not later than ninety days from the date of the first publication of said notice, which date shall be therein stated. He shall mail similar notices to all persons whose names appear as creditors upon the books of the corporation. He may

approve or reject any claims, but shall serve notice of rejection upon the claimant by mail or personally. An affidavit of service of such notice shall be prima facie evidence thereof. No action shall be brought on any claim after three months from the date of service of notice of rejection.

Claims of depositors may be presented after the expiration of the time fixed in the notice, and, if approved, shall be entitled to their proportion of prior dividends, if there be funds sufficient therefor, and shall share in the distribution of the remaining assets.

After the expiration of the time fixed in the notice the supervisor shall have no power to accept any claim except the claim of a depositor, and all claims except the claims of depositors shall be barred. [1955 c 33 § 30.44.060. Prior: 1923 c 115 § 10; 1917 c 80 § 63; 1915 c 98 § 4; RRS § 3270.]

30.44.070 Inventory—List of claims. Upon taking possession of such corporation, the supervisor shall make an inventory of the assets in duplicate and file one in his office and one in the office of the county clerk. Upon the expiration of the time fixed for the presentation of claims, he shall make a duplicate list of claims presented, segregating those approved and those rejected, to be filed as aforesaid. He shall also make and file a supplemental list of claims at least fifteen days before the declaration of any dividend, and in any event at least every six months. [1955 c 33 § 30.44.070. Prior: 1917 c 80 § 65; 1915 c 98 § 6; RRS § 3272.]

30.44.080 Objections to approved claims. Objection may be made by any interested person to any claim approved by the supervisor, which objection shall be determined by the court upon such notice to the claimant and objector as the court shall prescribe. [1955 c 33 § 30.44.080. Prior: 1917 c 80 § 67; 1915 c 98 § 8; RRS § 3274.]

30.44.090 Dividends. At any time after the expiration of the date fixed for the presentation of claims, the supervisor, subject to the approval of the court, may declare one or more dividends out of the funds remaining in his hands after the payment of expenses. [1955 c 33 § 30.44.090. Prior: 1917 c 80 § 66; 1915 c 98 § 7; RRS § 3273.]

30.44.100 Receiver prohibited except in emergency. No receiver shall be appointed by any court for any bank or trust company nor shall any assignment of any bank or trust company for the benefit of creditors be valid, excepting only that a court otherwise having jurisdiction may in case of imminent necessity appoint a temporary receiver to take possession of and preserve the assets of such corporation. Immediately upon any such appointment, the clerk of such court shall notify the supervisor by telegraph and mail of such appointment and the supervisor shall forthwith take possession of such bank or trust company, as in case of insolvency, and such temporary receiver shall upon demand of the supervisor surrender up to him such possession and all assets which shall have come into the hands of such receiver. The supervisor shall in due course pay such receiver out of the assets of such corporation such amount as the court

shall allow. [1955 c 33 § 30.44.100. Prior: 1917 c 80 § 69; 1915 c 98 § 9; RRS § 3276.]

30.44.110 Preferences prohibited—Penalty. Every transfer of its property or assets by any bank or trust company in this state, made in contemplation of insolvency, or after it shall have become insolvent, with a view to the preference of one creditor over another, or to prevent the equal distribution of its property and assets among its creditors, shall be void. Every director, officer or employee making any such transfer shall be guilty of a felony. [1955 c 33 § 30.44.110. Prior: 1917 c 80 § 55; RRS § 3262.]

30.44.120 Receiving deposits when insolvent—Penalty. An officer, director or employee of any bank or trust company who shall fraudulently receive for it any deposit, knowing that such bank or trust company is insolvent, shall be guilty of a felony. [1955 c 33 § 30.44.120. Prior: 1933 c 42 § 26; 1917 c 80 § 81; RRS § 3288.]

Receiving deposits after insolvency prohibited: State Constitution Art. 12 § 12.

30.44.130 Expense of liquidation. All expenses incurred by the supervisor in taking possession, administering and winding up any such corporation, including the expenses of deputies and other assistants and reasonable fees for any attorney who may be employed by him in connection therewith, and the reasonable compensation of any special deputy placed in charge of such corporation shall be a first charge upon the assets thereof. Such charges shall be fixed by the supervisor, subject to the approval of the court. [1955 c 33 § 30.44.130. Prior: 1917 c 80 § 64; 1915 c 98 § 5; RRS § 3271.]

30.44.140 Liquidation after claims are paid. When all proper claims of depositors and creditors (not including stockholders) have been paid, as well as all expenses of administration and liquidation and proper provision has been made for unclaimed or unpaid deposits and dividends, and assets still remain in his hands, the supervisor shall call a meeting of the stockholders of such corporation, giving thirty days' notice thereof, by one publication in a newspaper published in the county where such corporation is located. At such meeting, each share shall entitle the holder thereof to a vote in person or by proxy. A vote by ballot shall be taken to determine whether the supervisor shall wind up the affairs of such corporation or the stockholders appoint an agent to do so. The supervisor, if so required, shall wind up such corporation and distribute its assets to those entitled thereto. If the appointment of an agent is determined upon, the stockholders shall forthwith select such agent by ballot. Such agent shall file a bond to the state of Washington in such amount and so conditioned as the supervisor shall require. Thereupon the supervisor shall transfer to such agent the assets of such corporation then remaining in his hands, and be relieved from further responsibility in reference to such corporation. Such agent shall convert the assets of such corporation into cash and distribute the same to the parties thereunto entitled, subject to the supervision of the court. In case of his death, removal or refusal to act, the

stockholders may select a successor with like powers. [1955 c 33 § 30.44.140. Prior: 1917 c 80 § 70; RRS § 3277.]

30.44.150 Unclaimed dividends—Disposition. Any dividends to depositors or other creditors of such bank or trust company remaining uncalled for and unpaid in the hands of the supervisor for six months after order of final distribution, shall be deposited in a bank or trust company to his credit, in trust for the benefit of the persons entitled thereto and subject to the supervision of the court shall be paid by him to them upon receipt of satisfactory evidence of their right thereto.

All moneys so deposited remaining unclaimed for five years after deposit shall escheat to the state for the benefit of the permanent school fund and shall be paid by the supervisor into the state treasury. It shall not be necessary to have the escheat adjudged in a suit or action. [1955 c 33 § 30.44.150. Prior: 1923 c 115 § 11; 1917 c 80 § 71; RRS § 3278.]

30.44.160 Voluntary closing—Notice. Any bank or trust company may place itself under the control of the supervisor to be liquidated as herein provided by posting a notice on its door as follows: "This bank (trust company) is in the hands of the State Supervisor of Banking."

Immediately upon the posting of such notice, the officers of such corporation shall notify the supervisor thereof by telegraph and mail. The posting of such notice or the taking possession of any bank or trust company by the supervisor shall be sufficient to place all of its assets and property of every nature in his possession and bar all attachment proceedings. [1955 c 33 § 30.44.160. Prior: 1917 c 80 § 72; RRS § 3279.]

30.44.170 Voluntary liquidation—Notice to creditors. Any bank or trust company may, upon receipt of written permission from the supervisor, go into voluntary liquidation by a vote of its stockholders owning two-thirds of its capital stock. When such liquidation is authorized, the directors of such corporation shall publish in a newspaper published in the place where such corporation is located, once a week for four consecutive weeks, a notice requiring creditors of such corporation to present their claims against it for payment. [1955 c 33 § 30.44.170. Prior: 1917 c 80 § 74; RRS § 3281.]

30.44.180 Unclaimed dividends on voluntary liquidation. Whenever any bank or trust company shall voluntarily liquidate, any dividends to depositors or other creditors of such bank or trust company remaining uncalled for and unpaid at the conclusion of the liquidation shall be transmitted to the supervisor and shall be deposited by him in a bank or trust company to his credit in trust for the benefit of the persons entitled thereto, and shall be paid by him to them upon receipt of satisfactory evidence of their right thereto.

All moneys so deposited remaining unclaimed for five years after deposit shall escheat to the state for the benefit of the permanent school fund and shall be paid by the supervisor into the state treasury. It shall not be necessary to have the escheat adjudged in a suit or action. [1955 c 33 §

30.44.180. Prior: 1947 c 148 § 1; Rem. Supp. 1947 § 3281-1.]

30.44.190 Disposition of unclaimed personal property. Whenever any bank or trust company shall be liquidated, voluntarily or involuntarily, and shall retain in its possession at the conclusion of the liquidation, uncalled for and unclaimed personal property left with it for safekeeping, such property shall, in the presence of at least one witness, be inventoried by the liquidating agent and sealed in separate packages, each package plainly marked with the name and last known address of the person in whose name the property stands on the books of the bank or trust company. If the property is in safe deposit boxes, such boxes shall be opened by the liquidating agent in the presence of at least one witness, and the property inventoried, sealed in packages and marked as above required. All the packages shall be transmitted to the supervisor, together with certificates signed by the liquidating agent and witness or witnesses, listing separately the property standing in the name of any one person on the books of the bank or trust company, together with the date of inventory, and name and last known address of the person in whose name the property stands. [1955 c 33 § 30.44.190. Prior: 1947 c 148 § 2; Rem. Supp. 1947 § 3281-2.]

30.44.200 Duty of supervisor—Notice to owner. Upon receiving possession of the packages, the supervisor shall cause them to be opened in the presence of at least one witness, the property reinventoried, and the packages resealed, and held for safekeeping. The liquidated bank, its directors, officers, and shareholders, and the liquidating agent shall thereupon be relieved of responsibility and liability for the property so delivered to and received by the supervisor. The supervisor shall send immediately to each person in whose name the property stood on the books of the liquidated bank or trust company, at his last known address, in a securely closed, postpaid and registered letter, a notice that the property listed will be held in his name for a period of not less than two years. At any time after the mailing of such notice, and before the expiration of two years, such person may require the delivery of the property so held, by properly identifying himself and offering evidence of his right thereto, to the satisfaction of the supervisor. [1955 c 33 § 30.44.200. Prior: 1947 c 148 § 3; Rem. Supp. 1947 § 3281-3.]

30.44.210 Final notice after two years—Sale. After the expiration of two years from the time of mailing the notice, the supervisor shall mail in a securely closed postpaid registered letter, addressed to the person at his last known address, a final notice stating that two years have elapsed since the sending of the notice referred to in RCW 30.44.200, and that the supervisor will sell all the property or articles of value set out in the notice, at a specified time and place, not less than thirty days after the time of mailing the final notice. Unless the person shall, on or before the day mentioned, claim the property, identify himself and offer evidence of his right thereto, to the satisfaction of the supervisor, the supervisor may sell all the property or articles of value listed in the notice, at public auction, at the time

and place stated in the final notice: PROVIDED, That a notice of the time and place of sale has been published once within ten days prior to the sale in a newspaper of general circulation in the county where the sale is held. Any such property held by the supervisor, the owner of which is not known, may be sold at public auction after it has been held by the supervisor for two years, provided, that a notice of the time and place of sale has been published once within ten days prior to the sale in a newspaper of general circulation in the county where the sale is held. [1985 c 469 § 15; 1955 c 33 § 30.44.210. Prior: 1947 c 148 § 4; Rem. Supp. 1947 § 3281-4.]

30.44.220 Disposition of proceeds—Escheat. The proceeds of such sale shall be deposited by the supervisor in a bank or trust company to his credit, in trust for the benefit of the person entitled thereto, and shall be paid by him to such person upon receipt of satisfactory evidence of his right thereto.

All moneys so deposited remaining unclaimed for five years after deposit shall escheat to the state for the benefit of the permanent school fund and shall be paid by the supervisor into the state treasury. It shall not be necessary to have the escheat adjudged in a suit or action. [1955 c 33 § 30.44.220. Prior: 1947 c 148 § 5; Rem. Supp. 1947 § 3281-5.]

30.44.230 Procedure as to papers, documents, etc. Whenever the personal property held by a liquidated bank or trust company shall consist either wholly or in part, of documents, letters, or other papers of a private nature, such documents, letters, or papers shall not be sold, but shall be retained by the supervisor for a period of five years, and, unless sooner claimed by the owner, may be thereafter destroyed in the presence of the supervisor and at least one other witness. [1955 c 33 § 30.44.230. Prior: 1947 c 148 § 6; Rem. Supp. 1947 § 3281-6.]

30.44.240 Transfer of assets and liabilities to another bank or trust company. A bank or trust company may for the purpose of voluntary liquidation transfer its assets and liabilities to another bank or trust company, by a vote, or with the written consent of the stockholders of record owning two-thirds of its capital stock, but only with the written consent of the supervisor and upon such terms and conditions as he may prescribe. Upon any such transfer being made, or upon the liquidation of any such corporation for any cause whatever or upon its being no longer engaged in the business of a bank or trust company, the supervisor shall terminate its certificate of authority, which shall not thereafter be revived or renewed. When the certificate of authority of any such corporation shall have been revoked, it shall forthwith collect and distribute its remaining assets, and when that is done the supervisor shall certify the fact to the secretary of state, whereupon the corporation shall cease to exist and the secretary of state shall note that fact upon his records. [1955 c 33 § 30.44.240. Prior: 1953 c 236 § 1; 1923 c 115 § 12; 1919 c 209 § 17; 1917 c 80 § 75; RRS § 3282.]

30.44.250 Reopening. Whenever the supervisor has taken possession of a bank or trust company for any cause, he may wind up such corporation and cancel its certificate of authority, unless enjoined from so doing, as herein provided. Or if at any time within ninety days after taking possession, he shall determine that all impairment and delinquencies have been made good, and that it is safe and expedient for such corporation to reopen, he may permit such corporation to reopen upon such terms and conditions as he shall prescribe. Before being permitted to reopen, every such corporation shall pay all of the expenses of the supervisor, as herein elsewhere defined. [1955 c 33 § 30.44.250. Prior: 1917 c 80 § 73; RRS § 3280.]

30.44.260 Destruction of records after liquidation. Where any files, records, documents, books of account or other papers have been taken over and are in the possession of the supervisor in connection with the liquidation of any insolvent banks or trust companies under the laws of this state, the supervisor may, in his discretion at any time after the expiration of one year from the declaration of the final dividend, or from the date when such liquidation has been entirely completed, destroy any of the files, records, documents, books of account or other papers which may appear to the supervisor to be obsolete or unnecessary for future reference as part of the liquidation and files of his office. [1955 c 33 § 30.44.260. Prior: 1925 ex.s. c 55 § 1; RRS § 3277-1.]

30.44.270 Federal deposit insurance corporation as receiver or liquidator—Appointment—Powers and duties. The federal deposit insurance corporation is hereby authorized and empowered to be and act without bond as receiver or liquidator of any bank or trust company the deposits in which are to any extent insured by that corporation and which shall have been closed on account of inability to meet the demands of its depositors. In the event of such closing, the supervisor of banking may appoint the federal deposit insurance corporation as receiver or liquidator of such bank or trust company. If the corporation accepts such appointment, it shall have and possess all the powers and privileges provided by the laws of this state with respect to a liquidator of a bank or trust company, its depositors and other creditors, and be subject to all the duties of such liquidator, except insofar as such powers, privileges, or duties are in conflict with the provisions of the federal deposit insurance act, as now or hereafter amended. [1973 1st ex.s. c 54 § 1.]

30.44.280 Payment or acquisition of deposit liabilities by federal deposit insurance corporation—Not hindered by judicial review—Liability. The pendency of any proceedings for judicial review of the supervisor's actions in taking possession and control of a bank or trust company and its assets for the purpose of liquidation shall not operate to defer, delay, impede, or prevent the payment or acquisition by the federal deposit insurance corporation of the deposit liabilities of the bank or trust company which are insured by the corporation. During the pendency of any proceedings for judicial review, the supervisor of banking shall make available to the federal deposit insurance corporation such facilities in or of the bank or trust company and

such books, records, and other relevant data of the bank or trust company as may be necessary or appropriate to enable the corporation to pay out or to acquire the insured deposit liabilities of the bank or trust company. The federal deposit insurance corporation and its directors, officers, agents, and employees, the supervisor of banking, and his agents and employees shall be free from liability to the bank or trust company, its directors, stockholders, and creditors for or on account of any action taken in connection herewith. [1973 1st ex.s. c 54 § 2.]

Chapter 30.46

SUPERVISORY DIRECTION— CONSERVATORSHIP

Sections

30.46.010	Definitions.
30.46.020	Grounds for determining need for supervisory direction—Abatement of determination—Supervisory direction, procedure—Conservator.
30.46.030	Supervisory direction—Appointment of representative to supervise—Restrictions on operations.
30.46.040	Conservator—Appointment—Grounds—Powers, duties, and functions.
30.46.050	Costs as charge against bank's assets.
30.46.060	Request for review of action—Stay of action—Orders subject to review.
30.46.070	Suits against bank or conservator, where brought—Suits by conservator.
30.46.080	Duration of conservator's term—Rehabilitated banks—Management.
30.46.090	Authority of supervisor.
30.46.100	Rules and regulations.

30.46.010 Definitions. For the purposes of this chapter the following terms shall be defined as follows:

(1) "Unsafe condition" shall mean and include, but not be limited to, any one or more of the following circumstances:

(a) If a bank's capital is impaired or impairment of capital is threatened;

(b) If a bank violates the provisions of Title 30 RCW or any other law or regulation applicable to banks;

(c) If a bank conducts a fraudulent or questionable practice in the conduct of its business that endangers the bank's reputation or threatens its solvency;

(d) If a bank conducts its business in an unsafe or unauthorized manner;

(e) If a bank violates any conditions of its charter or any agreement entered with the supervisor; or

(f) If a bank fails to carry out any authorized order or direction of the bank examiner or the supervisor.

(2) "Exceeded its powers" shall mean and include, but not be limited to the following circumstances:

(a) If a bank has refused to permit examination of its books, papers, accounts, records, or affairs by the supervisor, his deputy or duly commissioned examiners; or

(b) If a bank has neglected or refused to observe an order of the supervisor to make good, within the time prescribed, any impairment of its capital.

(3) "Consent" includes and means a written agreement by the bank to either supervisory direction or conservatorship under this chapter. [1975 1st ex.s. c 87 § 1.]

30.46.020 Grounds for determining need for supervisory direction—Abatement of determination—Supervisory direction, procedure—Conservator. If upon examination or at any other time it appears to the supervisor that any bank is in an unsafe condition and its condition is such as to render the continuance of its business hazardous to the public or to its depositors and creditors, or if such bank appears to have exceeded its powers or has failed to comply with the law, or if such bank gives its consent, then the supervisor shall upon his determination (1) notify the bank of his determination, and (2) furnish to the bank a written list of the supervisor requirements to abate his determination, and (3) if the supervisor makes further determination to directly supervise, he shall notify the bank that it is under the supervisory direction of the supervisor and that the supervisor is invoking the provisions of this chapter. If placed under supervisory direction the bank shall comply with the lawful requirements of the supervisor within such time as provided in the notice of the supervisor, subject however, to the provisions of this chapter. If the bank fails to comply within such time the supervisor may appoint a conservator as hereafter provided. [1975 1st ex.s. c 87 § 2.]

30.46.030 Supervisory direction—Appointment of representative to supervise—Restrictions on operations. During the period of supervisory direction the supervisor may appoint a representative to supervise such bank and may provide that the bank may not do any of the following during the period of supervisory direction, without the prior approval of the supervisor or the appointed representative.

- (1) Dispose of, convey or encumber any of the assets;
- (2) Withdraw any of its bank accounts;
- (3) Lend any of its funds;
- (4) Invest any of its funds;
- (5) Transfer any of its property; or
- (6) Incur any debt, obligation, or liability. [1975 1st ex.s. c 87 § 3.]

30.46.040 Conservator—Appointment—Grounds—Powers, duties, and functions. After the period of supervisory direction specified by the supervisor for compliance, if he determines that such bank has failed to comply with the lawful requirements imposed, upon due notice and hearing or by consent of the bank, the supervisor may appoint a conservator, who shall immediately take charge of such bank and all of its property, books, records, and effects. The conservator shall conduct the business of the bank and take such steps toward the removal of the causes and conditions which have necessitated such order, as the supervisor may direct. During the pendency of the conservatorship the conservator shall make such reports to the supervisor from time to time as may be required by the supervisor, and shall be empowered to take all necessary measures to preserve, protect, and recover any assets or property of such bank, including claims or causes of actions belonging to or which may be asserted by such bank, and to deal with the same in his own name as conservator, and shall be empowered to file, prosecute, and defend any suit and suits which have been filed or which may thereafter be filed by or against such bank which are deemed by the conservator to be necessary to protect all of the interested parties for a

property affected thereby. The supervisor, or any newly appointed deputy, may be appointed to serve as conservator. If the supervisor, however, is satisfied that such bank is not in condition to continue business in the interest of its depositors or creditors under the conservator as above provided, the supervisor may proceed with appropriate remedies provided by other provisions of this title. [1975 1st ex.s. c 87 § 4.]

30.46.050 Costs as charge against bank's assets. All costs incident to supervisory direction and the conservatorship shall be fixed and determined by the supervisor and shall be a charge against the assets of the bank to be allowed and paid as the supervisor may determine. [1975 1st ex.s. c 87 § 5.]

30.46.060 Request for review of action—Stay of action—Orders subject to review. During the period of the supervisory direction and during the period of conservatorship, the bank may request the supervisor to review an action taken or proposed to be taken by the representative or conservator; specifying wherein the action complained of is believed not to be in the best interest of the bank, and such request shall stay the action specified pending review of such action by the supervisor. Any order entered by the supervisor appointing a representative and providing that the bank shall not do certain acts as provided in RCW 30.46.030 and 30.46.040, any order entered by the supervisor appointing a conservator, and any order by the supervisor following the review of an action of the representative or conservator as herein above provided shall be subject to review in accordance with the administrative procedure act of the state of Washington. [1975 1st ex.s. c 87 § 6.]

30.46.070 Suits against bank or conservator, where brought—Suits by conservator. Any suit filed against a bank or its conservator, after the entrance of an order by the supervisor placing such bank in conservatorship and while such order is in effect, shall be brought in the superior court of Thurston county and not elsewhere. The conservator appointed hereunder for such bank may file suit in any superior court or other court of competent jurisdiction against any person for the purpose of preserving, protecting, or recovering any asset or property of such bank including claims or causes of action belonging to or which may be asserted by such bank. [1975 1st ex.s. c 87 § 7.]

30.46.080 Duration of conservator's term—Rehabilitated banks—Management. The conservator shall serve for such time as is necessary to accomplish the purposes of the conservatorship as intended by this chapter. If rehabilitated, the rehabilitated bank shall be returned to management or new managements under such conditions as are reasonable and necessary to prevent recurrence of the condition which occasioned the conservatorship. [1975 1st ex.s. c 87 § 8.]

30.46.090 Authority of supervisor. If the supervisor determines to act under authority of this chapter, the sequence of his acts and proceedings shall be as set forth in this chapter. However, it is the purpose and substance of

this chapter to authorize administrative discretion—to allow the supervisor administrative discretion in the event of unsound banking operations—and in furtherance of that purpose the supervisor is hereby authorized to proceed with regulation either under this chapter or under any other applicable provisions of law or under this chapter in connection with other law, either as such law is now existing or is hereinafter enacted, and it is so provided. [1975 1st ex.s. c 87 § 9.]

30.46.100 Rules and regulations. The supervisor is empowered to adopt and promulgate such reasonable rules and regulations as may be necessary for the implementation of this chapter and its purposes. [1975 1st ex.s. c 87 § 10.]

Chapter 30.49

MERGER, CONSOLIDATION, AND CONVERSION

Sections

- 30.49.010 Definitions.
- 30.49.020 State bank to resulting national bank—Laws applicable—Vote required—Termination of franchise.
- 30.49.030 State or national bank to resulting state bank—Law applicable to nationals.
- 30.49.040 Merger to resulting state bank—Exception—Agreement, contents, approval, amendment.
- 30.49.050 Merger to resulting state bank—Stockholders' vote—Notice of meeting—Waiver of notice.
- 30.49.060 Merger to resulting state bank—Effective date—Termination of charters—Certificate of merger.
- 30.49.070 Conversion of national to state bank—Requirements—Procedure.
- 30.49.080 Resulting bank as same business and corporate entity—Use of name of merging, converting bank.
- 30.49.090 Rights of dissenting shareholder—Appraisal—Amount due as debt.
- 30.49.100 Provision for successors to fiduciary positions.
- 30.49.110 Assets, business—Time for conformance with state law.
- 30.49.120 Resulting state bank—Valuation of certain assets limited.
- 30.49.130 Severability—1955 c 33.

Reorganization as subsidiary of bank holding company: RCW 30.04.550 through 30.04.570.

30.49.010 Definitions. As used in this chapter:

"Merging bank" means a party to a merger;

"Converting bank" means a bank converting from a state to a national bank, or the reverse;

"Merger" includes consolidation;

"Resulting bank" means the bank resulting from a merger or conversion.

Wherever reference is made to a vote of stockholders or a vote of classes of stockholders it shall mean only a vote of those entitled to vote under the terms of such shares. [1986 c 279 § 43; 1955 c 33 § 30.49.010. Prior: 1953 c 234 § 1.]

30.49.020 State bank to resulting national bank—Laws applicable—Vote required—Termination of franchise. This section is applicable where there is to be a resulting national bank.

Nothing in the law of this state shall restrict the right of a state bank to merge with or convert into a resulting national bank. The action to be taken by such merging or converting state bank and its rights and liabilities and those of its shareholders shall be the same as those prescribed at

the time of the action for national banks merging with or converting into a resulting state bank by the law of the United States, and not by the law of this state, except that a vote of the holders of two-thirds of each class of voting stock of a state bank shall be required for the merger or conversion, and that on conversion by a state into a national bank the rights of dissenting stockholders shall be those specified in RCW 30.49.090.

Upon the completion of the merger or conversion, the franchise of any merging or converting state bank shall automatically terminate. [1955 c 33 § 30.49.020. Prior: 1953 c 234 § 2.]

30.49.030 State or national bank to resulting state bank—Law applicable to nationals. This section is applicable where there is to be a resulting state bank.

Upon approval by the supervisor of banking, state or national banks may be merged to result in a state bank, or a national bank may convert into a state bank as hereafter prescribed, except that the action by a national bank shall be taken in the manner prescribed by and shall be subject to limitations and requirements imposed by the law of the United States which shall also govern the rights of its dissenting shareholders. [1955 c 33 § 30.49.030. Prior: 1953 c 234 § 3.]

30.49.040 Merger to resulting state bank—Exception—Agreement, contents, approval, amendment. This section is applicable where there is to be a resulting state bank, except in the case of reorganization and exchange as authorized by this title.

(1) The board of directors of each merging state bank shall, by a majority of the entire board, approve a merger agreement which shall contain:

(a) The name of each merging state or national bank and location of each office;

(b) With respect to the resulting state bank, (i) the name and location of the principal and other offices; (ii) the name and mailing address of each director to serve until the next annual meeting of the stockholders; (iii) the name and mailing address of each officer; (iv) the amount of capital, the number of shares and the par value, if any, of each share; and (v) the amendments to its charters and bylaws;

(c) Provisions governing the exchange of shares of the merging state or national banks for such consideration as has been agreed to in the merger agreement;

(d) A statement that the agreement is subject to approval by the supervisor of banking and the stockholders of each merging state or national bank;

(e) Provisions governing the manner of disposing of the shares of the resulting state bank if such shares are to be issued in the transaction and are not taken by dissenting shareholders of merging state or national banks;

(f) Such other provisions as the supervisor of banking requires to discharge his or her duties with respect to the merger;

(2) After approval by the board of directors of each merging state bank, the merger agreement shall be submitted to the supervisor of banking for approval, together with certified copies of the authorizing resolutions of each board of directors showing approval by a majority of the entire

board and evidence of proper action by the board of directors of any merging national bank;

(3) Within sixty days after receipt by the supervisor of banking of the papers specified in subsection (2) of this section, the supervisor of banking shall approve or disapprove of the merger agreement, and if no action is taken, the agreement shall be deemed approved. The supervisor of banking shall approve the agreement if it appears that:

(a) The resulting state bank meets the requirements of state law as to the formation of a new state bank;

(b) The agreement provides an adequate capital structure including surplus in relation to the deposit liabilities of the resulting state bank and its other activities which are to continue or are to be undertaken;

(c) The agreement is fair;

(d) The merger is not contrary to the public interest.

If the supervisor of banking disapproves an agreement, he or she shall state his or her objections and give an opportunity to the merging state or national banks to amend the merger agreement to obviate such objections. [1986 c 279 § 49; 1982 c 196 § 9; 1955 c 33 § 30.49.040. Prior: 1953 c 234 § 4.]

Severability—1982 c 196: See note following RCW 30.04.550.

Reorganization as subsidiary of bank holding company: RCW 30.04.550 through 30.04.570.

30.49.050 Merger to resulting state bank—Stockholders' vote—Notice of meeting—Waiver of notice. To be effective, a merger which is to result in a state bank must be approved by the stockholders of each merging state bank by a vote of two-thirds of the outstanding voting stock of each class at a meeting called to consider such action, which vote shall constitute the adoption of the charter and bylaws of the resulting state bank, including the amendments in the merger agreement.

Unless waived in writing, notice of the meeting of stockholders shall be given by publication in a newspaper of general circulation in the place where the principal office of each merging state bank is located, at least once each week for four successive weeks, and by mail, at least fifteen days before the date of the meeting, to each stockholder of record of each merging state bank at his address on the books of his bank; no notice of publication need be given if written waivers are received from the holders of two-thirds of the outstanding shares of each class of stock. The notice shall state that dissenting stockholders will be entitled to payment of the value of only those shares which are voted against approval of the plan. [1955 c 33 § 30.49.050. Prior: 1953 c 234 § 5.]

30.49.060 Merger to resulting state bank—Effective date—Termination of charters—Certificate of merger. A merger which is to result in a state bank shall, unless a later date is specified in the agreement, become effective after the filing with and upon the approval of the supervisor of banking of the executed agreement together with copies of the resolutions of the stockholders of each merging state or national bank approving it, certified by the bank's president or a vice president and a secretary. The charters of the merging banks, other than the resulting bank, shall thereupon automatically terminate.

The supervisor of banking shall thereupon issue to the resulting state bank a certificate of merger specifying the name of each merging state or national bank and the name of the resulting state bank. Such certificate shall be conclusive evidence of the merger and of the correctness of all proceedings therefor in all courts and places, and may be recorded in any office for the recording of deeds to evidence the new name in which the property of the merging state or national bank is held. [1955 c 33 § 30.49.060. Prior: 1953 c 234 § 6.]

30.49.070 Conversion of national to state bank—Requirements—Procedure. Except as provided in RCW 30.49.100, a national bank located in this state which follows the procedure prescribed by the laws of the United States to convert into a state bank shall be granted a state charter by the supervisor of banking if he finds that the bank meets the standards as to location of offices, capital structures, and business experience and character of officers and directors for the incorporation of a state bank.

The national bank may apply for such charter by filing with the supervisor of banking a certificate signed by its president and cashier and by a majority of the entire board of directors, setting forth the corporate action taken in compliance with the provisions of the laws of the United States governing the conversion of a national to a state bank, and the articles of incorporation, approved by the stockholders, for the government of the bank as a state bank. [1955 c 33 § 30.49.070. Prior: 1953 c 234 § 7.]

30.49.080 Resulting bank as same business and corporate entity—Use of name of merging, converting bank. A resulting state or national bank shall be the same business and corporate entity as each merging state or national bank or as the converting state or national bank with all property, rights, powers and duties of each merging state or national bank or the converting state or national bank, except as affected by the state law in the case of a resulting state bank or the federal law in the case of a resulting national bank, and by the charter and bylaws of the resulting state or national bank.

A resulting state or national bank shall have the right to use the name of any merging state or national bank or of the converting bank whenever it can do any act under such name more conveniently.

Any reference to a merging or converting state or national bank in any writing, whether executed or taking effect before or after the merger or conversion, shall be deemed a reference to the resulting state or national bank if not inconsistent with the other provisions of such writing. [1955 c 33 § 30.49.080. Prior: 1953 c 234 § 8.]

30.49.090 Rights of dissenting shareholder—Appraisal—Amount due as debt. The owner of shares of a state bank which were voted against a merger to result in a state bank, or against the conversion of a state bank into a national bank, shall be entitled to receive their value in cash, if and when the merger or conversion becomes effective, upon written demand made to the resulting state or national bank at any time within thirty days after the effective date of the merger or conversion, accompanied by

two so chosen. The valuation agreed upon by any two appraisers shall govern. If the appraisal is not completed within ninety days after the merger or conversion becomes effective, the supervisor of banking shall cause an appraisal to be made.

The expenses of appraisal shall be paid by the resulting state bank.

The resulting state or national bank may fix an amount which it considers to be not more than the fair market value of the shares of a merging or the converting bank at the time of the stockholders' meeting approving the merger or conversion, which it will pay dissenting shareholders of the bank entitled to payment in cash. The amount due under such accepted offer or under the appraisal shall constitute a debt of the resulting state or national bank. [1955 c 33 § 30.49.090. Prior: 1953 c 234 § 9.]

30.49.100 Provision for successors to fiduciary positions. Where a resulting state bank is not to exercise trust powers, the supervisor of banking shall not approve a merger or conversion until satisfied that adequate provision has been made for successors to fiduciary positions held by the merging state or national banks or the converting state or national bank. [1955 c 33 § 30.49.100. Prior: 1953 c 234 § 10.]

30.49.110 Assets, business—Time for conformance with state law. If a merging or converting state or national bank has assets which do not conform to the requirements of state law for the resulting state bank or carries on business activities which are not permitted for the resulting state bank, the supervisor of banking may permit a reasonable time to conform with state law. [1955 c 33 § 30.49.110. Prior: 1953 c 234 § 11.]

30.49.120 Resulting state bank—Valuation of certain assets limited. Without approval by the supervisor of banking no asset shall be carried on the books of the resulting state bank at a valuation higher than that on the books of the merging or converting state or national bank at the time of its last examination by a state or national bank examiner before the effective date of the merger or conversion. [1955 c 33 § 30.49.120. Prior: 1953 c 234 § 12.]

30.49.130 Severability—1955 c 33. If any provision of this chapter or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the chapter which can be given effect without the invalid provision or application, and to this end the provisions of the chapter are declared to be severable. The invalidity of any provision as to a national bank or as to the stockholders of a national bank shall not affect its validity as to a state bank or as to the stockholders of a state bank. [1955 c 33 § 30.49.130. Prior: 1953 c 234 § 13.]

Chapter 30.56

BANK STABILIZATION ACT

Sections

30.56.010	"Bank" and "directors" defined.
30.56.020	Postponement of payments on deposits—Order—Posting.
30.56.030	Business during postponement.
30.56.040	Deposits received during postponement.
30.56.050	Plan for reorganization—Conditions.
30.56.060	Approval of plan—Unsecured claims.
30.56.070	No dividends until reductions paid.
30.56.080	Failure to pay in excess of plan, effect.
30.56.090	New bank may be authorized.
30.56.100	Chapter designated "bank stabilization act."

30.56.010 "Bank" and "directors" defined. In this chapter the word "bank" includes savings banks, mutual savings banks, and trust companies, and "directors" shall include trustees. [1955 c 33 § 30.56.010. Prior: 1933 c 49 § 2; RRS § 3293-2.]

30.56.020 Postponement of payments on deposits—Order—Posting. The supervisor of banking is hereby empowered, upon the written application of the directors of a bank, if in his judgment the circumstances warrant it, to authorize a bank to postpone, for a period of ninety days and for such further period or periods as he may deem expedient, the payment of such proportions or amounts of the demands of its depositors from time to time as he may deem necessary. The period or periods of postponement and the proportions or amounts of the demands to be deferred shall be determined by him according to the ability of the bank to pay withdrawals. By the regulations prescribed for deferred payments, the supervisor may classify accounts and limit payments to depositors of the several classes differently. The supervisor's orders, regulations and directions shall be in writing and be filed in his office, and copies thereof shall be delivered to the bank and be forthwith posted in a conspicuous place in the banking room. [1955 c 33 § 30.56.020. Prior: 1933 c 49 § 2; RRS § 3293-2.]

30.56.030 Business during postponement. During postponement of payments the bank shall remain open for business and be in charge of its officers, but shall not make any loans, investments or expenditures except such as the supervisor will approve as necessary to conserve its assets and pay the cost of operation. The bank's failure during a period of postponement to repay deposits existing at the commencement of the period, shall not authorize or require the supervisor to take charge of or liquidate the bank, nor constitute ground for the appointment of a receiver. [1955 c 33 § 30.56.030. Prior: 1933 c 49 § 3; RRS § 3293-3.]

30.56.040 Deposits received during postponement. Deposits received during a period of postponement and for sixty days thereafter shall be kept separate from other assets of the bank, shall not draw interest, shall not be loaned or invested except by depositing with reserve banks or investing in liquid securities approved by the supervisor, and shall be withdrawable upon demand. If during a postponement of payments, or at the expiration thereof, the supervisor shall take charge of the bank for liquidation, deposits made during

the period of postponement shall be deemed trust funds and be repaid to the depositors forthwith. [1955 c 33 § 30.56.040. Prior: 1933 c 49 § 4; RRS § 3293-4.]

30.56.050 Plan for reorganization—Conditions. At the request of the directors of a bank, the supervisor may propose a plan for its reorganization, if in his judgment it would be for the best interests of the bank's creditors and of the community which the bank serves. The plan may contemplate such temporary ratable reductions of the demands of depositors and other creditors as would leave its reserve adequate and its capital and surplus unimpaired after the charging off of bad and doubtful debts; and also may contemplate a postponement of payments as in a case falling within RCW 30.56.020. The plan shall be fully described in a writing, the original of which shall be filed in the office of the supervisor and several copies of which shall be furnished the bank, where one or more copies shall be kept available for inspection by stockholders, depositors and other creditors. [1955 c 33 § 30.56.050. Prior: 1933 c 49 § 5; RRS § 3293-5.]

30.56.060 Approval of plan—Unsecured claims. If, within ninety days after the filing of the plan, creditors having unsecured demands against the bank aggregating not less than three-fourths of the amount of the unsecured demands of all its creditors, approved the plan, the supervisor shall have power to declare the plan to be in effect. Thereupon the unsecured demands of creditors shall be ratably reduced according to the plan and appropriate debits shall be made in the books. The right of a secured creditor to enforce his security shall not be affected by the operation of the plan, but the amount of any deficiency to which he may be entitled shall be reduced as unsecured demands were reduced. If the plan contemplates a temporary postponement of payments, RCW 30.56.020, 30.56.030 and 30.56.040 shall be applicable, and the bank shall comply therewith and conduct its affairs accordingly. [1955 c 33 § 30.56.060. Prior: 1933 c 49 § 6; RRS § 3293-6.]

30.56.070 No dividends until reductions paid. A bank for which such a plan has been put into effect shall not declare or pay a dividend or distribute any of its assets among stockholders until there shall have been set aside for and credited ratably to the creditors whose demands were reduced an amount equal to the aggregate of the reductions. [1955 c 33 § 30.56.070. Prior: 1933 c 49 § 7; RRS 3293-7.]

30.56.080 Failure to pay in excess of plan, effect. The failure of a bank operating under such a plan to pay to a creditor at any time a sum greater than the plan then requires, shall not constitute a default nor authorize or require the supervisor to take charge of or liquidate the bank nor entitle the creditor to maintain an action against the bank. [1955 c 33 § 30.56.080. Prior: 1933 c 49 § 8; RRS 3293-8.]

30.56.090 New bank may be authorized. If the net assets of a bank operating under such a plan are sufficient to provide the capital and surplus of a newly organized bank in

the same place, the supervisor, under such reasonable conditions as he shall prescribe, may approve the incorporation of a new bank and permit it to take over the assets and business and assume the liabilities of the existing bank. [1955 c 33 § 30.56.090. Prior: 1933 c 49 § 9; RRS § 3293-9.]

30.56.100 Chapter designated "bank stabilization act." This chapter shall be known as the bank stabilization act. [1955 c 33 § 30.56.100. Prior: 1933 c 49 § 1; RRS § 3293-1.]

Chapter 30.60

COMMUNITY CREDIT NEEDS

Sections

- 30.60.010 Examinations—Investigation and assessment of performance record in meeting community credit needs.
- 30.60.020 Approval and disapproval of applications—Consideration of performance record in meeting community credit needs.
- 30.60.030 Adoption of rules.
- 30.60.900 Severability—1985 c 329.
- 30.60.901 Effective date—1985 c 329.

30.60.010 Examinations—Investigation and assessment of performance record in meeting community credit needs. (1) In conducting an examination of a bank chartered under Title 30 RCW, the supervisor of banking, deputy supervisor, or examiner shall investigate and assess the record of performance of the bank in meeting the credit needs of the bank's entire community, including low and moderate-income neighborhoods. The supervisor shall accept, in lieu of an investigation or part of an investigation required by this section, any report or document that the bank is required to prepare or file with one or more federal agencies by the act of Congress entitled the "Community Reinvestment Act of 1977" and the regulations promulgated in accordance with that act, to the extent such reports or documents assist the supervisor in making an assessment based upon the factors outlined in subsection (2) of this section.

(2) In making an investigation required under subsection (1) of this section, the supervisor shall consider, independent of any federal determination, the following factors in assessing the bank's record of performance:

(a) Activities conducted by the institution to ascertain credit needs of its community, including the extent of the institution's efforts to communicate with members of its community regarding the credit services being provided by the institution;

(b) The extent of the institution's marketing and special credit related programs to make members of the community aware of the credit services offered by the institution;

(c) The extent of participation by the institution's board of directors in formulating the institution's policies and reviewing its performance with respect to the purposes of the Community Reinvestment Act of 1977;

(d) Any practices intended to discourage applications for types of credit set forth in the institution's community reinvestment act statement(s);

(e) The geographic distribution of the institution's credit extensions, credit applications, and credit denials;

(f) Evidence of prohibited discriminatory or other illegal credit practices;

(g) The institution's record of opening and closing offices and providing services at offices;

(h) The institution's participation, including investments, in local community development projects;

(i) The institution's origination of residential mortgage loans, housing rehabilitation loans, home improvement loans, and small business or small farm loans within its community, or the purchase of such loans originated in its community;

(j) The institution's participation in governmentally insured, guaranteed, or subsidized loan programs for housing, small businesses, or small farms;

(k) The institution's ability to meet various community credit needs based on its financial condition, size, legal impediments, local economic condition, and other factors;

(l) Other factors that, in the judgment of the supervisor, reasonably bear upon the extent to which an institution is helping to meet the credit needs of its entire community.

(3) The supervisor shall include as part of the examination report, a summary of the results of the assessment required under subsection (1) of this section and shall assign annually to each bank a numerical community reinvestment rating based on a one through five scoring system. Such numerical scores shall represent performance assessments as follows:

- | | |
|-------------------------------|---|
| (a) Excellent performance: | 1 |
| (b) Good performance: | 2 |
| (c) Satisfactory performance: | 3 |
| (d) Inadequate performance: | 4 |
| (e) Poor performance: | 5 |

[1985 c 329 § 2.]

Legislative intent—1985 c 329: "The legislature believes that commercial banks and savings banks doing business in Washington state have a responsibility to meet the credit needs of the businesses and communities of Washington state, consistent with safe and sound business practices and the free exercise of management discretion.

This act is intended to provide the supervisor of banking and the supervisor of savings and loan associations with the information necessary to enable the supervisors to better determine whether commercial banks, savings banks, and savings and loan associations are meeting the convenience and needs of the public.

This act is further intended to condition the approval of any application by a commercial bank, savings bank, or savings and loan association for a new branch or satellite facility, for an acquisition, merger, conversion, or purchase of assets of another institution not required for solvency reasons, or for the exercise of any new power upon proof that the applicant is satisfactorily meeting the convenience and needs of its community or communities." [1985 c 329 § 1.] "This act" consists of the enactment of RCW 30.04.212, 30.04.214, 30.60.010, 30.60.020, 30.60.030, 30.60.900, 30.60.901, 32.40.010, 32.40.020, and 32.40.030 and this section and the 1985 c 329 amendment to RCW 30.04.210.

30.60.020 Approval and disapproval of applications—Consideration of performance record in meeting community credit needs. Whenever the supervisor of banking must approve or disapprove of an application for a new branch or satellite facility; for a purchase of assets, a merger, an acquisition or a conversion not required for solvency reasons; or for authority to engage in a business activity, the supervisor shall consider, among other factors, the record of performance of the applicant in helping to meet the credit needs of the applicant's entire community,

including low and moderate-income neighborhoods. Assessment of an applicant's record of performance may be the basis for denying an application. [1985 c 329 § 3.]

30.60.030 Adoption of rules. The supervisor of banking shall adopt all rules necessary to implement *sections 2 through 6 of this act by January 1, 1986. [1985 c 329 § 7.]

***Reviser's note:** "Sections 2 through 6 of this act" consist of the enactment of RCW 30.60.010, 30.60.020, 30.04.212, and 30.04.214 and the 1985 c 329 amendment to RCW 30.04.210.

30.60.900 Severability—1985 c 329. 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 329 § 11.]

30.60.901 Effective date—1985 c 329. This act shall take effect on January 1, 1986, but the supervisor of banking and the supervisor of savings and loans may immediately take such steps as are necessary to ensure that this act is implemented on its effective date. [1985 c 329 § 13.]

Chapter 30.98 CONSTRUCTION

Sections	
30.98.010	Continuation of existing law.
30.98.020	Title, chapter, section headings not part of law.
30.98.030	Invalidity of part of title not to affect remainder.
30.98.040	Prior investments or transactions not affected.
30.98.050	Repeals and saving.
30.98.060	Emergency—1955 c 33.

30.98.010 Continuation of existing law. The provisions of this title insofar as they are substantially the same as statutory provisions repealed by this chapter and relating to the same subject matter, shall be construed as restatements and continuations, and not as new enactments. [1955 c 33 § 30.98.010.]

30.98.020 Title, chapter, section headings not part of law. Title headings, chapter headings, and section or subsection headings, as used in this title do not constitute any part of the law. [1955 c 33 § 30.98.020.]

30.98.030 Invalidity of part of title not to affect remainder. If any provision of this title, or its application to any person or circumstance is held invalid, the remainder of the title, or the application of the provision to other persons or circumstances is not affected. [1955 c 33 § 30.98.030.]

30.98.040 Prior investments or transactions not affected. Nothing in this title shall be construed to affect the legality of investments, made prior to March 10, 1917, or of transactions had before March 10, 1917, pursuant to any provisions of law in force when such investment were made or transactions had. (Adopted from 1917 c 80 § 77.) [1955 c 33 § 30.98.040.]

30.98.050 Repeals and saving. See 1955 c 33 § 30.98.050.

30.98.060 Emergency—1955 c 33. This act is necessary for the immediate preservation of the public peace, health and safety, the support of the state government and its existing public institutions, and shall take effect immediately. [1955 c 33 § 30.98.060.]

Title 31

MISCELLANEOUS LOAN AGENCIES

Chapters

- 31.04 Consumer loan act.**
- 31.08 Consumer finance act.**
- 31.12 Washington state credit union act.**
- 31.12A Credit union share guaranty association act of 1975.**
- 31.13 Central credit unions.**
- 31.16 Crop credit associations.**
- 31.20 Development credit corporations.**
- 31.24 Industrial development corporations.**
- 31.30 Washington land bank.**
- 31.35 Agricultural lenders—Loan guaranty program.**
- 31.40 Federally guaranteed small business loans.**
- 31.45 Check cashers and sellers.**

Bank examiners: Chapter 43.19 RCW.

Bills of lading: Article 62A.7 RCW.

Cooperative associations: Chapter 23.86 RCW.

*Corporations and associations
nonprofit: Title 24 RCW.
profit: Title 23B RCW.*

Credit life insurance and credit accident and health insurance: Chapter 48.34 RCW.

False representations concerning credit: RCW 9.38.010.

Federal bonds and notes as investment or collateral: Chapter 39.60 RCW.

Forgery: RCW 9A.60.020.

Interest and usury in general: Chapter 19.52 RCW.

Joint tenancies with right of survivorship: Chapter 64.28 RCW.

Mortgages and trust receipts: Title 61 RCW.

Negotiable instruments: Article 62A.3 RCW.

*Nonadmitted foreign corporations, powers relative to secured interests:
Chapter 23B.18 RCW.*

Pawnbrokers: Chapter 19.60 RCW.

Retail installment sales of goods and services: Chapter 63.14 RCW.

*Safe deposit
companies: Chapter 22.28 RCW.
repository lease agreements ineffective to create joint ownership or
transfer property at death: RCW 11.02.090.*

Supervisor of banking: Chapter 43.19 RCW.

Supervisor of savings and loan associations: Chapter 43.19 RCW.

Uniform unclaimed property act: Chapter 63.29 RCW.

Chapter 31.04

CONSUMER LOAN ACT

(Formerly: Industrial loan companies)

Sections

- 31.04.005 Finding—Purpose.
- 31.04.015 Definitions.
- 31.04.025 Application of chapter.
- 31.04.035 License required.
- 31.04.045 License—Application—Fee—Surety bond.
- 31.04.055 License—Supervisor's duties.
- 31.04.065 License—Information contained—Requirement to post.

- 31.04.075 Licensee—Multiple locations.
- 31.04.085 Licensee—Fee—Bond—Time of payment.
- 31.04.093 License—Revocation, surrender, suspension.
- 31.04.105 Licensee—Powers—Restrictions.
- 31.04.115 Open-end loan—Requirements—Restrictions—Options.
- 31.04.125 Loan restrictions—Interest calculations.
- 31.04.135 Advertisements or promotions.
- 31.04.145 Examinations—Supervisor's duties—Costs.
- 31.04.155 Licensee—Recordkeeping—Report requirement.
- 31.04.165 Supervisor—Broad administrative discretion—Rulemaking.
- 31.04.175 Violation—Penalty—Gross misdemeanor.
- 31.04.185 Repealed sections of law—Rules adopted under.
- 31.04.900 Severability—1991 c 208.
- 31.04.901 Short title.
- 31.04.902 Effective dates, implementation—1991 c 208.

Master license system exemption: RCW 19.02.800.

Supervisor of banking and bank examiners: Chapter 43.19 RCW.

31.04.005 Finding—Purpose. The legislature finds that borrowers who represent a higher than average credit risk are unable to obtain credit except at interest rates higher than permitted under other statutory provisions governing interest rates for loans. Therefore, it is the purpose of this chapter to authorize higher interest rates for certain types of loans, subject to the conditions and limitations contained in this chapter in order to ensure credit availability. [1991 c 208 § 1.]

31.04.015 Definitions. The definitions set forth in this section apply throughout this chapter unless the context clearly requires a different meaning.

(1) "Person" includes individuals, partnerships, associations, trusts, corporations, and all other legal entities.

(2) "License" means a single license issued under the authority of this chapter with respect to a single place of business.

(3) "Licensee" means a person to whom one or more licenses have been issued.

(4) "Supervisor" means the supervisor of banking of the department of general administration.

(5) "Insurance" means life insurance, disability insurance, property insurance, involuntary unemployment insurance, and such other insurance as may be authorized by the insurance commissioner.

(6) "Add-on method" means the method of precomputing interest payable on a loan whereby the interest to be earned is added to the principal balance and the total plus any charges allowed under this chapter is stated as the loan amount, without further provision for the payment of interest except for failure to pay according to loan terms. The supervisor may adopt by rule a more detailed explanation of the meaning and use of this method.

(7) "Simple interest method" means the method of computing interest payable on a loan by applying the annual percentage interest rate or its periodic equivalent to the unpaid balances of the principal of the loan outstanding for

the time outstanding with each payment applied first to any unpaid penalties, fees, or charges, then to accumulated interest, and the remainder of the payment applied to the unpaid balance of the principal until paid in full. In using such method, interest shall not be payable in advance nor compounded. The supervisor may adopt by rule a more detailed explanation of the meaning and use of this method. [1991 c 208 § 2.]

31.04.025 Application of chapter. This chapter shall not apply to any person doing business under and as permitted by any law of this state or of the United States relating to banks, savings banks, trust companies, savings and loan or building and loan associations, or credit unions, nor to any pawnbroking business lawfully transacted under and as permitted by any law of this state regulating pawnbrokers, nor to any loan of credit made pursuant to a credit card plan including but not restricted to plans having all of the following characteristics:

(1) Where credit cards are issued pursuant to a plan whereby the organization issuing such cards shall be enabled to acquire those certain obligations which its members in good standing incur with those persons with whom the organization has entered into agreements setting forth said plan, and where the obligations are incurred pursuant to such agreements; or whereby the organization issuing such cards shall be enabled to extend credit to its members;

(2) Any fee for such credit cards is designed to cover only the administrative costs of the plan and does not exceed twenty-five dollars per year;

(3) Any charges, discounts, or fees resulting from the acquisition of such charges shall be paid to the organization issuing said credit cards (or to such other organizations as may be authorized by the issuing organization) by the persons, corporations, or associations with whom the organization has entered into such written agreements. [1991 c 208 § 4.]

31.04.035 License required. No person may engage in the business of making secured or unsecured loans of money, credit, or things in action at interest rates authorized by this chapter without first obtaining and maintaining a license in accordance with this chapter. [1991 c 208 § 3.]

31.04.045 License—Application—Fee—Surety bond. (1) Application for a license under this chapter must be in writing and in the form prescribed by the supervisor. The application must contain at least the following information:

(a) The name and the business and the residence addresses of the applicant;

(b) If the applicant is a partnership or association, the name of every member;

(c) If the applicant is a corporation, the name of each officer and director;

(d) The street address, county, and municipality where business is to be conducted; and

(e) Such other information as the supervisor may require by rule.

(2) At the time of filing an application for a license under this chapter, each applicant shall pay to the supervisor an investigation fee and the initial year's license fee in an

amount determined by rule of the supervisor to be sufficient to cover the supervisor's costs in administering this chapter.

(3) Each applicant shall file and maintain a surety bond, approved by the supervisor, in the penal sum of one hundred thousand dollars, executed by the applicant as obligor and by a surety company authorized to do a surety business in this state as surety, whose liability as such surety shall not exceed the penal sum in the aggregate. The bond shall run to the state of Washington as obligee for the use and benefit of the state and of any person or persons who may have a cause of action against the obligor under this chapter. The bond shall be conditioned that the obligor as licensee will faithfully conform to and abide by this chapter and all the rules adopted under this chapter. The bond will pay to the state and any person or persons having a cause of action against the obligor all moneys that may become due and owing to the state and those persons under and by virtue of this chapter. In lieu of a surety bond, if the applicant is a Washington business corporation, the applicant may maintain unimpaired capital, surplus, and long-term subordinated debt in an amount that at any time its outstanding promissory notes or other evidences of debt (other than long-term subordinated debt) in an aggregate sum do not exceed three times the aggregate amount of its unimpaired capital, surplus, and long-term subordinated debt. The supervisor may define qualifying "long-term subordinated debt" for purposes of this section. [1991 c 208 § 5.]

31.04.055 License—Supervisor's duties. (1) The supervisor shall issue and deliver a license to the applicant to make loans in accordance with this chapter at the location specified in the application if, after investigation, the supervisor finds that the applicant has paid all required fees, has complied with RCW 31.04.045, and that the financial responsibility, experience, character, and general fitness of the applicant are such as to command the confidence of the community and to warrant a belief that the business will be operated honestly, fairly, and efficiently within the purposes of this chapter.

(2) If the supervisor does not find the conditions of subsection (1) of this section have been met, the supervisor shall not issue the license. The supervisor shall notify the applicant of the denial and return to the applicant the bond posted and the sum paid by the applicant as a license fee, retaining the investigation fee to cover the costs of investigating the application. The supervisor shall approve or deny every application for license under this chapter within sixty days from the filing of a complete application with the fees and the approved bond. [1991 c 208 § 6.]

31.04.065 License—Information contained—Requirement to post. The license shall state the address at which the business is to be conducted and shall state fully the name of the licensee, and if the licensee is a copartnership or association, the names of its members, and if a corporation, the date and place of its incorporation. The licensee shall conspicuously post the license in the place of business of the licensee. The license is not transferable or assignable. [1991 c 208 § 7.]

31.04.075 Licensee—Multiple locations. The licensee may not maintain more than one place of business under the same license, but the supervisor may issue more than one license to the same licensee upon application by the licensee in a form and manner established by the supervisor. A licensee who has five licensed locations shall not be required to maintain a bond in a penal sum exceeding ten thousand dollars for each additionally licensed location.

Whenever a licensee wishes to change the place of business to a street address other than that designated in the license, the licensee shall give written notice to the supervisor and shall obtain the supervisor's approval. [1991 c 208 § 8.]

31.04.085 Licensee—Fee—Bond—Time of payment. A licensee shall, for each license held by any person, on or before the twentieth day of each December, pay to the supervisor an annual license fee. At the same time the licensee shall file with the supervisor the required bond or otherwise demonstrate compliance with RCW 31.04.045. [1991 c 208 § 9.]

31.04.093 License—Revocation, surrender, suspension. (1) The supervisor may revoke a license issued under this chapter if the supervisor finds that:

(a) The licensee has failed to pay any fee due the state of Washington, has failed to maintain in effect the bond or permitted substitute required under this chapter, or has failed to comply with any specific order or demand of the supervisor lawfully made and directed to the licensee in accordance with this chapter;

(b) The licensee, either knowingly or without the exercise of due care, has violated any provision of this chapter or any rule adopted under this chapter; or

(c) A fact or condition exists that, if it had existed at the time of the original application for the license, clearly would have allowed the supervisor to deny the application for the original license. The supervisor may revoke or suspend only the particular license with respect to which grounds for revocation or suspension may occur or exist unless the supervisor finds that the grounds for revocation or suspension are of general application to all offices or to more than one office operated by the licensee, in which case, the supervisor may revoke or suspend all of the licenses issued to the licensee.

(2) A licensee may surrender a license by delivering to the supervisor written notice of surrender, but the surrender does not affect the licensee's civil or criminal liability, if any, for acts committed before the surrender.

(3) The revocation, suspension, or surrender of a license does not impair or affect the obligation of a preexisting lawful contract between the licensee and a borrower.

(4) Every license issued under this chapter remains in force and effect until it has been surrendered, revoked, or suspended in accordance with this chapter. However, the supervisor may on his or her own initiative reinstate suspended licenses or issue new licenses to a licensee whose license or licenses have been revoked if the supervisor finds that the licensee meets all the requirements of this chapter. [1991 c 208 § 10.]

31.04.105 Licensee—Powers—Restrictions. Every licensee may:

(1) Lend money at a rate that does not exceed twenty-five percent per annum as determined by the simple interest method of calculating interest owed;

(2) In connection with the making of a loan, charge the borrower a nonrefundable, prepaid, loan origination fee not to exceed four percent of the first twenty thousand dollars and two percent thereafter of the principal amount of the loan advanced to or for the direct benefit of the borrower, which fee may be included in the principal balance of the loan;

(3) Agree with the borrower for the payment of fees for title insurance, appraisals, recording, reconveyance, and releasing when such fees are actually paid by the licensee to a third party for such services or purposes and may include such fees in the amount of the loan. However, no charge may be collected unless a loan is made, except for reasonable fees properly incurred in connection with the appraisal of property by a qualified, independent, professional, third-party appraiser selected by the borrower and approved by the lender or in the absence of borrower selection, selected by the lender;

(4) Charge and collect a penalty of ten cents or less on each dollar of any installment payment delinquent ten days or more;

(5) Make open-end loans as provided in this chapter;

(6) Charge and collect a fee for dishonored checks in an amount approved by the supervisor; and

(7) In accordance with Title 48 RCW, sell insurance covering real and personal property, covering the life or disability or both of the borrower, and covering the involuntary unemployment of the borrower. [1991 c 208 § 11.]

31.04.115 Open-end loan—Requirements—Restrictions—Options. (1) As used in this section, "open-end loan" means an agreement between a licensee and a borrower that expressly states that the loan is made in accordance with this chapter and that provides that:

(a) A licensee may permit the borrower to obtain advances of money from the licensee from time to time, or the licensee may advance money on behalf of the borrower from time to time as directed by the borrower;

(b) The amount of each advance and permitted charges and costs are debited to the borrower's account, and payments and other credits are credited to the same account;

(c) The charges are computed on the unpaid principal balance, or balances, of the account from time to time; and

(d) The borrower has the privilege of paying the account in full at any time without prepayment penalty or, if the account is not in default, in monthly installments of fixed or determinable amounts as provided in the agreement.

(2) Interest charges on an open-end loan shall not exceed twenty-five percent per annum computed in each billing cycle by any of the following methods:

(a) By converting the annual rate to a daily rate, and multiplying the daily rate by the daily unpaid principal balance of the account, in which case each daily rate is determined by dividing the annual rate by three hundred sixty-five;

(b) By multiplying a monthly rate by the average daily unpaid principal balance of the account in the billing cycle, in which case the monthly rate is one-twelfth of the annual rate, and the average daily unpaid principal balance is the sum of the amount unpaid each day during the cycle divided by the number of days in the cycle; or

(c) By converting the annual rate to a daily rate, and multiplying the daily rate by the average daily unpaid principal balance of the account in the billing cycle, in which case the daily rate is determined by dividing the annual rate by three hundred sixty-five, and the average daily unpaid principal balance is the sum of the amount unpaid each day during the cycle divided by the number of days in the cycle.

For all of the methods of computation specified in this subsection, the billing cycle shall be monthly, and the unpaid principal balance on any day shall be determined by adding to the balance unpaid, as of the beginning of that day, all advances and other permissible amounts charged to the borrower, and deducting all payments and other credits made or received that day. A billing cycle is considered monthly if the closing date of the cycle is on the same date each month, or does not vary by more than four days from that date.

(3) In addition to the charges permitted under subsection (2) of this section, the licensee may contract for and receive an annual fee, payable each year in advance, for the privilege of opening and maintaining an open-end loan account. Except as prohibited or limited by this section, the licensee may also contract for and receive on an open-end loan any additional charge permitted by this chapter on other loans, subject to the conditions and restrictions otherwise pertaining to those charges.

(4)(a) If credit life or disability insurance is provided, and if the insured dies or becomes disabled when there is an outstanding open-end loan indebtedness, the insurance must be sufficient to pay the total balance of the loan due on the date of the borrower's death in the case of credit life insurance, or all minimum payments that become due on the loan during the covered period of disability in the case of credit disability insurance. The additional charge for credit life insurance or credit disability insurance shall be calculated in each billing cycle by applying the current monthly premium rate for the insurance, as permitted by the insurance commissioner, to the unpaid balances in the borrower's account, using any of the methods specified in subsection (2) of this section for the calculation of interest; and

(b) The licensee shall not cancel credit life or disability insurance written in connection with an open-end loan because of delinquency of the borrower in the making of the required minimum payments on the loan, unless one or more of the payments is past due for a period of ninety days or more; and the licensee shall advance to the insurer the amounts required to keep the insurance in force during that period, which amounts may be debited to the borrower's account.

(5) A security interest in real or personal property may be taken to secure an open-end loan. Any such security interest may be retained until the open-end account is terminated. The security interest shall be promptly released if (a) there has been no outstanding balance in the account for twelve months and the borrower either does not have or surrenders the unilateral right to create a new outstanding

balance; or (b) the account is terminated at the borrower's request and paid in full.

(6) The licensee may from time to time increase the rate of interest being charged on the unpaid principal balance of the borrower's open-end loans if the licensee mails or delivers written notice of the change to the borrower at least thirty days before the effective date of the increase unless the increase has been earlier agreed to by the borrower. However, the borrower may choose to terminate the open-end account and the licensee shall allow the borrower to repay the unpaid balance incurred before the effective date of the rate increase upon the existing open-end loan account terms and interest rate unless the borrower incurs additional debt on or after the effective date of the rate increase or otherwise agrees to the new rate.

(7) The licensee shall deliver a copy of the open-end loan agreement to the borrower at the time the open-end account is created. The agreement must contain the name and address of the licensee and of the principal borrower, and must contain such specific disclosures as may be required by rule of the supervisor. In adopting the rules the supervisor shall consider Regulation Z promulgated by the board of governors of the federal reserve system under the federal consumer credit protection act.

(8) Except in the case of an account that the licensee deems to be uncollectible, or with respect to which delinquency collection procedures have been instituted, the licensee shall deliver to the borrower at the end of each billing cycle in which there is an outstanding balance of more than one dollar in the account, or with respect to which interest is imposed, a periodic statement in the form required by the supervisor. In specifying such form the supervisor shall consider Regulation Z promulgated by the board of governors of the federal reserve system under the federal consumer credit protection act. [1991 c 208 § 12.]

31.04.125 Loan restrictions—Interest calculations.

(1) No licensee may make a loan with a repayment period greater than six years and fifteen days after the loan origination date except for open-end loans or loans secured by real estate or personal property used as a residence.

(2) No licensee may make a loan using any method of calculating interest other than the simple interest method; except that the add-on method of calculating interest may be used for a loan not secured by real property or personal property used as a residence when the repayment period does not exceed three years and fifteen days after the loan origination date.

(3) No licensee may make a loan secured by real estate in an amount in excess of ninety percent of the value of such real estate and improvements, including all prior liens against the property.

(4) No licensee may make a loan using the add-on method to calculate interest that does not provide for a refund to the borrower or a credit to the borrower's account of any unearned interest when the loan is repaid before the original maturity date in full by cash, by a new loan, by refinancing, or otherwise before the final due date. The refund must be calculated using the actuarial method, unless a sum equal to two or more installments has been prepaid and the account is not in arrears and continues to be paid

ahead, in which case the interest on the account must be recalculated by the simple interest method with the refund of unearned interest made as if the loan had been made using the simple interest method. When computing an actuarial refund, the lender may round the annual rate used to the nearest quarter of one percent.

In computing a required refund of unearned interest, a prepayment made on or before the fifteenth day after the scheduled payment date is deemed to have been made on the payment date preceding the prepayment. In the case of prepayment before the first installment due date, the company may retain an amount not to exceed one-thirtieth of the first month's interest charge for each day between the origination date of the loan and the actual date of prepayment.

(5) No licensee may provide credit life or disability insurance in an amount greater than that required to pay off the total balance owing on the date of the borrower's death net of refunds in the case of credit life insurance, or all minimum payments that become due on the loan during the covered period of disability in the case of credit disability insurance. The lender may not require any such insurance.

(6) Except in the case of loans by mail, where the borrower has sufficient time to review papers before returning them, no licensee may prepare loan papers in advance of the loan closing without having reviewed with the borrower the terms and conditions of the loan to include the type and amount of insurance, if any, requested by the borrower. [1991 c 208 § 13.]

31.04.135 Advertisements or promotions. No licensee may advertise, print, display, publish, distribute, or broadcast or cause or permit to be advertised, printed, displayed, published, distributed, or broadcast, in any manner whatsoever, any statement or representation with regard to the rates, terms, or conditions for the lending of money that is false, misleading, or deceptive. [1991 c 208 § 14.]

31.04.145 Examinations—Supervisor's duties—Costs. For the purpose of discovering violations of this chapter or securing information lawfully required under this chapter, the supervisor may at any time, either personally or by a designee, investigate the loans and business and examine, wherever located, the books, accounts, records, and files used in the business of every licensee and of every person who is engaged in the business described in RCW 31.04.035, whether the person acts or claims to act as principal or agent, or under or without the authority of this chapter. For that purpose the supervisor and designated representative shall have free access to the offices and places of business, books, accounts, papers, records, files, safes, and vaults of all such persons. The supervisor and persons designated by the supervisor may require the attendance of and examine under oath all persons whose testimony may be required about the loans or the business or the subject matter of any investigation, examination, or hearing. The supervisor shall make such an examination of the affairs, business, office, and records of each licensee at least once each eighteen months. The licensee so examined shall pay to the supervisor the actual cost of examining and supervising each licensed place of business. [1991 c 208 § 15.]

31.04.155 Licensee—Recordkeeping—Report requirement. The licensee shall keep and use in the business such books, accounts, and records as will enable the supervisor to determine whether the licensee is complying with this chapter and with the rules adopted by the supervisor under this chapter. The supervisor shall have free access to such books, accounts, and records wherever located. Every licensee shall preserve the books, accounts, and records for at least two years after making the final entry on any loan recorded in them.

Each licensee shall on or before the first day of March each year file a report with the supervisor giving such relevant information as the supervisor reasonably may require concerning the business and operations during the preceding calendar year of each licensed place of business conducted by the licensee within the state. The report must be made under oath and must be in the form prescribed by the supervisor, who shall make and publish annually an analysis and recapitulation of the reports. [1991 c 208 § 16.]

31.04.165 Supervisor—Broad administrative discretion—Rulemaking. (1) The supervisor has the power, and broad administrative discretion, to administer and interpret this chapter to facilitate the delivery of financial services to the citizens of this state by loan companies subject to this chapter. The supervisor shall adopt all rules necessary to ensure complete and full disclosure by licensees of lending transactions governed by this chapter.

(2) If it appears to the supervisor that a licensee is conducting business in an injurious manner or is violating any provision of this chapter, the supervisor may direct the discontinuance of any such injurious or illegal practice. [1991 c 208 § 17.]

31.04.175 Violation—Penalty—Gross misdemeanor. (1) Every licensee that fails to file a report that is required to be filed by this chapter within the time required under this chapter is subject to a penalty of fifty dollars per day for each day's delay. The attorney general may bring a civil action in the name of the state for recovery of any such penalty.

(2) A person who violates, or knowingly aids or abets the violation of any provision of this chapter for which no penalty has been prescribed, and a person who fails to perform any act that it is made his or her duty to perform under this chapter and for which failure no penalty has been prescribed, is guilty of a gross misdemeanor. No person who has been convicted for the violation of the banking laws of this state or of the United States may be permitted to engage in the business, or become an officer or official, of any licensee in this state.

(3) No provision imposing civil penalties or criminal liability under this chapter or rule adopted under this chapter applies to an act taken or omission made in good faith in conformity with a written notice, interpretation, or examination report of the supervisor or his or her agent. [1991 c 208 § 18.]

31.04.185 Repealed sections of law—Rules adopted under. All rules adopted under or to implement the provisions of law repealed by sections 23 and 24, chapter 208,

Laws of 1991 remain in effect until amended or repealed by the supervisor. [1991 c 208 § 19.]

31.04.900 Severability—1991 c 208. 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 208 § 20.]

31.04.901 Short title. This chapter shall be known as the consumer loan act. [1991 c 208 § 21.]

31.04.902 Effective dates, implementation—1991 c 208. (1) Sections 1 through 23 of this act shall take effect January 1, 1992, but the supervisor shall take such steps and adopt such rules as are necessary to implement this act by that date.

(2) Section 24 of this act shall take effect January 1, 1993. [1991 c 208 § 25.]

Chapter 31.08 CONSUMER FINANCE ACT

Sections

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31.08.010 Definitions. (Effective until January 1, 1993.) The following words and terms when used in this chapter shall have the following meanings unless the context clearly requires a different meaning. The meaning ascribed to the singular form shall apply also to the plural.

(1) "Person" shall include individuals, copartnerships, associations, trusts, corporations, and all other legal entities.

(2) "License" shall mean a single license issued under the authority of this chapter with respect to a single place of business.

(3) "Licensee" shall mean a person to whom one or more licenses have been issued.

(4) "Supervisor" the duly appointed supervisor of banking of the division of banking, department of general administration. [1988 c 25 § 3; 1941 c 208 § 1; Rem. Supp. 1941 § 8371-1.]

Supervisor of banking: Chapter 43.19 RCW.

31.08.020 License required. (Effective until January 1, 1993.) No person shall engage in the business of making secured or unsecured loans of money, credit, goods, or things in action in the amount or of the value of two thousand five hundred dollars or less and charge, contract for, or receive a greater rate of interest, discount, or consideration therefor than the lender would be permitted by law to charge if he were not a licensee hereunder except as authorized by this chapter and without first obtaining a license from the supervisor. [1977 ex.s. c 150 § 1; 1959 c 212 § 1; 1941 c 208 § 2; Rem. Supp. 1941 § 8371-2.]

31.08.030 Application for license—Fees—Assets—Bond. (Effective until January 1, 1993.) Application for such license shall be in writing, under oath, and in the form, if any, prescribed by the supervisor, and shall contain the name and the address (both of the residence and place of business) of the applicant, and if the applicant is a copartnership or association, of every member thereof, and if a corporation, of each officer and director thereof; also the county and municipality with street and number, if any, where the business is to be conducted and such further relevant information as the supervisor may require. Such applicant at the time of making such application shall pay to the supervisor the sum of two hundred and fifty dollars as a fee for investigating the application and the additional sum of one hundred dollars as an annual license fee for a period terminating on the last day of the current calendar year.

Every applicant shall also prove, in form satisfactory to the supervisor, that he or it has available for the operation of such business at the location specified in the application, liquid assets of at least fifty thousand dollars.

At the time of filing of the application, the applicant shall also file with the supervisor a bond to be approved by the supervisor in the penal sum of two thousand five hundred dollars, executed by the applicant as obligor and by a surety company authorized to do a surety business in this state as surety, whose liability as such surety shall not exceed the said sum in the aggregate. Such bond shall run to the state of Washington as obligee for the use and benefit of the state and of any person or persons who may have cause of action against the obligor of said bond under the provisions of this chapter. Such bond shall be conditioned that said obligor as licensee hereunder will faithfully conform to and abide by the provisions of this chapter and of all general rules and regulations lawfully made by the supervisor hereunder and will pay to the state and any such person or persons any and all moneys that may become due

and owing to the state from such obligor under and by virtue of the provisions of this chapter. [1979 c 18 § 5; 1977 ex.s. c 150 § 2; 1959 c 212 § 2; 1941 c 208 § 3; Rem. Supp. 1941 § 8371-3. Formerly RCW 31.08.030 and 31.08.040.]

31.08.050 Investigation and action on application. (Effective until January 1, 1993.) Upon the filing of such application and the payment of such fees and the approval of such bond the supervisor shall investigate the facts and if he shall find that the financial responsibility, experience, character, and general fitness of the applicant, and of the members thereof if the applicant be a copartnership or association, and of the officers and directors thereof if the applicant be a corporation, are such as to command the confidence of the community and to warrant belief that the business will be operated honestly, fairly, and efficiently within the purposes of this chapter, and that allowing such applicant to engage in business, will promote the convenience and advantage of the community in which the business of the applicant is to be conducted, and that the applicant has available for the operation of such business at the specified location liquid assets of at least fifty thousand dollars, (the foregoing facts being conditions precedent to the issuance of a license under this chapter), he shall thereupon issue and deliver a license to the applicant to make loans in accordance with the provisions of this chapter at the location specified in the said application, which license shall remain in full force and effect until it is surrendered by the licensee or revoked or suspended as hereinafter provided; if the supervisor shall not so find he shall not issue such license and he shall notify the applicant of the denial and return to the applicant the bond and sum paid by the applicant as a license fee, retaining the two hundred and fifty dollars investigation fee to cover the costs of investigating the application. The supervisor shall approve or deny every application for license hereunder within sixty days from the filing thereof with the said fees and the said approved bond.

If the application is denied, the supervisor shall within twenty days thereafter file with the division of banking of the department of general administration his order of denial together with his findings with respect thereto and the reasons supporting the order, and forthwith serve upon the applicant a copy thereof, from which order the applicant may request a hearing and appeal pursuant to chapter 34.05 RCW. [1977 ex.s. c 150 § 3; 1941 c 208 § 4; Rem. Supp. 1941 § 8371-4.]

31.08.060 License—Contents—Posting. (Effective until January 1, 1993.) Such license shall state the address at which the business is to be conducted and shall state fully the name of the licensee, and if the licensee is a copartnership or association, the names of the members thereof, and if a corporation, the date and place of its incorporation. Such license shall be kept conspicuously posted in the place of business of the licensee and shall not be transferable or assignable. [1941 c 208 § 5; Rem. Supp. 1941 § 8371-5.]

31.08.070 Additional bond. (Effective until January 1, 1993.) If the supervisor shall find at any time that the bond is insecure, depleted, exhausted, or otherwise doubtful, an additional bond of the character specified in RCW

31.08.030, to be approved by him, in the sum of not more than two thousand five hundred dollars, shall be filed by the licensee within ten days after written demand upon the licensee by the supervisor.

Every licensee shall maintain at all times assets of at least fifty thousand dollars for each licensed place of business either in liquid form available for the operation of or actually used in the conduct of such business at the location specified in the license. [1979 c 18 § 6; 1977 ex.s. c 150 § 4; 1941 c 208 § 6; Rem. Supp. 1941 § 8371-6.]

31.08.080 License required for each place of business. (Effective until January 1, 1993.) Not more than one place of business shall be maintained under the same license, but the supervisor may issue more than one license to the same licensee upon compliance with all the provisions of this chapter governing an original issuance of a license, for each such new license.

Whenever a licensee shall wish to change his place of business to a street address other than that designated in his license he shall give written notice thereof to the supervisor and shall pay to the supervisor an investigation fee of one hundred dollars. Upon receipt of such notice and fee the supervisor shall investigate the facts, and, if he shall find that allowing such licensee to engage in business in such new location will promote the convenience and advantage of the community in which the licensee desires to conduct his business, he shall attach to the license in writing his approval of the change and the date thereof, which shall be authority for the operation of such business under such license at such new location. If the supervisor shall not so find he shall deny the licensee permission so to change the location of his place of business, in the manner specified and subject to the provisions contained in the last paragraph of RCW 31.08.050. [1977 ex.s. c 150 § 5; 1941 c 208 § 7; Rem. Supp. 1941 § 8371-7.]

31.08.090 Annual license fee and bond. (Effective until January 1, 1993.) Every licensee shall, for each license held by him, on or before the twentieth day of each December, pay to the supervisor the sum of one hundred dollars as an annual license fee and shall at the same time file with the supervisor a bond to be approved by the supervisor in the same amount and of the same character as required by RCW 31.08.030. [1977 ex.s. c 150 § 6; 1941 c 208 § 8; Rem. Supp. 1941 § 8371-8.]

31.08.100 Revocation, suspension, or surrender of license—Reinstatement—Effect. (Effective until January 1, 1993.) The supervisor shall, upon ten days' written notice to the licensee stating the contemplated action and in general the grounds therefor, and upon reasonable opportunity to be heard, revoke any license issued hereunder if he shall find that:

(1) The licensee has failed to pay the annual license fee or to maintain in effect the bond or bonds required under the provisions of this chapter or to comply with any specific order or demand of the supervisor lawfully made and directed to the licensee pursuant to and within the authority of this chapter; or that

(2) The licensee, either knowingly or without the exercise of due care to prevent the same, has violated any provisions of this chapter or any general rule or regulation lawfully made by the supervisor under and within the authority of this chapter; or that

(3) Any fact or condition exists which, if it had existed at the time of the original application for such license, clearly would have warranted the supervisor in refusing originally to issue such license.

The supervisor may, upon five days' written notice and after a hearing, suspend any license for a period not exceeding thirty days, pending investigation.

The supervisor may revoke or suspend only the particular license with respect to which grounds for revocation or suspension may occur or exist, or, if he shall find that such grounds for revocation or suspension are of general application to all offices, or to more than one office, operated by such licensee, he shall revoke or suspend all of the licenses issued to said licensee or such licenses as such grounds apply to, as the case may be.

Any licensee may surrender any license by delivering to the supervisor written notice that he thereby surrenders such license, but such surrender shall not affect such licensee's civil or criminal liability for acts committed prior to such surrender.

No revocation or suspension or surrender of any license shall impair or affect the obligation of any preexisting lawful contract between the licensee and any borrower.

Every license issued hereunder shall remain in force and effect until the same shall have been surrendered, revoked, or suspended in accordance with the provisions of this chapter, but the supervisor shall have authority on his own initiative to reinstate suspended licenses or to issue new licenses to a licensee whose license or licenses shall have been revoked if no fact or condition then exists which clearly would have warranted the supervisor in refusing originally to issue such license under this chapter.

Whenever the supervisor shall revoke or suspend a license issued pursuant to this chapter, he shall forthwith file with the division of banking of the department of general administration his order of revocation or suspension together with his finding with respect thereto and the reasons supporting the order, and forthwith serve upon the licensee a copy thereof, from which order the applicant may appeal as provided in RCW 31.08.260. [1988 c 25 § 4; 1941 c 208 § 9; Rem. Supp. 1941 § 8371-9. Formerly RCW 31.08.100, 31.08.110 and 31.08.120.]

31.08.130 Examinations—Cost. (Effective until January 1, 1993.) For the purpose of discovering violations of this chapter or securing information lawfully required by him hereunder, the supervisor may at any time, either personally or by a person or persons duly designated by him, investigate the loans and business and examine the books, accounts, records, and files used therein, of every licensee and of every person who shall be engaged in the business described in RCW 31.08.020, whether such person shall act or claim to act as principal or agent, or under or without the authority of this chapter. For that purpose the supervisor and his duly designated representatives shall have free access to the offices and places of business, books, accounts,

papers, records, files, safes, and vaults of all such persons. The supervisor and all persons duly designated by him shall have authority to require the attendance of and to examine under oath all persons whomsoever whose testimony he may require relative to such loans or such business or to the subject matter of any examination, investigation or hearing. The supervisor shall make such an examination of the affairs, business, office, and records of each licensee at least once each year. The actual cost of every examination shall be paid to the supervisor by every licensee so examined: PROVIDED, HOWEVER, That the actual cost of examining each licensed place of business shall not exceed the sum of two hundred fifty dollars annually. [1959 c 212 § 3; 1941 c 208 § 10; Rem. Supp. 1941 § 8371-10.]

31.08.140 Records—Annual report. (Effective until January 1, 1993.) The licensee shall keep and use in his business such books, accounts, and records as will enable the supervisor to determine whether such licensee is complying with the provisions of this chapter and with the rules and regulations lawfully made by the supervisor hereunder, to which books, accounts, and records the supervisor shall have free access. Every licensee shall preserve such books, accounts and records, including cards used in the card system, if any, for at least two years after making the final entry on any loan recorded therein.

Each licensee shall annually on or before the first day of March file a report with the supervisor giving such relevant information as he reasonably may require concerning the business and operations during the preceding calendar year of each licensed place of business conducted by such licensee within the state. Such report shall be made under oath and shall be in the form prescribed by the supervisor, who shall make and publish annually an analysis and recapitulation of such reports. [1941 c 208 § 11; Rem. Supp. 1941 § 8371-11.]

31.08.150 Prohibited acts. (Effective until January 1, 1993.) No licensee or other person shall advertise, print, display, publish, distribute, broadcast, or televise or cause or permit to be advertised, printed, displayed, published, distributed, broadcast, or televised in any manner whatsoever any false, misleading, or deceptive statement or representation with regard to the rates, terms, or conditions for the lending of money, credit, goods, or things in action in the amount or of the value of two thousand five hundred dollars or less. The supervisor may order any licensee to desist from any conduct which he shall find to be a violation of the foregoing provisions.

The supervisor may require that rates of charge, if stated by a licensee, be stated fully and clearly in such manner as he may deem necessary to prevent misunderstanding thereof by prospective borrowers.

No licensee shall conduct the business of making loans under this chapter within any office, room, or place of business in which any other business is solicited or transacted, or in association or conjunction therewith, if the supervisor shall find, after five days' written notice and after a hearing that the solicitation or transaction of such other business conceals evasion of this chapter by the licensee or is of such nature that such solicitation or transaction would

facilitate evasion of this chapter or of the general rules and regulations lawfully made hereunder, and shall order such licensee in writing to desist from such conduct.

No licensee shall conduct, or advertise such business or make any loan provided for by this chapter under any other name or at any other place of business than that named in a license issued under this chapter.

No licensee shall take any confession of judgment or any power of attorney to confess judgment. No licensee shall take any note, promise to pay, or other obligation signed by the borrower that does not accurately disclose the actual amount of the loan, the time for which it is made, and the agreed rate of charge, nor any instrument in which blanks are left to be filled in after the proceeds of the loan are delivered. When charges are precomputed, as permitted by subsection (3) of RCW 31.08.160, the note shall disclose the amount of the precomputed charge. [1977 ex.s. c 150 § 7; 1959 c 212 § 4; 1941 c 208 § 12; Rem. Supp. 1941 § 8371-12.]

31.08.160 Rates and charges—Splitting loans prohibited. (Effective until January 1, 1993.) (1) Every licensee hereunder may lend any sum of money not to exceed two thousand five hundred dollars in amount and may charge, contract for, and receive thereon charges at a rate not exceeding two and one-half percent per month on that part of the unpaid principal balance of any loan not in excess of five hundred dollars, one and one-half percent per month on that part of the unpaid principal balance of any loan in excess of five hundred dollars and not in excess of one thousand dollars, and one percent per month on any remainder of such unpaid principal balance.

(2) Charges on loans made under this chapter shall not be paid, deducted, discounted, or received in advance, or compounded, but the rate of charge authorized by this section may be precomputed as provided in subsection (3) of this section. Charges on loans made under this chapter, except as permitted by subsection (3) hereof, (a) shall be computed and paid only as a percentage per month of the unpaid principal balance or portions thereof, and (b) shall be so expressed in every obligation signed by the borrower. For the purpose of this section a month shall be that period of time from any date in a month to the corresponding date in the next month and if there is no such corresponding date then to the last day of the next month; and a day shall be considered one-thirtieth of a month when computation is made for a fraction of a month.

(3) When the loan contract requires repayment in substantially equal and consecutive monthly installments of principal and charges combined, the charges may be precomputed at the monthly rate on scheduled unpaid principal balances according to the terms of the contract and added to the principal of the loan. Every payment may be applied to the combined total of principal and precomputed charge until the contract is fully paid. The acceptance or payment of charges on loans made under the provisions of this subsection shall not be deemed to constitute payment, deduction, or receipt thereof in advance nor compounding under subsection (2) above. Such precomputed charge shall be subject to the following adjustments:

(a) The portion of the precomputed charge applicable to any particular monthly installment period shall bear the same ratio to the total precomputed charge, excluding any adjustment made under paragraph (f) of this subsection, as the balance scheduled to be outstanding during that monthly period bears to the sum of all monthly balances scheduled originally by the contract of loan.

(b) If the loan contract is prepaid in full by cash, a new loan, refinancing, or otherwise before the final installment date, the portion of the precomputed charge applicable to the full installment periods following the installment date nearest the date of such prepayment shall be rebated. In computing any required rebate, any prepayment made on or before the fifteenth day following an installment date shall be deemed to have been made on the installment date preceding such prepayment. If prepayment in full occurs before the first installment date an additional rebate of one-thirtieth of the portion of the precomputed charge applicable to a first installment period of one month shall be made for each day from the date of such prepayment to the first scheduled installment date. If judgment is obtained before the final installment date, the contract balance shall be reduced by the rebate of precomputed charge which would be required for prepayment in full as of the date judgment is obtained.

(c) If the payment date of all wholly unpaid installments on which no default charge has been collected is deferred one or more full months and the contract so provides, the licensee may charge and collect a deferment charge. Such deferment charge shall not exceed the portion of the precomputed charge applicable under the original contract of loan to the first month of the deferment period multiplied by the number of months in said period. The deferment period is the month or months in which no scheduled payment has been made or in which no payment is to be required by reason of the deferment. In computing any default charge, or required rebate, the portion of the precomputed charge applicable to each deferred balance and installment period following the deferment period and prior to the deferred maturity shall remain the same as that applicable to such balances and periods under the original contract of loan. Such charge may be collected at the time of deferment or at any time thereafter. If a loan is prepaid in full during a deferment period, the borrower shall receive, in addition to the rebate required under paragraph (b) of this subsection, a rebate of that portion of the deferment charge applicable to any unexpired months of the deferment period.

(d) If the payment in full of any scheduled installment is in default more than seven days and the contract so provides, the licensee may charge and collect a default charge not exceeding five percent of the unpaid amount of the installment or five dollars, whichever is less. Said charge may not be collected more than once for the same default and may be collected when such default occurs or any time thereafter. If such default charge is deducted from any payment received after default occurs and such deduction results in the default of a subsequent installment, no charge may be made for the resulting default.

(e) If two or more full installments are in default for one full month or more at any installment date and if the contract so provides, the licensee may reduce the contract balance by the rebate which would be required for prepayment in full on such installment date. Thereafter, charges

may be received at the agreed rate computed on actual unpaid balances of the contract for the time outstanding until the contract is fully paid. Charges so collected shall be in lieu of any deferment or default charges which otherwise would accrue on the contract after such installment date.

(f) A licensee and borrower may agree that the first installment due date may be not more than fifteen days more than one month and the amount of such installment may be increased by one-thirtieth of the portion of the precomputed charge applicable to a first installment of one month for each extra day.

(4) No licensee shall induce or permit any borrower to split up or divide any loan, nor induce or permit any person, nor any husband or wife jointly or severally, to become obligated, directly or contingently or both, under more than one contract of loan at the same time, for the purpose or with the result of obtaining a higher rate of charge than would otherwise be permitted by this section. If part or all of the consideration for a loan contract is the unpaid principal balance of a prior loan with the same licensee, then the principal amount payable under such loan contract shall not include any unpaid charges on the prior loan, except charges which have accrued within sixty days before the making of such loan contract and may include the balance of a precomputed contract which remains after giving the rebate required by subsection (3) hereof.

(5) No licensee shall directly or indirectly charge, contract for, or receive any charges or fees except charges authorized by this chapter, the reasonable actual costs paid by the licensee to foreclose, repossess or otherwise realize on the security, reasonable attorney fees and court costs incurred by the licensee and the lawful fees, if any, actually and necessarily paid out by the licensee to any public officer for the transferring of title or for filing, recording, or releasing in any public office, any instrument securing the loan, which fees may be collected when the loan is made, or at any time thereafter. If any payment on a loan is made by check and payment of that check is refused because there was no account or due to insufficient funds, the licensee may contract for and receive a charge in an amount authorized under rule by the supervisor of banking. A bona fide error in the calculation of charges or in the recording of such charges in any statement or receipt delivered to the borrower or in the licensee's records shall not be deemed to be a violation of this chapter if the licensee corrects the error. [1983 c 227 § 1; 1979 c 18 § 3; 1977 ex.s. c 150 § 8; 1959 c 212 § 5; 1941 c 208 § 13; Rem. Supp. 1941 § 8371-13.]

Interest and usury in general: Chapter 19.52 RCW.

31.08.170 Statement to borrower—Receipts—Advance payments—Cancellation and release of obligations—Borrower's statement. (Effective until January 1, 1993.) It shall be the duty of every licensee to:

(1) Deliver to the borrower or anyone thereof, if several, at the time any loan is made under this chapter, a statement showing in clear and distinct terms the amount financed, the date of the loan, the agreed schedule of payments, the nature of the security, if any, for the loan, the name and address of the licensee, and the finance charges. The licensee shall provide to the borrower at the time the loan is made a copy of RCW 31.08.160.

(2) Give to the party making any payment a plain and complete receipt for each payment made on account of any such loan at the time such payment is made, or a periodic statement at least once each forty-five days showing such payment, specifying the amount applied to charges and the amount, if any, applied to principal, and stating the unpaid principal balance, if any, of such loan; a receipt shall be given at the time any cash payment is made: PROVIDED, That if the charges were precomputed the receipt or statement need not be itemized, and no receipt or statement shall be required where payment is made by check or money order and the full amount of such check or money order is applied to the loan: PROVIDED FURTHER, That when a default or deferment charge is collected, a receipt or statement shall be given showing the amount applied to the loan and the amount applied to the default or deferment charge;

(3) Permit payment to be made in advance in any amount on any such loan at any time during regular business hours, but the licensee may apply such payment first to all charges at the agreed rate up to the date of such payment: PROVIDED, That when charges are precomputed such payment shall be equal to one or more full scheduled installments;

(4) Upon payment of the loan in full, mark indelibly every obligation signed by the borrower with the word "paid" or "canceled" and release any mortgage and restore all notes and collateral which no longer secures a loan and to which the borrower may be lawfully entitled: PROVIDED, HOWEVER, That in case any such document or obligation is in custodia legis these requirements shall not be applicable; and

(5) Obtain from the borrower prior to making the loan a statement signed by the borrower setting forth the borrower's then current financial condition and describing the penalties and defenses resulting from giving false financial information, all on a form approved by the supervisor. A copy of the statement shall be delivered to the borrower when the loan is made. [1983 c 227 § 2; 1959 c 212 § 6; 1941 c 208 § 14; Rem. Supp. 1941 § 8371-14.]

31.08.173 Limitation on term of contract. (Effective until January 1, 1993.) No contract made by a licensee under this chapter shall provide for a final maturity more than forty-eight and one-half months from the date of making such contract. [1977 ex.s. c 150 § 9; 1959 c 212 § 10.]

31.08.175 Insurance in connection with loans. (Effective until January 1, 1993.) (1) No licensee shall require the purchasing of property insurance from the licensee or any employee, affiliate, or associate of the licensee or from any agent, broker, or insurance company designated by the licensee as a condition precedent to the making of a loan nor shall any licensee decline existing insurance which meets or exceeds the standards set forth in this section.

The licensee may require a borrower to insure tangible property offered as security for a loan hereunder against any substantial risk of loss, damage, or destruction for an amount not to exceed the reasonable value of the property insured or the amount of the loan and for the customary term approxi-

mating the term of the loan contract: PROVIDED, That no licensee hereunder may require such insurance on loans in an amount less than three hundred dollars. It shall be optional with the borrower to obtain such insurance in an amount greater than the amount of the loan or for a longer term. The premium for such insurance shall not exceed that fixed by current applicable manual of a recognized standard insurance rating bureau and such insurance shall be written by or through a duly licensed insurance agent or broker.

(2) A licensee may insure the life of one borrower, but only one of them if there are two or more obligors, for the unpaid principal balance scheduled to be outstanding; and regardless of the the premium paid by the licensee, the licensee may charge not more than sixty cents per one hundred dollars per year computed on the original principal amount of the loan, excluding charges for the loan, when the loan contract requires substantially equal and consecutive monthly installments of principal and charges combined, and such charge may be in the same proportions for different payment schedules, maturities, and principal amounts: PROVIDED, HOWEVER, That if both husband and wife sign an obligation to repay the loan, each may be an insured borrower hereunder and a single identifiable insurance charge may be made by the licensee for the two jointly under a plan whereby both lives are insured but a death benefit is paid only upon the death of the spouse dying first. For such joint spouse coverage, the licensee may charge not more than one dollar per one hundred dollars per year computed on the same basis as herein prescribed for life insurance on one borrower. Such charge may be deducted from the principal of the loan when the loan is made. Only one such charge may be made in connection with any loan contract irrespective of the number of obligors, and only one obligor need be insured. If the insured obligor dies during the term of the loan contract, the insurance must pay the principal balance of the loan outstanding on the day of his death without any exception or reservation. The insurance shall be in force as soon as the loan is made. If the loan contract is prepaid in full by cash, a new loan, renewal, refinancing, or otherwise, a portion of such life insurance charge shall be rebated according to the method established in paragraphs (a) and (b) of subsection (3) of RCW 31.08.160. When charges for the loan are precomputed in accordance with subsection (3) of RCW 31.08.160, any required rebate and any permitted deferment charge may be computed on the combined total of the precomputed charge and the life insurance charge.

(3) A licensee may insure against the disability of the borrower, but only one of them if there are two or more obligors, pursuant to chapter 48.34 RCW, and may deduct from the principal of the loan and retain an amount equal to the premium lawfully charged by the insurance company.

(4) If a borrower procures any insurance by or through a licensee, the statement required by RCW 31.08.170 shall disclose the cost to the borrower and the type of insurance, and the licensee shall cause to be delivered to the borrower a copy of the policy, certificate, or other evidence thereof within a reasonable time.

Notwithstanding any other provision of this chapter, any gain or advantage in any form whatsoever to the licensee or to any employee, affiliate, or associate of the licensee from any insurance or its sale or provision shall not be deemed to

be additional or further interest, consideration, charges, or fee in connection with such loan.

Nothing in this section shall be deemed to alter, amend or repeal any provision of the insurance code.

No insurance shall be required, requested, sold, or offered for sale in connection with any loan made under this chapter, except as and to the extent authorized by this section. [1979 c 18 § 4; 1975 1st ex.s. c 266 § 1; 1959 c 212 § 11.]

Severability—1975 1st ex.s. c 266: "If any provision of this 1975 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 1st ex.s. c 266 § 21.]

31.08.180 Loans in excess of two thousand five hundred dollars—Restrictions. (Effective until January 1, 1993.) No licensee shall directly or indirectly charge, contract for, or receive any interest, discount, or consideration greater than the lender would be permitted by law to charge if he were not a licensee hereunder upon the loan, use, or forbearance of money, goods, or things in action, or upon the loan, use, or sale of credit, of the amount or value of more than two thousand five hundred dollars, exclusive of charges permitted by RCW 31.08.160. [1977 ex.s. c 150 § 10; 1959 c 212 § 7; 1941 c 208 § 15; Rem. Supp. 1941 § 8371-15.]

31.08.190 Assignment of earnings as loan. (Effective until January 1, 1993.) The payment of two thousand five hundred dollars or less in money, credit, goods, or things in action, as consideration for any sale or assignment of, or order for, the payment of wages, salary, commissions, or other compensation for services, whether earned or to be earned, shall for the purpose of regulation under this chapter be deemed a loan secured by such assignment, and the amount by which such assigned compensation retained by the assignee at the completion of the transaction exceeds the total amount of such consideration actually paid by the assignee to the assignor shall for the purpose of regulation under this chapter be deemed interest or charges upon such loan. Such transaction shall be governed by and subject to the provisions of this chapter. [1977 ex.s. c 150 § 11; 1959 c 212 § 8; 1941 c 208 § 16; Rem. Supp. 1941 § 8371-16.]

31.08.200 Chapter governs interest rates. (Effective until January 1, 1993.) No person except as authorized by this chapter shall directly or indirectly charge, contract for, or receive any interest, discount, or consideration greater than the lender would be permitted by law to charge if he were not a licensee hereunder upon the loan, use, or forbearance of money, goods, or things in action, or upon the loan, use, or sale of credit of the amount or value of two thousand five hundred dollars or less.

The foregoing prohibition shall apply to any person who by any device, subterfuge, or pretense whatsoever shall charge, contract for, or receive greater interest, consideration, or charges than is authorized by this chapter for any such loan, use, or forbearance of money, goods, or things in action or for any such loan, use, or sale of credit.

Interest rates for small loans as described in RCW 31.08.160 are hereby declared to be the maximum rates

permissible under the public policy of the state of Washington. With respect to any loan of the amount or value of two thousand five hundred dollars or less for which a greater rate of interest, consideration, or charges than is permitted by RCW 31.08.160 has been charged, contracted for, or received, the lender or his successor in interest shall not be entitled to collect or receive in this state: (1) any principal, interest, consideration or charges whatsoever if any part of the loan transaction occurred in this state; or (2) any interest, consideration or charges in excess of that stated in RCW 31.08.160 if no part of the loan transaction occurred in this state. [1977 ex.s. c 150 § 12; 1967 c 180 § 1; 1959 c 212 § 9; 1941 c 208 § 17; Rem. Supp. 1941 § 8371-17.]

Severability—1967 c 180: "If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provisions to other persons or circumstances is not affected." [1967 c 180 § 16.]

Prior transactions—1967 c 180: "The provisions of this 1967 amendatory act shall not apply to transactions entered into prior to the effective date hereof." [1967 c 180 § 17.]

31.08.210 Criminal acts—Penalty. (Effective until January 1, 1993.) Any person and the several members, officers, directors, agents, and employees thereof, who shall violate or participate in the violation of any of the provisions of RCW 31.08.020, 31.08.150, 31.08.160, 31.08.170, or 31.08.200, shall be guilty of a gross misdemeanor.

Any contract or loan not invalid for any other reason, in the making or collection of which any act shall have been done which constitutes a gross misdemeanor under this section shall be void and the lender shall have no right to collect or receive any principal, interest, or charges whatsoever. [1941 c 208 § 18; Rem. Supp. 1941 § 8371-18.]

31.08.220 Excepted activities. (Effective until January 1, 1993.) This chapter shall not apply to any person doing business under and as permitted by any law of this state or of the United States relating to banks, savings banks, trust companies, savings and loan or building and loan associations, industrial loan companies or credit unions, nor to any pawnbroking business lawfully transacted under and as permitted by any law of this state regulating pawnbrokers, nor to any loan of credit made pursuant to a credit card plan including but not restricted to plans having all of the following characteristics:

(1) Where credit cards are issued pursuant to a plan whereby the organization issuing such cards shall be enabled to acquire those certain obligations which its members in good standing incur with those persons with whom the organization has entered into agreements setting forth said plan, and where the obligations are incurred pursuant to such agreements; or whereby the organization issuing such cards shall be enabled to extend credit to its members;

(2) Any fee for such credit cards is designed to cover only the administrative costs of the plan and does not exceed twenty-five dollars per year;

(3) Any charges, discounts, or fees resulting from the acquisition of such charges shall be paid to the organization issuing said credit cards (or to such other organizations as may be authorized by the issuing organization) by the persons, corporations or associations with whom the organi-

zation has entered into such written agreements. [1971 ex.s. c 37 § 1; 1941 c 208 § 19; Rem. Supp. 1941 § 8371-19.]

31.08.230 Rules and regulations. (Effective until January 1, 1993.) The supervisor is hereby authorized and empowered to make general rules and regulations and specific orders, demands, and findings for the enforcement of this chapter, in addition hereto and not inconsistent herewith.

Copies of all general rules and regulations shall be mailed to every licensee by the supervisor on or before their respective effective dates and copies of all general rules and regulations and of all specific orders and demands shall be kept in a permanent, indexed book in the division of banking of the department of general administration, and shall be public records. [1988 c 25 § 5; 1941 c 208 § 20; Rem. Supp. 1941 § 8371-20.]

31.08.240 Notices, how served. (Effective until January 1, 1993.) All notices required or authorized by this chapter to be given or served by the supervisor may be given or served by registered mail and service thereof shall be deemed complete when a true copy thereof is deposited in the post office properly addressed and stamped. [1941 c 208 § 21; Rem. Supp. 1941 § 8371-21.]

31.08.250 Effect of repeal or amendment. (Effective until January 1, 1993.) This chapter or any part thereof may be modified, amended, or repealed so as to effect a cancellation or alteration of any license or right of a licensee hereunder: PROVIDED, That such cancellation or alteration shall not impair or affect the obligation of any preexisting lawful contract between any licensee and any borrower. [1941 c 208 § 22; Rem. Supp. 1941 § 8371-22.]

31.08.260 Appellate review. (Effective until January 1, 1993.) Whenever the supervisor shall deny an application for a license or shall revoke or suspend a license issued pursuant to this chapter, or shall issue any specific order or demand, then such applicant or licensee thereby affected may, within thirty days from the date of service of notice as provided for in this chapter, appeal to the superior court of the state of Washington for Thurston county. The appeal shall be perfected by serving a copy of the notice of appeal upon the supervisor and by filing it, together with proof of service, with the clerk of the superior court of Thurston county. Whereupon the supervisor shall, within fifteen days after filing of such notice of appeal, make and certify a transcript of the evidence and of all the records and papers on file in his office relating to the order appealed from, and the supervisor shall forthwith file the same in the office of the clerk of said superior court. The reasonable costs of preparing such transcript shall be assessed by the court as part of the costs. A trial shall be had in said superior court de novo. The applicant or licensee, as the case may be, shall be deemed the plaintiff and the state of Washington the defendant. Each party shall be entitled to subpoena witnesses and produce evidence to sustain or reverse the findings and order or demand of the supervisor. During the pendency of any appeal from the order of revocation or suspension of a license, the order of revocation

thereof entered by the supervisor shall be stayed and any other order or demand appealed from may be stayed in the discretion of the court. Either party may seek appellate review of the judgment of said superior court as in other civil actions. [1988 c 202 § 31; 1971 c 81 § 81; 1941 c 208 § 23; Rem. Supp. 1941 § 8371-23.]

Severability—1988 c 202: See note following RCW 2.24.050.

31.08.270 Investigation of business practices and interest rates—Subpoenas, oaths, examination of witnesses—Recommended legislation. (Effective until January 1, 1993.) It shall be the duty of the supervisor to investigate and examine the practice of the consumer finance business in this state, and to obtain statistics and data from other states with special reference to practices performed under this chapter and to interest rates charged for the purpose of determining abuses thereof which should be corrected. In order to carry out such investigation the supervisor shall have the power to subpoena witnesses and records, to administer oaths and examine persons under oath. He shall thereupon submit his findings to the next session of the legislature, and make such recommendations, and submit bills or amendments which in his opinion will correct any such abuses. It shall also be his duty to make findings regarding interest rates to be charged the public and to determine from these findings the lowest possible interest rate which should be legally charged which would be consistent with fairness to the consumer finance business and the public. [1979 c 18 § 1; 1941 c 208 § 24; Rem. Supp. 1941 § 8371-24.]

31.08.900 Repeals. (Effective until January 1, 1993.) All acts and parts of acts, whether general, special, or local, which relate to the same subject matter as this chapter, so far as they are inconsistent with the provisions of this chapter, are hereby repealed. [1941 c 208 § 25; Rem. Supp. 1941 § 8371-25.]

31.08.910 Severability—1941 c 208. (Effective until January 1, 1993.) If any clause, sentence, section, provision, or part of this chapter shall be adjudged to be unconstitutional or invalid for any reason by any court of competent jurisdiction, such judgment shall not impair, affect, or invalidate the remainder of this chapter, which shall remain in full force and effect thereafter. [1941 c 208 § 26; Rem. Supp. 1941 § 8371-26.]

31.08.911 Severability—1959 c 212. (Effective until January 1, 1993.) If any clause, sentence, section, provision, or part of this amendatory act shall be adjudged to be unconstitutional or invalid for any reason by any court of competent jurisdiction, such judgment shall not impair, affect or invalidate the remainder of this amendatory act, which shall remain in full force and effect. [1959 c 212 § 12.]

31.08.920 Short title. (Effective until January 1, 1993.) This chapter shall be known as the consumer finance act. [1979 c 18 § 2; 1941 c 208 § 27; Rem. Supp. 1941 § 8371-27.]

Chapter 31.12

WASHINGTON STATE CREDIT UNION ACT

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Fairness in lending act: RCW 30.04.500 through 30.04.515.

Master license system exemption: RCW 19.02.800.

31.12.005 Definitions. Unless the context clearly requires otherwise, as used in this chapter:

(1) "Board" means the board of directors of a credit union.

(2) "Branch" means any office, other than the principal place of business, maintained by a credit union for the purpose of providing services directly to its members. "Branch" does not include a facility that is limited to an electronic funds transferring machine that can be operated without the assistance of an employee of a credit union.

(3) "Credit union" means a credit union organized and operating under this chapter.

(4) "Employees" means the principal operating officer and other operating personnel of a credit union.

(5) "Federal credit union" means a credit union organized and operating under the laws of the United States.

(6) "Officers" means the officers of the board of a credit union who are elected under RCW 31.12.265.

(7) "Shares" and "deposits" are synonymous and interchangeable. Shares and deposits of a credit union shall be subject to such terms and conditions as established by the board of the credit union.

(8) "Supervisor" means the supervisor of savings and loan associations appointed under RCW 43.19.100, or the duly authorized agent of the supervisor of savings and loan associations.

(9) "Supervisory committee" means a committee having the powers and duties set forth in RCW 31.12.326 through 31.12.355. Supervisory committees are the statutory successors of auditing committees. [1984 c 31 § 2.]

31.12.015 Declaration of policy. A credit union is a cooperative society organized for the purposes of promoting thrift among its members and creating a source of credit for them at fair and reasonable rates of interest. The supervisor is the state's credit union regulatory authority whose purpose is to protect the members' financial interests, the integrity of credit unions as cooperative institutions, and the interests of the general public, and to ensure that state-chartered credit unions remain viable and competitive in this state. [1984 c 31 § 3.]

31.12.025 Use of words in name. (1) A credit union shall include in its name the words "credit union."

(2) No person, partnership, association, corporation, or other organization may transact business or engage in any other activity under a name or title containing the words "credit union" unless it is:

(a) A credit union;

(b) An organization comprised of corporations organized under this chapter or under federal credit union laws;

(c) A sole proprietorship, partnership, or corporation that is primarily in the business of managing one or more credit unions; or

(d) An organization specifically authorized under the laws of this state or under federal law to use the words "credit union" in its name. [1984 c 31 § 4.]

31.12.035 Application for permission to organize—Approval. Seven or more persons who reside in this state may apply to the supervisor for permission to organize a credit union. The supervisor shall approve the application if it is in compliance with this chapter. [1984 c 31 § 5.]

31.12.045 Limitation on membership. (1) Membership in a credit union shall be limited to groups having a common bond of occupation or association, or to groups within a well-defined neighborhood, community, or rural district. The supervisor may adopt rules: (a) Reasonably defining "common bond"; and (b) setting forth standards for the approval of charters.

(2) The supervisor may approve the inclusion within the field of membership of a credit union a group having a separate common bond if the supervisor determines that the group is not of sufficient size or resources to support a viable credit union of its own. [1984 c 31 § 6.]

31.12.055 Manner of organizing—Articles of incorporation—Submission to supervisor. (1) Persons applying for the organization of a credit union shall execute articles of incorporation stating:

(a) The initial name of the proposed credit union and its location;

(b) That the duration of the credit union is perpetual;

(c) That the purpose of the credit union is to engage in the business of a credit union and any other lawful activities permitted to a credit union by applicable laws and rules;

(d) The number of its directors, which shall not be less than five nor greater than fifteen, and the names, occupations, and addresses of the persons who are to serve as the initial directors;

(e) The names, occupations, and addresses of the subscribers to the articles of incorporation, and a statement of the number of shares which each has agreed to take; and

(f) The initial par value of the shares of the credit union.

(2) Applicants shall submit the articles of incorporation in triplicate to the supervisor. [1984 c 31 § 7.]

31.12.065 Bylaws—Submission to supervisor. (1) Persons applying for the organization of a credit union shall adopt bylaws that are consistent with this chapter and that prescribe the manner in which the business of the credit union shall be conducted. The bylaws shall include:

(a) The name of the credit union;

(b) The purposes of the credit union;

(c) The qualifications for membership in the credit union, including the minimum number of shares, if any, required for membership status, and the standards and procedures for expelling a member who has failed to maintain the minimum number of shares;

(d) The number of directors and supervisory committee members, and the length of terms they serve;

(e) The frequency of regular meetings of the board and the supervisory committee, and the manner in which members of the board or supervisory committee are to be notified of meetings;

(f) The powers and duties of the officers elected by the board;

(g) The timing of the annual meeting and the manner in which members are to be notified of membership meetings, including special membership meetings;

(h) The number of members constituting a quorum at a membership meeting; and

(i) Other matters considered appropriate by the applicants to be included in the bylaws.

(2) Applicants shall submit the bylaws in duplicate to the supervisor. [1984 c 31 § 8.]

31.12.075 Approval, refusal of proposed credit union—Appeal. (1) When articles of incorporation and bylaws complying with the requirements of RCW 31.12.055 and 31.12.065 have been filed with the supervisor, the supervisor shall:

(a) Determine whether the articles of incorporation and bylaws are consistent with the purposes and requirements of this chapter; and

(b) Determine the feasibility of the credit union, taking into account surrounding facts and circumstances pertaining to a successful operation of a credit union.

The supervisor may establish by rule, as a prerequisite to approval of a proposed credit union, specific criteria consistent with the purposes and policies of this chapter.

(2) If the supervisor is satisfied with the determinations made under subsection (1)(a) and (b) of this section, the supervisor shall endorse each of the articles of incorporation "approved" and indicate the date the approval is granted, and return two sets of articles and one set of bylaws to the applicants.

(3) If the supervisor is not satisfied with the determinations made under subsection (1)(a) and (b) of this section, the supervisor shall endorse each of the articles of incorpora-

tion "refused," indicate the date of and reasons for the refusal, and return two copies of the articles of incorporation with one copy of the bylaws to the person from whom they were received. The supervisor shall at the time of returning the copies of the articles of incorporation and bylaws also provide notice to the applicant of the applicant's right to appeal the refusal under chapter 34.05 RCW. The refusal is conclusive unless the applicant requests a hearing under chapter 34.05 RCW.

(4) The supervisor shall accept or refuse the articles of incorporation within sixty days of receipt. [1984 c 31 § 9.]

31.12.085 Filing upon approval—Fee—Notice to supervisor—Authority to commence business. (1) Upon the approval of the supervisor under RCW 31.12.075(2), the applicants shall file a copy of the articles of incorporation with the secretary of state. Upon receipt of the approved articles of incorporation and a five dollar filing fee to be provided by the applicants, the secretary of state shall file and record the articles of incorporation. The applicants shall in writing promptly notify the supervisor of the exact date of the filing.

(2) Upon the filing and recording of the approved articles of incorporation with the secretary of state, the persons named in the articles of incorporation and their successors may operate as a credit union, which shall have the powers and be subject to the duties and obligations of this chapter. A credit union shall not conduct business until the articles have been recorded by the secretary of state.

(3) A credit union shall organize and begin business within six months of the date that its articles of incorporation are filed and recorded with the secretary of state or its charter shall become void, unless the supervisor for cause grants an extension of the six-month period. The supervisor shall not grant a single extension exceeding three months, but may grant as many extensions to a credit union as circumstances require. [1984 c 31 § 10.]

31.12.095 Articles of incorporation and bylaws—Forms to be supplied. In order to simplify the organization of credit unions the supervisor shall cause to be prepared forms of articles of incorporation and bylaws consistent with this chapter and, upon written application of seven residents of this state, shall supply to the applicants, at no cost, blank forms of the suggested articles of incorporation and bylaws. [1984 c 31 § 11.]

31.12.105 Amendment to articles of incorporation—Approval. The articles of incorporation of a credit union may be amended, with the approval of the supervisor, by a resolution of the board. Amendments to the articles of incorporation shall be filed with the supervisor and the secretary of state. [1984 c 31 § 12.]

31.12.115 Amendment to bylaws—Approval. (1) Subject to the approval of the supervisor under subsection (2) of this section, the bylaws of a credit union may be amended by the board of directors at any regular meeting or at a special meeting called for that purpose. An amendment of the bylaws requires the affirmative vote of two-thirds of the total members of the board. At least seven days before

a meeting at which an amendment to the bylaws is to be voted upon, a copy of the proposed amendment, together with a written notice of the meeting as provided in the bylaws, shall be served upon each member of the board either personally or by mail to the director's last known post office address.

(2) An amendment to the bylaws of a credit union shall not become operative until it has been approved by the supervisor. The supervisor shall approve or disapprove an amendment within thirty days of receipt. [1984 c 31 § 13.]

31.12.125 Powers. A credit union may:

(1) Issue shares to and receive deposits from its members as provided in this chapter and the bylaws of the credit union;

(2) Make loans to its members as provided in this chapter and the bylaws of the credit union;

(3) Pay dividends or interest to its members;

(4) Impose reasonable charges for the services it provides to its members;

(5) Impose financing charges and reasonable late charges in the event of default on loans in accordance with the bylaws of the credit union and recover reasonable costs and expenses, including reasonable attorneys' fees incurred both before and after judgment, incurred in the collection of sums due it if provided for in the note or agreement signed by the borrower;

(6) Acquire, lease, hold, assign, pledge, hypothecate, sell, or otherwise dispose of a possessory interest in personal property and, with the prior written permission of the supervisor, in real property, so long as the property is necessary or incidental to the operation of the credit union. The written permission of the supervisor is not required for the acquisition and disposition of property through the collection of loans secured by the property;

(7) Deposit and invest funds in excess of the amount approved for loans to members as provided in this chapter;

(8) Borrow money, up to a maximum of fifty percent of its paid-in and unimpaired capital and surplus;

(9) Discount or sell any of its assets, or purchase any or all of the assets of another credit union. A credit union may not discount or sell more than ten percent of its assets without the prior written approval of the supervisor;

(10) Accept deposits of deferred compensation of its members under the terms and conditions of RCW 28A.400.240 and 41.04.250(2);

(11) Act as fiscal agent for and receive payments on shares and deposits from the federal government or this state, and any agency or political subdivision thereof;

(12) Engage in activities and programs as requested by the federal government, this state, and any political subdivision thereof, when the activities or programs are not inconsistent with this chapter;

(13) Hold membership in other credit unions organized under this chapter or other laws and in associations controlled by or fostering the interests of credit unions, including a central liquidity facility organized under state or federal law; and

(14) Exercise such incidental powers as are necessary or requisite to enable it to carry on effectively the business for which it is incorporated. [1990 c 33 § 564; 1984 c 31 § 14.]

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

31.12.136 Additional powers—Powers conferred on federal credit union—Authority of supervisor—Adoption of power by resolution of board. (1) Notwithstanding any other provision of law, a credit union may exercise any of the powers or authority conferred as of July 26, 1987, upon a federal credit union doing business in this state.

(2) In addition to the powers conferred under subsection (1) of this section, the supervisor may by rule authorize credit unions to exercise any of the powers conferred at the time of the adoption of the rule upon a federal credit union doing business in this state if the supervisor finds that the exercise of power serves the convenience and advantage of depositors and borrowers of state-chartered credit unions, and maintains the fairness of competition and parity between state-chartered credit unions and federal-chartered credit unions.

(3) Before exercising a power under subsection (1) or (2) of this section, the board of a credit union shall adopt a resolution identifying and formally adopting that power. [1987 c 338 § 1; 1984 c 31 § 15.]

31.12.145 Membership. A credit union may admit to membership those persons qualified for membership as set forth in its bylaws upon the payment of a membership fee, if any, or the purchase of one or more shares, as provided in the bylaws. A fraternal organization, partnership, or corporation having a usual place of business in this state and comprised principally of persons who are eligible for membership in the credit union may become a member of the credit union. [1984 c 31 § 16.]

31.12.155 Minors. Shares may be issued in the name of a minor and the shares may, in the discretion of the board, be withdrawn by the minor or by the minor's parent or guardian. A minor under age eighteen does not have the right to vote as a member. [1984 c 31 § 17.]

31.12.165 Service charge for dormant accounts. A credit union may impose a reasonable service charge for the processing of accounts that remain dormant for a period of time specified by the board. [1984 c 31 § 18.]

31.12.175 Fiscal year. The fiscal year of a credit union shall end on the 31st day of December. [1984 c 31 § 19.]

31.12.185 Regular meetings—Voting rights. (1) The regular membership meeting of a credit union shall be held annually, at such time and place as the bylaws prescribe, and shall be conducted according to the customary rules of parliamentary procedure.

(2) Notice of regular meetings of a credit union shall be given as provided in the bylaws of the credit union.

(3) No member may have more than one vote regardless of the number of shares held by the member. A fraternal organization, voluntary association, partnership, or corporation having a membership in a credit union may cast one vote by its authorized agent, who shall be an officer of the

organization, association, partnership, or corporation. Voting by mail ballot may be authorized by the board as prescribed in the bylaws. [1987 c 338 § 2; 1984 c 31 § 20.]

31.12.195 Special meetings—Report of results—Voting by mail ballot. (1) A special meeting of a credit union may be called by a majority of the board, a majority vote of the supervisory committee, or upon written application of at least ten percent or two thousand, whichever is less, of the voting members of a credit union. A request for a special meeting of a credit union shall be in writing and shall state specifically the purpose or purposes for which the meeting is called. If the special meeting is being called for the removal of a director the notice shall state the name of the director whose removal is sought.

(2) Upon receipt of a request for a special meeting, the secretary of the credit union shall designate the time and place at which the special meeting will be held. The designated place of the meeting shall be a reasonable location within the county in which the principal office of the credit union is located. The designated time of the meeting shall be no sooner than twenty nor later than thirty days after the request is received by the secretary. The secretary shall within ten days of receipt of the request give notice of the meeting, including the purpose for which the meeting is called, as provided in the bylaws. A wilful violation of this section constitutes a violation of this chapter and constitutes grounds sufficient for the suspension and removal of the secretary under RCW 31.12.575.

(3) Except as provided in this subsection, the chairman or president of the board shall preside over special meetings. If the purpose of the special meeting includes the proposed removal of the chairman or president from the board, the next highest ranking officer of the board whose removal is not sought shall preside over the special meeting. If the removal of all of the officers of the board is sought, the chairman of the supervisory committee shall preside over the special meeting. After every special meeting, the chairman of the supervisory committee shall report to the supervisor the results of the special meeting and whether the special meeting was conducted in a fair manner in accordance with the bylaws of the credit union and with customary rules of parliamentary procedure.

(4) Voting by mail ballot on issues to be presented at a special meeting is prohibited except with regard to mergers under RCW 31.12.695. Voting by mail ballot on a merger under RCW 31.12.695 may be authorized by the board in accordance with rules established by the supervisor. [1987 c 338 § 3; 1984 c 31 § 21.]

31.12.206 Special meetings to remove majority of board—Petition for cease and desist order—Issuance and scope of order. Members of a credit union who are calling for a special meeting, the purpose of which is to remove a majority of the board, may file a petition with the supervisor setting forth the reasons for which removal is sought and seeking the issuance of a cease and desist order. The supervisor may, after reviewing the merits of the petition, issue a cease and desist order prohibiting the directors and employees of the credit union from conducting any credit union business outside the scope of the usual daily affairs of

the credit union. The cease and desist order shall remain in effect until revoked or modified by the supervisor or until the conclusion of the special meeting. [1984 c 31 § 22.]

31.12.215 Notice of intent to establish branch. A credit union desiring to establish a branch shall submit to the supervisor a notice of intent to establish a branch on a form provided by the supervisor at least thirty days before conducting business at the branch. [1984 c 31 § 23.]

31.12.225 Board of directors—Election of directors—Terms. The business and affairs of a credit union shall be managed by a board of not less than five nor greater than fifteen directors. The directors shall be elected at the annual meetings. The directors, as well as the principal operating officer and committee members of the credit union, shall be sworn to the faithful performance of their duties. The directors shall hold their offices, unless sooner removed as provided in this chapter, until their successors are qualified under RCW 31.12.235. Directors shall be elected to terms of between one and three years, as provided in the bylaws. If the terms are longer than one year, the terms shall be divided into classes, and an equal number of terms, as near as possible, shall be elected each year. [1984 c 31 § 24.]

31.12.235 Directors—Qualifications—Interim directors. (1) A director shall be a member of the credit union. If a director ceases to be a member of the credit union, the director shall no longer serve as director.

(2) A director shall no longer serve as director if the director in any twelve-month period is absent from more than thirty-three percent of the regular board meetings required by this chapter.

(3) The remainder of the term of a director's office that becomes vacant under subsection (1) or (2) of this section shall be served by an interim director appointed by the board. [1984 c 31 § 25.]

31.12.246 Removal of directors—Interim directors. The members of a credit union may remove a director of the credit union at a special meeting called for that purpose. If the members remove a director, the members may at the same special meeting elect an interim director to complete the remainder of the director's term of office or may elect to authorize the board to appoint an interim director as provided in RCW 31.12.235. [1984 c 31 § 26.]

31.12.255 Board of directors—Meetings—Powers and duties. The board shall have the general direction of the affairs of the credit union. The board shall meet as often as necessary, but not less than once each month. The board shall:

(1) Act upon applications for membership with the credit union. The board may authorize a membership officer to approve applications under conditions prescribed by the board;

(2) Expel members for cause as provided in this chapter;

(3) Borrow and invest money on behalf of the credit union as provided by this chapter or authorize an investment committee to invest money;

(4) Determine the maximum amount of shares and deposits that a member may hold in the credit union;

(5) Declare dividends on shares and set the rate of interest on deposits in the manner and form provided in the bylaws;

(6) Determine the amount which may be loaned to a member and the finance charges, including interest, to be charged on the loans;

(7) Prescribe the conditions and terms under which a loan officer or credit committee may approve loans;

(8) Set the minimum number of shares, if any, required for active member status;

(9) Fill vacancies on all committees except the supervisory committee;

(10) Set the par value of shares of the credit union;

(11) Set the fees, if any, to be charged by the credit union to its members for the right to be a member of the credit union and for services rendered by the credit union;

(12) Approve the charge-off of credit union losses; or

(13) Perform such other acts as are required by this chapter. [1984 c 31 § 27.]

31.12.265 Officers. The board at its first meeting after the annual meeting of the members shall elect a chairman or president, and one or more vice chairmen or vice presidents, a secretary, a treasurer, and other officers that may be necessary for transacting the business of the board of the credit union. The officers of the board of the credit union shall hold office until their successors are elected and qualified, unless sooner removed as provided by this chapter. The offices of secretary and treasurer may be held by the same person. All officers of the board of a credit union, with the exception of the treasurer, shall be elected members of the board. The treasurer need not be an elected member of the board. The board may designate such employees, including a principal operating officer who shall not share the title chosen for the chairman or president of the board and who need not be a member of the board, as are necessary for the operation of the credit union. [1987 c 338 § 4; 1984 c 31 § 28.]

31.12.275 Removal of officers by board. The board may for cause remove an officer from office or a committee member from a committee, other than the supervisory committee. For the purpose of this section "cause" includes demonstrated financial irresponsibility or activities which, in the judgment of the board, are detrimental to the credit union. [1984 c 31 § 29.]

31.12.285 Suspension of members of board or supervisory committee by board. The board may, by a two-thirds vote, suspend for cause a member of the board or a member of the supervisory committee until a membership meeting is held. The meeting shall be held within thirty days after the suspension. The members attending that meeting shall vote whether to remove the suspended party. [1984 c 31 § 30.]

31.12.295 Expulsion of member by board. (1) The board may, by a two-thirds vote, expel a member for cause. The board shall notify the member of the expulsion and the

reasons upon which it is based. The board shall, upon request of the expelled member, allow the member to challenge the expulsion and seek reinstatement as a member.

(2) The amounts paid in on shares or deposited by a member who has been expelled shall be paid to the member after deducting amounts due from the member(s) to the credit union. Expulsion shall not operate to relieve a member from outstanding liabilities owed to the credit union. [1984 c 31 § 31.]

31.12.306 Surety bonds. (1) Each director, committee member, and employee of a credit union shall be bonded in an amount and with surety and conditions established by the supervisor.

(2) When the bond coverage under subsection (1) of this section is suspended or terminated, the board of the affected credit union shall notify the supervisor in writing within five days of having received notice of the suspension or termination. [1984 c 31 § 32.]

31.12.315 Loans and lines of credit—Requirements for applications—Approval. A credit committee or loan officer, as the bylaws may provide, shall act upon all applications for loans and lines of credit under the terms and conditions prescribed by the board. All applications for loans or lines of credit shall be in writing and shall state the purpose for which the loan or line of credit is desired and the security, if any, offered. Approval of loans and lines of credit shall be in writing. [1984 c 31 § 33.]

31.12.326 Supervisory committee—Membership—Terms. A supervisory committee of at least three members shall be elected at the annual meeting of the credit union. A member of the supervisory committee shall serve a term of three years, unless sooner removed under this chapter or until a successor commences the performance of the member's duties. The members of the supervisory committee shall be divided into classes so that as equal a number as is possible is elected each year. If a member of the supervisory committee ceases to be a member of the credit union, the member's office shall become vacant. The supervisory committee shall fill vacancies in its membership until successors are elected, except that if all positions on the committee are vacant at the same time the board may fill the vacancies until the next annual meeting. No officer or employee of a credit union may serve on the supervisory committee of that credit union. No more than one director may be a member of the supervisory committee at the same time. No member of the supervisory committee may serve on the credit committee or investment committee of the credit union while serving on the supervisory committee. [1984 c 31 § 34.]

31.12.335 Supervisory committee—Duties. The supervisory committee of a credit union shall:

(1) Meet as often as necessary and at least quarterly;

(2) Keep fully informed as to the financial condition of the credit union;

(3) Cause to be made semiannually a complete examination of the cash, the credit union accounts, including income

and expense, and the members' share accounts in accordance with rules adopted by the supervisor; and

(4) Report its findings and recommendations to the board and make an annual report to the members at the annual meeting. [1984 c 31 § 35.]

31.12.345 Suspension of officers, members of a committee, or members of the board by supervisory committee. By unanimous vote the supervisory committee of a credit union may suspend for cause an officer of the credit union, a member of a committee, or a member of the board until a membership meeting is held. The meeting shall be held within thirty days after the suspension. The members attending that meeting shall vote whether to remove the suspended party. [1984 c 31 § 36.]

31.12.355 Reports by supervisory committee—Penalty. Within forty-five days after the end of the fiscal year of a credit union, the supervisory committee of a credit union shall make a report to the supervisor on a form provided by the supervisor. A credit union that fails to submit the report within the time prescribed, or that fails to submit other reports within thirty days of a written request by the supervisor, shall pay to the state five dollars for each day until the report is submitted. The penalty for any single delinquency shall not exceed one hundred dollars and may be waived by the supervisor. [1984 c 31 § 37.]

31.12.365 Directors and members of committees—Compensation—Reimbursement—Loans. Directors and members of committees shall not receive compensation for their services, except to the extent that an officer serving as principal operating officer may receive compensation. Directors and members of committees may receive reimbursement for reasonable expenses incurred in the performance of their duties. Loans to directors and committee members shall be under no more favorable conditions and terms than those under which loans to general members are made. [1984 c 31 § 38.]

31.12.376 Capital. The capital of a credit union consists of the money paid in by its members on shares and deposits under RCW 31.12.385 and membership fees, if any, paid under RCW 31.12.395. [1984 c 31 § 39.]

31.12.385 Shares and deposits governed by chapter 30.22 RCW—Limitation on shares and deposits—Notice of withdrawal. Shares purchased and deposits made in a credit union by an individual are governed by chapter 30.22 RCW. An individual member may purchase shares and make deposits in a credit union in an amount that does not exceed five hundred dollars or twenty percent of the total shares of the credit union, whichever is greater. A fraternal organization, partnership, or corporation that is a member may purchase shares and make deposits in an amount that does not exceed twenty percent of the assets of the credit union, unless the supervisor authorizes a greater amount. A credit union may require from a member ninety days notice of the intention to withdraw shares or deposits. The notice requirement may be extended with the written consent of the supervisor. [1984 c 31 § 40.]

31.12.395 Membership fee. The board of a credit union may establish as a condition of membership a membership fee to be paid by a member upon becoming a member. [1984 c 31 § 41.]

31.12.406 Loans to members—Classes of loans. (1) A credit union may make loans to its members with the approval of a credit committee or loan officer. A credit union shall not make loans to a fraternal organization, partnership, or corporation in excess of the total shares of the organization, partnership, or corporation without the written consent of the supervisor.

(2) A credit union may make to individual members:

(a) Personal loans secured by the note of the member or other adequate security, including, but not limited to, equity interests in real estate, automobiles, boats, motorhomes, and travel trailers. The aggregate of personal loans to one member shall be limited to five thousand dollars or two and one-half percent of the assets of the credit union, whichever is greater, unless the supervisor approves in writing a greater loan amount;

(b) Student loans under student loan programs of this state or the United States;

(c) Loans for the acquisition of a modular home or mobile home as defined by RCW 82.50.010, secured by a first security interest in that modular home or mobile home, owned by the member. A loan under this subsection shall not exceed eighty-five percent of the purchase price or of the appraised value of the modular home or mobile home, whichever is less;

(d) Residential real estate loans under RCW 31.12.415;

(e) Loans to its members under an act of congress known as the "FHA Title I, National Housing Act of 1934," June 27, 1934 (12 U.S.C. Sec. 1701 to 1750, inc.); and

(f) Loans to credit union members in participation with other credit unions, credit union organizations, or financial organizations. The credit union which originates a loan under this subsection shall retain an interest of at least ten percent of the face amount of the loan unless the loan is a real estate loan in which case there is no retention requirement.

(3) Personal loans shall be given preference, and in the event there are not sufficient funds available to satisfy all approved loan applicants, further preference shall be given to small loans. [1987 c 338 § 6; 1984 c 31 § 42.]

31.12.415 Residential real estate loans. (1) For purposes of this section a residential real estate loan is a loan secured by a first mortgage, deed of trust, real estate contract, or other first lien on the borrower's interest in a one-to-four family dwelling, including an individual cooperative unit, or a loan made for the construction of the dwelling. The dwelling shall be insured by hazard insurance in an amount at least as great as the credit union's interest in the dwelling or the value of the dwelling, whichever is less. A residential real estate loan shall not exceed ten thousand dollars or two and one-half percent of the assets of the credit union, whichever is greater, without the approval of the supervisor.

(2) Except for loans made with the intent of sale on the secondary market, the total amount of loans held by a credit union under this section shall not exceed:

(a) Ten percent of its total assets if its total assets are less than one hundred thousand dollars;

(b) Twenty percent of its total assets if its total assets are greater than one hundred thousand dollars but less than one million dollars; or

(c) Thirty percent of its total assets if its total assets are greater than one million dollars. [1984 c 31 § 43.]

31.12.425 Deposit or investment of capital or surplus funds—Investment committee. (1) The capital or surplus funds in excess of the amount for which loans are approved may be deposited or invested in any of the following ways, so long as the investment has not been in default as to principal or interest within five years prior to the date of purchase:

(a) Accounts in banks or trust companies, including national banks located in this state, or other states, the accounts of which are insured by the federal deposit insurance corporation. The deposits made by a credit union under this subsection may exceed the insurance limits established by the federal deposit insurance corporation;

(b) Bonds, securities, or other investments that are fully guaranteed as to principal and interest by the United States government, and general obligations of this state and its political subdivisions;

(c) Obligations issued by corporations designated under Section 9101 of Title 31 U.S.C., or obligations, participations or other instruments issued and guaranteed by the federal national mortgage association;

(d) Participations or obligations which have been subjected by one or more government agencies to a trust or trusts for which an executive department, agency, or instrumentality of the United States has been named to act as trustee;

(e) Shares, share certificates, or share deposits of other credit unions or savings and loan associations organized or authorized to do business under the laws of this state, other states, or the United States, the accounts of which are insured or guaranteed by the federal savings and loan insurance corporation, the national credit union administration, the Washington credit union share guaranty association, or another insurer approved by the supervisor. The deposits made by a credit union under this subsection may exceed the insurance or guarantee limits established by the organization insuring or guaranteeing the institution into which the deposits are made;

(f) Common trust funds whose investment portfolios consist of securities issued or guaranteed by the federal government or an agency of the government;

(g) Up to two percent of a corporation owned by the Washington credit union league;

(h) Shares, stocks, loans, or other obligations of an organization of which the membership or ownership is confined primarily to credit unions and the purpose of which is to strengthen, advance, or provide services to the credit union industry. An investment under subsection (1)(h) of this section shall be limited to one percent of the total paid-in and unimpaired capital and surplus of the credit union, but

a credit union may, in addition to the investment, lend to the organization an amount not exceeding an additional one percent of the total paid-in and unimpaired capital and surplus of the credit union;

(i) Loans to other credit unions organized or authorized to do business under the laws of this state, other states, or the United States. The aggregate of loans issued under this subsection shall be limited to twenty-five percent of the paid-in and unimpaired capital of the lending credit union; or

(j) Other investments authorized in accordance with rules adopted by the supervisor consistent with this chapter.

(2) The board may appoint an investment committee to make and manage the investments under this section. An investment committee shall remain subject to the supervision of the board. [1987 c 338 § 7; 1984 c 31 § 44.]

31.12.435 Investment in real property or leasehold interests for own use. (1) A credit union may invest a reasonable amount of its funds in real property or leasehold interests for its own use in conducting business if:

(a) The aggregate of its regular reserve and its undivided earnings equals five percent of the total of its share accounts;

(b) The board approves the investment in real property for its own use in conducting business by a two-thirds majority vote of the total number of directors;

(c) The total investment in the property does not exceed seven and one-half percent of the aggregate of its share and deposit accounts; and

(d) The supervisor approves of the investment in writing.

(2) The supervisor may waive the restrictions of this section. The restrictions of this section do not affect investments existing as of July 1, 1984. [1984 c 31 § 45.]

31.12.445 Reserve requirements. (1) At the end of each accounting period and before the payment of dividends to members, a credit union shall set apart as a regular reserve an amount in accordance with subsection (2) of this section.

(2) (a) If a credit union has been in operation for four or more years and has assets of at least five hundred thousand dollars it shall reserve ten percent of gross income until the regular reserve equals four percent of outstanding loans and then shall reserve five percent of gross income until the regular reserve equals six percent of outstanding loans.

(b) If a credit union has been in operation for less than four years or has assets of less than five hundred thousand dollars, it shall reserve ten percent of gross income until the regular reserve equals seven and one-half percent of outstanding loans and then shall reserve five percent of gross income until the regular reserve equals ten percent of outstanding loans.

(c) The supervisor may authorize a credit union falling under subsection (2)(b) of this section to follow the reserving requirements for credit unions falling under subsection (2)(a) of this section.

(d) In computing outstanding loans for purposes of reserving, a credit union may exclude loans secured by shares and loans insured or guaranteed by the federal

government or the government of this state to the extent of the security, insurance, or guarantee.

(3) When the regular reserve falls below the percentage of outstanding loans required under subsection (2) of this section, a credit union shall replenish the regular reserve by again reserving a portion of gross income as set forth in subsection (2) of this section.

(4) The regular reserve and the investments thereof shall be held to meet contingencies or losses in the business of the credit union and shall not be distributed to its members except in the case of dissolution or with the permission of the supervisor. [1984 c 31 § 46.]

31.12.455 Alternative reserve requirement—Approval. A credit union may with the approval of the supervisor, in lieu of complying with the requirements of RCW 31.12.445, comply with the reserve requirements and regulations of the national credit union administration. [1984 c 31 § 47.]

31.12.465 Liquidity reserve. The supervisor may, if deemed necessary, require a credit union to establish a liquidity reserve of up to five percent of unimpaired capital. The liquidity reserve shall be in cash or investments with maturities of one year or less. [1984 c 31 § 48.]

31.12.475 Special reserve fund. The supervisor may require a credit union to charge-off or set-up a special reserve fund for such delinquent loans or other assets as in the supervisor's opinion require such action. [1984 c 31 § 49.]

31.12.485 Dividends. (1) At each annual, semiannual, quarterly, or monthly period the board may declare a dividend from net earnings. The dividends shall be paid on all eligible shares outstanding at the time of declaration and may be paid to members on shares withdrawn during the period. Shares which became paid-up during the dividend period shall be entitled only to a proportional part of the dividend in accordance with a formula adopted by the board.

(2) Dividends may be declared from the earnings which remain after the deduction of expenses, interest on deposits, and the amounts required for regular, liquidity, and special reserve, or the dividends may be declared in whole or in part from the undivided earnings that remain from preceding periods.

(3) A member shall be given the option to receive declared dividends either by cash payment or by a credit to the member's account in either shares or deposits. [1984 c 31 § 50.]

31.12.495 Distribution of surplus earnings. A credit union may distribute surplus earnings to borrowers as an interest refund ratably in proportion to interest paid by the borrowers. [1984 c 31 § 51.]

31.12.506 Limitation on expenditures—Waiver. (1) Except as provided in subsections (2) and (3) of this section, a credit union shall not pay or become liable to pay as salaries, fees, wages, or other compensation to officers,

directors, agents, attorneys, and employees and for rent, advertising, and all other operating expenses, sums of money in excess of ten percent of the average amount of assets of the credit union during the prior twelve months.

(2) Subsection (1) of this section notwithstanding, a credit union shall not be limited in its expenditures to a sum less than six hundred dollars in a calendar year.

(3) The supervisor may waive the restrictions of subsection (1) of this section if, in the supervisor's opinion: (a) Circumstances warrant a waiver, and (b) waiver will not jeopardize the financial condition of the credit union. [1984 c 31 § 52.]

31.12.516 Powers of supervisor. The powers of supervision and examination of credit unions are vested in the supervisor. The supervisor shall require each credit union to conduct business in compliance with this chapter and other laws that apply to credit unions, and has the power to commence and prosecute actions and proceedings, to enjoin violations, and to collect sums due the state of Washington from a credit union authorized to conduct business under this chapter. [1984 c 31 § 53.]

31.12.526 Authority of out-of-state credit union to operate in this state—Conditions. (1) A credit union organized and qualified as a credit union in another state which has not had its authority to operate in another state suspended or revoked may operate as a credit union under this chapter if:

(a) The supervisor has approved an application to do business in this state;

(b) A credit union organized under the laws of this state is permitted to do business in the state in which the credit union is organized;

(c) The interest rate charged by the credit union on loans made to members residing in this state does not exceed the maximum interest rate permitted in the state in which the credit union is organized, or exceed the maximum interest rate which a credit union organized in this state is permitted to charge on similar loans, whichever is lower;

(d) The credit union has secured surety bond and fidelity bond coverages satisfactory to the supervisor;

(e) The credit union has secured for the share accounts of its members insurance or other surety satisfactory to the supervisor;

(f) The credit union submits to the supervisor an annual audit or examination report of its most recently completed fiscal year; and

(g) The credit union complies with all other provisions of this chapter and rules adopted by the supervisor.

(2) The supervisor shall disapprove an application filed under this section or, upon reasonable notice and an opportunity for hearing, suspend or revoke the approval of an application, if the supervisor finds that the standards of organization, operation, and regulation of the credit union do not reasonably conform with the standards under this chapter or that at least fifty percent of the members of the credit union are, or are reasonably expected to be, residents of this state. In considering the standards of organization, operation, and regulation of the credit union, the supervisor may consider the laws and regulations of the state in which the

credit union is organized. A decision under this subsection may be appealed under chapter 34.05 RCW.

(3) In implementing this section, the supervisor may cooperate with the administrators of the credit union laws in other states and may share with the administrators the information received in the administration of this chapter.

(4) The supervisor shall adopt rules for the periodic examination and investigation of the affairs of an out-of-state credit union operating in this state. The costs of examination and supervision shall be fully borne by the out-of-state credit union. [1984 c 31 § 54.]

31.12.535 Rule-making authority. The supervisor may adopt such rules as are reasonable or necessary to carry out the purposes of this chapter. Chapter 34.05 RCW shall wherever applicable govern the rights, remedies, and procedures respecting the administration of this chapter. [1984 c 31 § 55.]

31.12.545 Examinations and investigations—Reports—Communications. (1) The supervisor shall make an examination and full investigation into the affairs of each credit union at least once every eighteen months, unless the supervisor determines with respect to a credit union that a less frequent examination schedule will satisfactorily protect the financial stability of the credit union and will satisfactorily assure compliance with the provisions of this chapter. The actual cost of examination and supervision shall be paid by the credit union examined. The supervisor may waive all or a portion of the examination costs payable by the credit union, in light of the time and expense of the examination and the ability of the credit union to pay the costs. The examination costs with respect to the first examination of a credit union with assets under two hundred thousand dollars shall not be payable by that credit union.

(2) The supervisor may accept in lieu of an examination under subsection (1) of this section the report of an examiner authorized to examine a credit union under the laws of the United States or another state or the report of an accountant, satisfactory to the supervisor, who has made and submitted a report of the condition of the affairs of a credit union and, if approved, the report shall have the same force and effect as an examination under subsection (1) of this section.

(3) Communications from the supervisor to the board of a credit union regarding an examination or report shall be read before the board at its first meeting following the receipt of the communication and the fact that the communication was read before the board shall be noted in the minutes of the meeting. The board shall promptly respond to the supervisor either by stating that steps have been taken to comply with the communication or by stating that the board objects to the communication and stating the reasons for the objection. [1984 c 31 § 56.]

31.12.555 Investigations of credit union service organizations. The supervisor may investigate the affairs of a credit union service organization in which a credit union has an interest. A person or an entity that is not a credit union that has an interest in a credit union service organization in which a credit union has an interest is deemed to have consented to the investigation. For the purposes of this

section and RCW 31.12.565, a sole proprietorship, partnership, or corporation that is primarily in the business of managing one or more credit unions shall be considered to be a credit union service organization. [1984 c 31 § 57.]

31.12.565 Examination reports and information confidential—Exceptions—Penalty. (1) Examination reports and information obtained by the supervisor's staff in conducting examinations of credit unions and credit union service organizations are confidential and privileged information and not subject to public disclosure under chapter 42.17 RCW.

(2) Notwithstanding subsection (1) of this section, the supervisor may furnish examination reports prepared by the supervisor's office to:

(a) Federal agencies empowered to examine state-chartered credit unions;

(b) Officials empowered to investigate criminal charges. The supervisor may furnish only that part of the report which is necessary and pertinent to the investigation, and only after notifying the affected credit union and members of the credit union who are named in that part of the examination report that the report is being furnished to the officials, unless the officials requesting the report obtain a waiver of the notice requirement for good cause from a court of competent jurisdiction;

(c) The examined credit union, solely for its confidential use;

(d) The attorney general in his role as legal advisor to the supervisor;

(e) Prospective merger partners or liquidating agents of a distressed credit union;

(f) Credit union administrators in other states regarding an out-of-state chartered credit union doing business in this state under this chapter, or regarding a credit union chartered under this chapter doing business in another state;

(g) Accounting firms under contract with the credit union;

(h) Companies that have bonded the credit union to the extent that information is relevant to the renewal of the bond coverage or to a claim under the bond coverage; or

(i) Companies, associations, or agencies insuring or guaranteeing the shares of or deposits in the credit union.

(3) Examination reports furnished under subsection (2) of this section remain the property of the supervisor's office and no person, agency, or authority to whom reports are furnished or any officer, director, or employee thereof may disclose or make public the reports or information contained in the reports except in published statistical information that does not disclose the affairs of an individual or corporation, except that nothing prevents the use in a criminal prosecution of reports furnished under subsection (2)(b) of this section.

(4) In a civil action in which the reports are sought to be discovered or used as evidence, a party upon notice to the supervisor, may petition the court for an in-camera review of the reports. The court may permit discovery and introduction of only those portions of the report which are relevant and otherwise unobtainable by the requesting party. This subsection does not apply to an action brought or defended by the supervisor.

(5) This section does not apply to investigation reports prepared by the supervisor and the supervisor's staff concerning an application for a new credit union or a notice of intent to establish a branch of a credit union, except that the supervisor may adopt rules making confidential portions of the reports if in the supervisor's opinion the public disclosure of that portion of the report would impair the ability to obtain information the supervisor considers necessary to fully evaluate the application.

(6) Any person who knowingly violates a provision of this section is guilty of a gross misdemeanor. [1984 c 31 § 58.]

31.12.575 Suspension of director or principal operating officer by supervisor—Notice—Order of suspension—Removal. (1) The supervisor may suspend a director or the principal operating officer of a credit union if, in the opinion of the supervisor, the director or principal operating officer is dishonest, inefficient, incompetent, is wilfully disobeying orders of the supervisor, or is in any way violating this chapter or the bylaws of the credit union. The supervisor shall give prompt notice of and the reasons for the suspension to the board of the affected credit union.

(2) Unless the supervisor specifically provides otherwise in the order of suspension, an order of suspension shall take effect immediately. The suspended person shall be prohibited from all aspects of the operation of the credit union. The suspended person shall be barred from the credit union premises and shall surrender the possession of all property and records of the credit union. A person who knowingly violates an order of suspension or who knowingly aids in the violation of an order of suspension shall be guilty of a gross misdemeanor.

(3) Upon receipt of the notice of suspension, the board shall within twenty days call a meeting of its members to consider the causes of the suspension. The board shall give at least seven days' notice of the time and place of the meeting to the supervisor unless the supervisor agrees to accept shorter notice. If the board finds the supervisor's objection to be well-founded, the board shall remove the suspended person immediately.

(4) If the board fails to remove the suspended person as provided in subsection (3) of this section, the supervisor may remove that person after reasonable notice and an opportunity to be heard under chapter 34.05 RCW. The suspension shall remain in effect for twenty days after the board meeting at which the board considers the suspension, during which time the supervisor may call a hearing under this subsection. If the supervisor calls a hearing, the suspension shall remain in effect until the time of the hearing. [1984 c 31 § 59.]

31.12.585 Prohibited acts—Notice of charges—Hearing—Cease and desist order. (1) The supervisor may issue and serve upon a credit union a notice of charges if in the opinion of the supervisor the credit union:

(a) Is engaging or has engaged in an unsafe or unsound practice in conducting the business of the credit union;

(b) Is violating or has violated a material provision of any law, rule, or any condition imposed in writing by the supervisor in connection with the granting of any application

or other request by the credit union or any written agreement made with the supervisor; or

(c) Is about to do the acts prohibited in (a) or (b) of this subsection if the opinion that the threat exists is based upon reasonable cause.

(2) The notice shall contain a statement of the facts constituting the alleged violation or the practice and shall fix a time and place at which a hearing will be held to determine whether an order to cease and desist should issue against the credit union. The hearing shall be set not earlier than ten days nor later than thirty days after service of the notice unless a later date is set by the supervisor at the request of the credit union.

Unless the credit union appears at the hearing by a duly authorized representative, it shall be deemed to have consented to the issuance of the cease and desist order. In the event of this consent or if upon the record made at the hearing the supervisor finds that any violation or practice specified in the notice of charges has been established, the supervisor may issue and serve upon the credit union an order to cease and desist from the violation or practice. The order may require the credit union and its directors, officers, employees, and agents to cease and desist from the violation or practice and may require the credit union to take affirmative action to correct the conditions resulting from the violation or practice.

(3) A cease and desist order shall become effective at the expiration of ten days after the service of the order upon the credit union concerned except that a cease and desist order issued upon consent shall become effective at the time specified in the order and shall remain effective as provided therein unless it is stayed, modified, terminated, or set aside by action of the supervisor or a reviewing court. [1984 c 31 § 60.]

31.12.595 Temporary cease and desist order. If the supervisor determines that the act specified in RCW 31.12.585 is likely to cause insolvency or substantial dissipation of assets or earnings of the credit union or to otherwise seriously prejudice the interests of its depositors, members, or shareholders, the supervisor may issue a temporary order requiring the credit union to cease and desist from the violation or practice. The order shall become effective upon service on the credit union and shall remain effective unless set aside, limited, or suspended by a court in proceedings under RCW 31.12.605 pending the completion of the administrative proceedings under the notice and until the supervisor dismisses the charges specified in the notice or until the effective date of a cease and desist order issued against the credit union under RCW 31.12.585. [1984 c 31 § 61.]

31.12.605 Injunction setting aside, limiting, or suspending temporary cease and desist order. Within ten days after a credit union has been served with a temporary cease and desist order, the credit union may apply to the superior court in the county of its principal place of business for an injunction setting aside, limiting, or suspending the order pending the completion of the administrative proceedings under RCW 31.12.585. The superior court shall have jurisdiction to issue the injunction. [1984 c 31 § 62.]

31.12.615 Injunction to enforce temporary cease and desist order. In the case of a violation or threatened violation of a temporary cease and desist order issued under RCW 31.12.595, the supervisor may apply to the superior court of the county of the principal place of business of the credit union for an injunction to enforce the order, and the court shall issue an injunction if it determines that there has been a violation or threatened violation. [1984 c 31 § 63.]

31.12.625 Administrative hearing—Decision—Orders. (1) An administrative hearing provided in RCW 31.12.585 shall be conducted in accordance with chapter 34.05 RCW. The hearing shall be private unless the supervisor determines that a public hearing is necessary to protect the public interest after fully considering the views of the party afforded the hearing.

(2) Within sixty days after the hearing, the supervisor shall render a decision which shall include findings of fact upon which the decision is based and the supervisor shall issue and serve upon each party to the proceeding an order or orders consistent with RCW 31.12.585. [1984 c 31 § 64.]

31.12.635 Prohibited acts—Penalty. (1) It is unlawful for a person to perform any of the following acts:

(a) To knowingly subscribe to, make, or cause to be made a false statement or entry in the books of a credit union;

(b) To knowingly make a false statement or entry in a report required to be made to the supervisor; or

(c) To knowingly exhibit a false or fictitious paper, instrument, or security to a person authorized to examine a credit union.

(2) A violation of this section is a class C felony under chapter 9A.20 RCW. [1984 c 31 § 65.]

31.12.645 Prohibited acts of officer, director, agent, or employee—Penalty. Unless otherwise provided by law, it is a misdemeanor for an officer, director, agent, or employee of a credit union to knowingly violate or consent to the violation of this chapter. [1984 c 31 § 66.]

31.12.655 Authority of supervisor to call special meeting of board. The supervisor may request a special meeting of the board of a credit union if the supervisor believes that a special meeting is necessary for the welfare of the credit union or the purposes of this chapter. The supervisor's request for a special meeting shall be made in writing to the secretary of the board and the request shall be handled in the same manner as a call for a special meeting under RCW 31.12.195. The supervisor may require the attendance of all of the directors of the board at the special meeting, and an absence of a director unexcused by the supervisor constitutes a violation of this chapter. [1984 c 31 § 67.]

31.12.665 Authority of supervisor to attend meetings of the board. (1) The supervisor may attend a regular or special meeting of the board of a credit union if the supervisor believes that attendance at the meeting is necessary for the welfare of the credit union or the purposes of this chapter or if the board has requested the supervisor's [Title 31 RCW—page 24]

attendance. The supervisor shall provide reasonable notice to the board before attending a meeting.

(2) A communication from the supervisor to the board shall upon the request of the supervisor be read to the board at its next meeting and the fact that the communication was read shall be noted in the minutes. [1984 c 31 § 68.]

31.12.675 Insolvency—Suspension or revocation of articles—Placement in involuntary liquidation—Appointment of liquidating agent—Notice—Procedure—Effect. (1) The articles of incorporation of a credit union may be suspended or revoked, the credit union placed in involuntary liquidation, and a liquidating agent appointed upon a finding by the supervisor that the credit union is insolvent.

(2) Except as otherwise provided in this chapter, the supervisor, before suspending or revoking the articles of incorporation of a credit union and placing the credit union in liquidation, shall issue and serve notice on the credit union concerned of the intention to suspend or revoke the articles and an order directing the credit union to show cause why its articles of incorporation should not be suspended or revoked, in accordance with chapter 34.05 RCW.

(3) If the supervisor finds that the credit union is insolvent and the credit union fails to adequately show cause, the articles of incorporation shall be suspended or revoked and the credit union placed in involuntary liquidation. The supervisor shall serve on the credit union an order directing the suspension or revocation and an order directing the involuntary liquidation and appointment of a liquidating agent under RCW 31.12.685, and a statement of the findings on which the order is based.

(4) The suspension or revocation shall be immediate and complete. Once the articles of incorporation are suspended or revoked, the credit union shall cease conducting business. The credit union may not accept any payment on shares or deposits, may not grant or pay out any new or previously approved loans, may not invest any of its assets, and may not declare or pay out any previously declared dividends. The liquidating agent of a credit union whose articles have been suspended or revoked may accept payments on loans previously paid out and may accept income from investments already made. [1984 c 31 § 69.]

31.12.685 Order directing involuntary liquidation—Designation of liquidating agent—Procedure. (1) The supervisor shall designate the liquidating agent in the order directing the involuntary liquidation of the credit union under RCW 31.12.675. On receipt of the order placing the credit union in involuntary liquidation, the officers and directors of the credit union concerned shall deliver to the liquidating agent possession and control of all books, records, assets, and property of the credit union.

(2) The liquidating agent shall proceed to convert the assets to cash, collect all debts due to the credit union and wind up its affairs in accordance with the instructions and procedures issued by the supervisor. If a liquidating agent agrees to absorb and serve the membership of a distressed credit union the supervisor may approve a pooling of assets and liabilities rather than a distribution of assets.

(3) The liquidating agent shall cause to be published notice of liquidation once a week for three consecutive weeks in a newspaper of general circulation in the county in which the principal place of business of the liquidating credit union is located. The notice of liquidation shall inform creditors of the liquidating credit union how to make a claim upon the liquidating agent and that if a claim is not made upon the liquidating agent within thirty days of the last date of publication the creditor's claim shall be barred. The liquidating agent shall provide personal notice of liquidation to the creditors of record informing them that if they fail to make a claim upon the liquidating agent within thirty days of the service of the notice, the creditor's claim shall be barred. If a creditor fails to make a claim upon the liquidating agent within the times required to be specified in the notices of liquidation the creditor's claim shall be barred. All contingent liabilities of the liquidated credit union shall be discharged upon the supervisor's order to liquidate the credit union. The liquidating agent shall, upon completion, certify to the supervisor that the distribution or pooling of assets of the credit union is complete. [1984 c 31 § 70.]

31.12.695 Mergers. (1) For purposes of this section the merging credit union is the credit union whose charter ceases to exist upon merging with the continuing credit union. The continuing credit union is the credit union whose charter continues upon merging with the merging credit union.

(2) A credit union may be merged with another credit union with the approval of the supervisor and in accordance with requirements the supervisor may prescribe. The merger shall be approved by two-thirds majority vote of the board of each credit union and two-thirds majority vote of those members of the merging credit union voting on the merger at a special membership meeting called by the merging credit union board or by mail ballot as provided in RCW 31.12.195(4). The requirement of approval by the members of the merging credit union may be waived if in the supervisor's opinion the merging credit union is in imminent danger of insolvency.

(3) The property, rights, and interests of the merging credit union transfer to and vest in the continuing credit union without deed, endorsement, or instrument of transfer, although instruments of transfer may be used if their use is deemed appropriate. The debts and obligations of the merging credit union that are known or reasonably should be known are assumed by the continuing credit union. The continuing credit union shall cause to be published notice of merger once a week for three consecutive weeks in a newspaper of general circulation in the county in which the principal place of business of the merging credit union is located. The notice of merger shall inform creditors of the merging credit union how to make a claim on the continuing credit union and that if a claim is not made upon the continuing credit union within thirty days of the last date of publication creditors' claims that are not known by the continuing credit union may be barred. Unless a claim is filed as requested by the notice, or unless the debt or obligation is known or reasonably should be known by the continuing credit union, the debts and obligations of the merging credit union are discharged. Upon merger the

charter of the merging credit union ceases to exist. [1987 c 338 § 8; 1984 c 31 § 71.]

31.12.705 Conversion of state to federal credit union. (1) A credit union chartered under the laws of this state may convert itself into a federal credit union chartered under the laws of the United States as authorized by the federal credit union act. The conversion shall be approved by two-thirds majority vote of the members present at any regular or special membership meeting called for that purpose by the board. The meeting shall be held within thirty days of being called and the secretary shall notify the members and the supervisor of the meeting and its purpose as provided by the bylaws at least twenty days prior to the meeting.

(2) If the conversion is approved by the members a copy of the resolution certified by the board shall be filed with the supervisor within ten days of approval. The board may effect the conversion from a state-chartered credit union to a federal-chartered credit union upon terms agreed by the board and the proper federal authorities as provided by federal laws, rules, and regulations.

(3) A certified copy of the federal credit union charter or authorization issued to the credit union by the proper federal authority shall be filed in the supervisor's office and thereupon the state-chartered credit union ceases to exist except for the purpose of winding up its affairs and prosecuting or defending any litigation by or against the state-chartered credit union. For all other purposes the credit union is converted into a federal-chartered credit union and the state-chartered credit union may execute, acknowledge, and deliver to the successor federal credit union the instruments of transfer, conveyance, and assignment that are necessary or desirable to complete the conversion, and the property, tangible or intangible, and all rights, titles, and interests that are agreed to by the board and the proper federal authorities.

(4) Procedures, similar to those contained in subsections (1) through (3) of this section, prescribed by the supervisor shall be followed when a credit union chartered under the laws of this state merges with or converts to a credit union chartered under the laws of another state. [1984 c 31 § 72.]

31.12.715 Conversion of federal to state credit union. (1) A federal credit union located and conducting business in this state which becomes inoperative because of a change in the laws under which it is chartered or which is authorized to dissolve or convert to a state-chartered credit union in accordance with federal law may convert into a state-chartered credit union.

(2) The board of the federal credit union shall file with the supervisor proposed articles of incorporation and proposed bylaws, as provided by this chapter for organizing a new state-chartered credit union. If approved by the supervisor the federal-chartered credit union shall become a state-chartered credit union under the laws of this state and the assets and liabilities of the credit union vest in and become the property of the successor state-chartered credit union subject to all existing liabilities against the federal-chartered credit union. Shareholders and members of the

federal credit union may become shareholders and members of the successor state-chartered credit union.

(3) Procedures, similar to those contained in subsections (1) and (2) of this section, prescribed by the supervisor shall be followed when a credit union chartered under the laws of another state wishes to merge with or convert to a credit union chartered under the laws of this state. [1984 c 31 § 73.]

31.12.720 Satellite facilities. See chapter 30.43 RCW.

31.12.725 Liquidation—Disposition of unclaimed funds. (1) At a meeting specially called for the purpose of liquidation, upon the recommendation of at least two-thirds of the total members of the board of a credit union, the members of a credit union may by a two-thirds vote of the members present elect to liquidate the credit union.

(2) Upon a vote to liquidate under subsection (1) of this section, a committee of three shall be elected to liquidate the assets of the credit union. The committee shall act under the direction of the supervisor and may be reasonably compensated by the board of the credit union. Each share of the credit union shall be entitled to its proportionate part of the assets in liquidation after all deposits and debts have been paid. The assets of the liquidating credit union shall not be subject to contingent liabilities. Upon distribution of the assets, the credit union shall cease to exist except for the purpose of discharging existing liabilities and obligations.

(3) Funds representing unclaimed dividends in liquidation and remaining in the hands of the liquidating committee for six months after the date of the final dividend shall be deposited, together with all the books and papers of the credit union, with the supervisor. The supervisor may one year after receipt destroy such records, books, and papers as, in the supervisor's judgment, are obsolete or unnecessary for future reference. The funds may be deposited in one or more trust companies, mutual savings banks, savings and loan associations, or national or state banks to the credit of the supervisor in trust for the members of the liquidating credit union entitled to the funds. The supervisor may pay to a person entitled to it that person's portion of the funds upon the receipt of satisfactory evidence that the person is entitled to a portion of the funds. In case of doubt or of conflicting claims, the supervisor may require an order of the superior court of the county in which the credit union was located authorizing and directing the payment of the funds. The supervisor may apply the interest earned by the funds toward defraying the expenses incurred in the holding and paying of the funds. Five years after the receipt of the funds, the funds still remaining with the supervisor shall be escheated to the state. [1984 c 31 § 74.]

Uniform unclaimed property act: Chapter 63.29 RCW.

31.12.735 Taxation of credit unions. Neither a credit union nor its members may be taxed upon its shares and deposits as property. A credit union shall be taxable upon its real property and tangible personal property, and every credit union shall be termed a mutual institution for savings and neither it nor its property may be taxable under any law which exempts savings banks or institutions for savings from

taxation. For all purposes of taxation, the assets represented by the regular reserve and other reserves, other than reserves for expenses and losses of a credit union, shall be deemed its only permanent capital, and in computing any tax, whether it be property, income, or excise, appropriate adjustment shall be made to give effect to the mutual nature of such credit union. [1984 c 31 § 75.]

31.12.902 Short title. This chapter may be known and cited as the "Washington State Credit Union Act." [1984 c 31 § 76.]

31.12.903 Application of chapter to credit unions operating on July 1, 1984. Credit unions organized and operating under the laws of this state as of July 1, 1984, may continue to operate after July 1, 1984, and need not comply with the requirements of organization under RCW 31.12.055 through 31.12.085. The activities of such credit unions conducted after July 1, 1984, shall be governed by the provisions of this chapter. [1984 c 31 § 77.]

31.12.904 Severability—1984 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. [1984 c 31 § 80.]

31.12.905 Effective date—1984 c 31. This act shall take effect on July 1, 1984. The supervisor of savings and loans may immediately take such steps as are necessary to ensure that this act is implemented on its effective date. [1984 c 31 § 81.]

Chapter 31.12A

CREDIT UNION SHARE GUARANTY ASSOCIATION ACT OF 1975

Sections

31.12A.005	Purpose.
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31.12A.070	First meeting of members and board of directors.
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31.12A.130	Taxation.
31.12A.140	Immunity.
31.12A.900	Short title.
31.12A.910	Construction—1975 1st ex.s. c 80.
31.12A.920	Section headings not part of law—1975 1st ex.s. c 80.
31.12A.930	Effective date—1975 1st ex.s. c 80.
31.12A.940	Severability—1975 1st ex.s. c 80.

Master license system exemption: RCW 19.02.800.

31.12A.005 Purpose. The purpose of this chapter is to provide funds arising from assessments upon member credit unions chartered by the state of Washington (1) to

guarantee payment, to the extent herein provided, to credit union shareholders of the amount of loss to their share and deposit accounts in a liquidating member credit union, and (2) to provide other services to promote the stability of state-chartered credit unions. In the judgment of the legislature, the foregoing purposes 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. [1982 c 67 § 1; 1975 1st ex.s. c 80 § 2.]

31.12A.010 Definitions. As used in this chapter, unless the context otherwise requires, the terms defined in this section shall have the meanings indicated.

(1) "Assessment" means the amount levied by the association against its members in order to carry out its stated purposes.

(2) "Association" means the credit union share guaranty association created in RCW 31.12A.020.

(3) "Board" means board of directors of the guaranty association.

(4) "Contracted guarantees" means those liabilities specifically agreed to by the association for providing assistance to member credit unions or for indemnifying any other entity against loss because of its participation in the absorption or liquidation of a distressed member credit union.

(5) "Credit union" means a credit union organized and authorized under laws contained in chapter 31.12 RCW, as now or hereafter amended.

(6) "Initial member" means a member qualified by the supervisor within sixty days after September 1, 1975, but not yet ratified by the board.

(7) "Member" means a member of the guaranty association, ratified by the board.

(8) "Share account" of a credit union shareholder includes the share and/or deposit accounts and the share and/or deposit certificates of which the shareholder is owner of record with the credit union.

(9) "Shareholder" includes both members and nonmembers of a credit union, who have either shares and/or deposits in the credit union, including deposits of deferred compensation as referred to in RCW 31.12.125(10).

(10) "Supervisor" means the state supervisor of the division of savings and loan associations, or his successor in the event of a departmental restructuring.

(11) "Transfer" means entering on the credit union's books of account a decrease to one account and a corresponding increase to another account. [1985 c 7 § 98; 1983 c 48 § 1; 1982 c 67 § 2; 1980 c 41 § 11; 1975 1st ex.s. c 80 § 3.]

Severability—1980 c 41: See note following RCW 11.62.030.

31.12A.020 Guaranty association created. There is hereby created a nonprofit unincorporated legal entity to be known as the Washington credit union share guaranty association, which shall be comprised of state-chartered credit unions in the state of Washington and governed by a board of directors as in RCW 31.12A.060 provided. [1975 1st ex.s. c 80 § 4.]

31.12A.030 Powers of the association. The association shall have power:

(1) To use a seal, to contract, to sue and be sued;

(2) To make bylaws for conduct of its affairs, not inconsistent with the provisions of this chapter;

(3) To lend and to borrow money, and require and give security;

(4) To receive, collect, and enforce by legal proceedings, if necessary, payment of all assessments for which any member may be liable under this chapter, and payment of any other debt or obligation due the association;

(5) To invest and reinvest its funds in investments permitted for credit unions in RCW 31.12.425, provided such investments do not exceed a maximum maturity of one year;

(6) To acquire, hold, convey, dispose of and otherwise engage in transactions involving or affecting real and personal property of all kinds;

(7) To assess each member an amount not exceeding that permitted in RCW 31.12A.050 for liquidations to cover the expense of operation of the association, as established in the bylaws, and for such other proper purposes of the association;

(8) To enter into contracts of insurance or reinsurance, insuring in whole or in part its contractual guaranties to its member credit unions and other insurance or bonding contracts necessary or advisable in the conduct of its business; and

(9) To carry out the applicable provisions of this chapter. [1985 c 7 § 99; 1982 c 67 § 3; 1975 1st ex.s. c 80 § 5.]

31.12A.040 Membership—Association operative date. (1) Every credit union meeting the following qualifications is eligible for membership in the association:

(a) Must be in business as a duly authorized credit union.

(b) Must be operating in compliance with applicable laws and the rules and regulations of the supervisor.

(c) Must not be in the process of liquidation, either voluntary or involuntary.

(2) Prior to the operative date stated in subsection (3) of this section, application for membership shall be made by the credit union in writing to the association on forms designed and furnished by the association, and filed with the secretary. An application fee, as fixed in the bylaws, payable to the order of the association, shall accompany each such application. If the application is found to be:

(a) Complete, and the applicant qualified for membership: The association shall issue and deliver to the applicant a certificate of membership in appropriate form.

(b) Incomplete: The association shall require the applicant to refile said application in its entirety within thirty days.

(c) Not qualified: The association shall notify said applicant within thirty days of filing: PROVIDED, That said applicant will be allowed to meet qualification standards under conditions as provided in the bylaws of the association.

(3) The initial membership of the association shall be comprised of all those credit unions qualified under subsection (1) of this section by the supervisor within sixty days

after September 1, 1975, with final ratification by the initial board of directors subject to full compliance of all qualifications for membership within one hundred twenty days after September 1, 1975.

(4) Membership in either this association or the federal share insurance program under the national credit union administration shall be mandatory. [1982 c 67 § 4; 1975 1st ex.s. c 80 § 6.]

31.12A.050 Funding—Investments—Termination.

(1) Funding of the association shall be by transfers to a share guaranty association contingency reserve as follows:

(a) Credit unions approved by the supervisor and ratified by the board for membership subsequent to those initial members shall establish a share guaranty association contingency reserve by transferring from their guaranty fund an amount equal to one-half of one percent of the total guaranteeable outstanding share and deposit balances as of the date of membership. When one member credit union is merged into another member credit union, the continuing credit union shall include in its share guaranty contingency reserve the share guaranty contingency reserve of the merged credit union. A nonmember credit union merging with a member credit union must transfer into the share guaranty contingency reserve of the continuing credit union an amount equal to one-half of one percent of the total guaranteeable outstanding share and deposit balances of the nonmember credit union as of the effective date of the merger, as determined by the supervisor.

(b) On the first business day of each year, member credit unions shall make a transfer of an amount sufficient to adjust the contingency reserve to a level of one-half of one percent of the guaranteeable outstanding share and deposit balances as of December 31st of the previous year. If the member's guaranteeable outstanding share and deposit balances decrease from the previous year, any excess which may then appear in the contingency reserve may be transferred to the guaranty fund.

(c) The board may require one additional transfer during the calendar year of an amount not to exceed one-half of one percent of the guaranteeable outstanding share and deposit balances as of December 31st of the previous year. Credit unions which have merged during the year and credit unions which have joined during the year will be subject to the one additional transfer, even if that required transfer occurred before ratification of the joining member or the merger of the two credit unions. The transfer will be based on the guaranteeable share and deposit balances of those credit unions as of the following dates:

(i) For new members, the balances as of the date of membership;

(ii) For members that merge, the sum of the balances as of December 31st of the previous year;

(iii) For a nonmember merging with a member, the sum of the member's balances as of December 31st of the previous year, and of the nonmember's balances as of the effective date of the merger.

(2) Sums specified in subsection (1) of this section may be offset from the statutory transfer requirement to the guaranty fund and shall be retained in the credit union share guaranty contingency reserve as an integral part of its

guaranty fund until such time and if necessary to be drawn for the purposes set forth in this chapter.

(3) Members' share guaranty association contingency reserve funds shall be invested in investments as permitted in the bylaws of the association.

(4) The board, in concurrence with the supervisor, may also suspend or diminish the transfer in any given period after reaching a normal operating sufficiency as provided in the bylaws.

(5) Membership in this association may be terminated upon approval by a majority of the credit union members responding to such a proposal and subject further to acceptance by the national credit union administration of continued share insurance coverage under the national credit union administration share insurance program. Notice of such intentions shall be in writing to the association's board of directors at least twelve months prior to such contemplated action: PROVIDED, That in the event that the credit union board has voted to recommend to the membership liquidation, conversion from state to federal credit union charter, or merger with or conversion to a credit union organized under the laws of another state, the liquidating, converting, or merging member will notify the association in writing within seven days after the credit union board has taken such action. Share guarantee coverage through the association will terminate with the effective date of the new charter or completion of the liquidation or merger as determined by the supervisor.

(6) Except for a credit union merging with a member credit union, any credit union terminating membership in the association shall be assessed its pro rata share of the difference, if any, between the association's current liability for contracted guarantees and the amount from previous assessments currently held for contracted guarantees by the association. Such difference shall be determined by the supervisor at the time the membership is terminated. If the amount of the assessment exceeds the amount of the actual obligation when finalized, the excess shall be refunded in the same proportion as paid. [1983 c 48 § 2; 1982 c 67 § 5; 1980 c 41 § 12; 1975 1st ex.s. c 80 § 7.]

Severability—1980 c 41: See note following RCW 11.62.030.

31.12A.060 Management. (1) The affairs and operations of the association shall be managed and conducted by a board of directors and officers.

(2) The board shall consist of not more than five directors, as provided by the bylaws. Directors shall be elected by members for terms, as fixed by the bylaws, of not more than three years. The board shall have power to fill vacancies occurring during the interim between annual meetings and until an election is held at the next annual meeting, to fill that portion of the unexpired term.

(3) The officers shall be elected by the board, and shall be a chairman of the board, a vice chairman, a secretary and a treasurer. The offices of secretary and treasurer may be held by the same person. The officers shall have the usual and customary powers and responsibilities of the respective offices, as fixed by the bylaws.

(4) The directors shall be compensated only to the extent of actual out-of-pocket travel and meeting expenses as

provided in the bylaws. [1982 c 67 § 6; 1975 1st ex.s. c 80 § 8.]

31.12A.070 First meeting of members and board of directors. (1) Within thirty days after the operative date of this chapter, the supervisor shall call a first meeting of the initial members of the association for the purpose of electing directors and shall give written notice of the time and place of such meeting. The meeting shall be held within sixty days after such operative date, at a place in this state selected by the supervisor and of convenience to members. The supervisor shall preside at the meeting.

(2) The initial board of directors shall meet within thirty days after the first meeting of members, to elect officers, consider bylaws, and transact such other business relating to the association as may properly come before it. [1975 1st ex.s. c 80 § 9.]

31.12A.080 Bylaws. (1) The first bylaws of the association shall be as adopted by its initial board, and the board shall so adopt bylaws within three months after the association has become operative. All bylaws, and amendments thereof, shall be promptly filed with, and are subject to the approval of, the supervisor, and shall be approved if found by the supervisor to be reasonable, and fair and equitable to the association and its members. Among the customary, useful, and desirable provisions the bylaws shall provide:

- (a) For the date and place of holding the annual meeting of members.
- (b) Procedure for holding of special meetings.
- (c) For voting privilege.
- (d) For quorum requirements.
- (e) For qualifications of directors, for procedures for nomination, election and removal of directors; and number, term and compensation of directors.
- (f) For the bonding of any individual who may be expected to handle funds for the association.
- (g) Qualifications for membership.
- (h) Duties of officers.
- (i) Application fees and assessment fees.
- (j) Fines, if any.
- (k) Coverage loss limits.
- (l) Powers and duties of the board.
- (m) Types of investments, liquidity, and normal operating sufficiency.
- (n) Such other regulations as may be deemed necessary.

(2) After adoption of initial bylaws by the board, the bylaws shall be subject to amendments only by vote of the members. The secretary-treasurer of the association shall promptly file all bylaws and amendments with the supervisor. No bylaws or amendments thereto, except the adoption of initial bylaws, shall be effective until approved by the supervisor as hereinabove in this section provided. [1975 1st ex.s. c 80 § 10.]

31.12A.090 Liquidation of members—Assessment.

(1) In the event a member of the association is placed in liquidation, either voluntary or involuntary, the supervisor or his representative shall determine as soon as is reasonably possible the probable assessment, if any, resulting therefrom

to its shareholders. If an assessment seems to be indicated, the supervisor or his representative shall promptly inform the association in writing of the probable amount of such assessment. In determining the probable assessment for the liquidating member, charges, if any, for services of the supervisor or his representative, or his staff, as well as accrued but unpaid interest or dividends on share accounts, shall not be deemed liabilities of the liquidating credit union; and, with the consent of the association, all illiquid holdings (furniture, fixtures and other personal property) of the liquidating member, at the fair recoverable value thereof, as determined by the supervisor or his representative, may be excluded as assets. In determining the assessment as to a particular share account, the supervisor or his representative shall first deduct the amount of any accrued and currently payable obligation of the shareholder to the liquidating credit union.

(2) Within thirty days after receipt by the association of the foregoing information, the board shall notify the remaining members of the association of the aggregate amount required to make good the probable net loss to share accounts, subject to the following conditions:

(a) The amount of loss to be made good to any shareholder shall not be less than provided by the national credit union administration share insurance program, with authority vested in the association to increase the coverage.

(b) To the amount of the assessment as otherwise determined pursuant to this section, the board may add such amount as it may deem to be reasonably necessary to cover its clerical, mailing and other expense connected with the assessment and distribution of the proceeds thereof to shareholders of the liquidating credit union, not to exceed actual costs of such mailing and clerical services.

(c) The amount of the assessment shall be prorated among the assessed members against their share guaranty contingency reserve: PROVIDED, That members shall not be liable for any amount of assessment exceeding their share guaranty contingency reserve or for any assessments exceeding those permitted in RCW 31.12A.050 as now or hereafter amended.

(d) That a plan for an orderly and expeditious liquidation be presented to the board of directors for their consideration and approval. In cases where a central or other eligible credit union is authorized to act as liquidator or liquidating agent, the association would provide an indemnity against loss to such authorized credit union.

(3) In case of liquidation the board shall cause written notice to each member only if a potential assessment is indicated and the probable amount of such contingency as it relates to a percentage of their total share guaranty contingency reserve. The actual assessment shall be paid by members upon completion of liquidation or sooner, as determined by the board of directors. In all cases the total reserve structure of a liquidating credit union, including its share guaranty contingency reserve, shall be utilized in concluding the liquidation. [1982 c 67 § 7; 1975 1st ex.s. c 80 § 11.]

31.12A.100 Payment to shareholders—Subrogation.

(1) Upon collection in full of the amount assessed against members as provided for in RCW 31.12A.090, or other

provision satisfactory to the board, the association shall conclude the liquidation subject to acceptance by the supervisor.

(2) If illiquid holdings of the liquidating member have not been included as assets in determining net loss to share accounts, as provided for in RCW 31.12A.090(1), the association shall be subrogated to all rights of shareholders with respect to such holdings and to the extent of the value thereof so excluded and reflected in the assessment of association members; and the officers of the liquidating member or other persons having authority with respect thereto shall execute such conveyances, assignments, or other documents as may be requested by the association to facilitate recovery by the association in due course of the amount of its interest in such assets or so much thereof as may in fact be recoverable. The association shall have the right to bring and maintain suit or other action in its own name for the enforcement of any right of the insolvent member or its shareholders with respect to any such asset. [1975 1st ex.s. c 80 § 12.]

31.12A.110 Disposition of amounts recovered. Amounts recovered by the association pursuant to its right of subrogation as provided in RCW 31.12A.100(2) shall be refunded pro rata to those members who paid assessments out of which right of subrogation arose. [1975 1st ex.s. c 80 § 13.]

31.12A.120 Reports—Recommendations—Examination. (1) Within sixty days after expiration of each calendar year, the association shall render a report in writing of its financial affairs and transactions for the year, and of its financial condition at year-end. The association shall furnish a copy of the report to each member and to the supervisor.

(2) The financial affairs of the association shall be subject to examination by the supervisor at such intervals as he may deem advisable in relation to the extent of the association's activities. The cost of examination shall be borne by the association. In lieu of his own examination, the supervisor may accept the report of any competent accountant, satisfactory to the supervisor. [1975 1st ex.s. c 80 § 14.]

31.12A.130 Taxation. The association shall be exempt from all taxes and fees now or hereafter imposed by the state of Washington or any county, municipality, or local authority or subdivision; except that any real property owned by the association shall be subject to taxation to the same extent according to its value as other real property is taxed. [1975 1st ex.s. c 80 § 15.]

31.12A.140 Immunity. There shall be no separate and individual liability on the part of and no cause of action of any nature shall arise against any member insurer, agents or employees of the association, the board of directors, or the supervisor or his representatives, for any action taken by them in the performance of their powers and duties under this chapter. [1975 1st ex.s. c 80 § 16.]

31.12A.900 Short title. This chapter shall be known and may be cited as the Washington credit union share guaranty association act. [1975 1st ex.s. c 80 § 17.]

31.12A.910 Construction—1975 1st ex.s. c 80. This chapter shall be liberally construed to effect the purpose stated in RCW 31.12A.005, which shall constitute an aid and guide to interpretation. [1975 1st ex.s. c 80 § 18.]

31.12A.920 Section headings not part of law—1975 1st ex.s. c 80. Section headings in this act do not constitute any part of the law. [1975 1st ex.s. c 80 § 19.]

31.12A.930 Effective date—1975 1st ex.s. c 80. This act shall become effective on September 1, 1975. [1975 1st ex.s. c 80 § 21.]

31.12A.940 Severability—1975 1st ex.s. c 80. If any clause, sentence, paragraph, section or part of this act shall for any reason be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder thereof but shall be confined in its operation to the clause, sentence, paragraph, section or part thereof directly involved in the controversy in which such judgment has been rendered. [1975 1st ex.s. c 80 § 20.]

Chapter 31.13 CENTRAL CREDIT UNIONS

Sections

- 31.13.010 Definitions.
- 31.13.020 Authority to organize and operate—Rights and powers—Name—Preexisting unions.
- 31.13.030 Bylaws.
- 31.13.040 Additional rights and powers.
- 31.13.050 Reserve fund.
- 31.13.900 Severability—1977 ex.s. c 207.

Master license system exemption: RCW 19.02.800.

31.13.010 Definitions. The terms used in this chapter shall have the following meanings unless the context in which they are used clearly indicates otherwise.

(1) "Members" shall mean any organization which meets the requirements of chapter 31.12 RCW.

(2) "Member credit union" shall mean any credit union which has been elected to membership and subscribed for at least one share in the central credit union and paid the initial installment thereon.

(3) "Credit union" shall mean a corporation organized under chapter 31.12 RCW or chartered to do business as a credit union by the administrator of the national credit union administration or the successor or successors of him.

(4) "Funds" shall mean deposits and shares of the central credit union members.

(5) For the purpose of establishing required reserves all assets except the following are "risk assets":

- (a) Cash on hand;
- (b) Deposits and shares in banks, trust companies, savings and loan associations, mutual savings banks or credit unions;

(c) Assets which are insured or guaranteed by, or due from, the federal government or any agency or instrumentalities thereof. [1984 c 31 § 79; 1977 ex.s. c 207 § 5.]

Severability—Effective date—1984 c 31: See RCW 31.12.904 and 31.12.905.

31.13.020 Authority to organize and operate—Rights and powers—Name—Preexisting unions. A central credit union may be organized and operated under this chapter. The central credit union shall have all the rights and powers granted in and be subject to all provisions of chapter 31.12 RCW which are not inconsistent with this chapter. Such credit union shall use the term "central" in its official name. Any central credit union in existence on September 21, 1977 in the state of Washington shall operate under the provisions of this chapter. [1977 ex.s. c 207 § 1.]

31.13.030 Bylaws. Notwithstanding any other provision of law, the central credit union may adopt bylaws enabling it to exercise any of the powers, as now existing or hereafter conferred upon, a federally chartered central credit union doing business in this state which is subject to the regulations of the administrator of the national credit union administration, or the successor or successors of him, if the supervisor finds that the exercise of such power:

- (1) Serves the public convenience and advantage; and
- (2) Equalizes and maintains the quality of competition between the state chartered central credit union and any federally chartered central credit union. [1977 ex.s. c 207 § 2.]

31.13.040 Additional rights and powers. The central credit union shall have the following additional rights and powers:

- (1) May offer variable rate certificates to its members.
- (2) Upon approval of its board of directors, may borrow money on behalf of the central credit union for the purpose of making loans to its members and the payment of debts or withdrawals: PROVIDED, That said borrowing capacity shall not exceed fifty percent of the central credit union's paid-in and unimpaired capital and surplus.
- (3) May lend to its member credit unions an amount not to exceed seventy-five percent of the aggregate funds of such member credit unions on deposit with the central credit union.
- (4) Establish deposit accounts for its member credit unions, under conditions specified by the board of directors. Such deposit accounts shall bear interest at a rate established by the central credit union, which interest shall be considered a business expense.
- (5) May enter into agreements with its member credit unions to purchase or sell any:
 - (a) Real estate loan made by member credit unions;
 - (b) Certificate or obligation of the United States government or any agency thereof, owned by member credit unions; and
- (c) Student loans made by member credit unions pursuant to the federally insured student loan program under Public Law No. 89-329, Title IV, Part (b) of the Higher Education Act of 1965, as amended. [1977 ex.s. c 207 § 3.]

31.13.050 Reserve fund. The central credit union may maintain only one reserve fund in addition to the Washington state guarantee fund: PROVIDED, That before payment of any interest or dividends by the central credit union, there shall be set apart in said reserve fund not less than ten percent of the net income which has accumulated during the next preceding guaranty period, until such time as the fund shall equal five percent of the risk assets of the central credit union, and thereafter there shall be added to the fund at the end of such period a percentage of the net income which has accumulated during that period which will result in at least maintaining such fund at that amount. [1977 ex.s. c 207 § 4.]

31.13.900 Severability—1977 ex.s. c 207. If any provision of this 1977 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 207 § 7.]

Chapter 31.16

CROP CREDIT ASSOCIATIONS

Sections

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Warehouse receipts: Article 62A.7 RCW.

31.16.020 Purpose. The purpose of this chapter is to promote the orderly marketing of standard crops grown in the state of Washington by providing credit facilities

whereby the growers thereof may finance the harvesting, storing and marketing of same. [1921 c 121 § 2; RRS § 2911. FORMER PART OF SECTION: 1921 c 121 § 3, part now in RCW 31.16.030.]

31.16.025 Crop credit associations authorized—
"Standard crops" defined. Any number of bona fide growers of standard crops in the state of Washington, not less than ten, may associate themselves together to form a crop credit association in the manner hereinafter provided. The term "standard crops" as herein used means wheat, hay, apples, potatoes, and such other crops as the director of agriculture of the state of Washington shall hereafter designate. [1988 c 25 § 6; 1921 c 121 § 3; RRS § 2912. Formerly RCW 31.16.010, part and 31.16.020, part.]

31.16.028 Classification of associations. Such crop credit associations shall be divided into two classes:

(1) Temporary crop credit associations, which shall exist for one year and for the purpose of establishing credit facilities for the handling of one crop.

(2) Permanent crop credit associations, which may incorporate for a term not exceeding fifty years, with such powers and privileges as are hereinafter set forth or may be conferred thereon by law. [1921 c 121 § 4; RRS § 2913. Formerly RCW 31.16.010, part.]

31.16.030 Director's powers and duties, bond—
"Director" defined. The director of agriculture of the state of Washington shall have general charge and supervision of all such crop credit associations as herein provided. Before beginning his duties as the director of crop credit associations he shall make and file in the office of the secretary of state a bond in the penal sum of five thousand dollars, to be approved by the secretary of state, conditioned upon the faithful discharge of his duties as such director of crop credit associations. The word "director" wherever it shall hereafter appear in this chapter shall mean the director of agriculture of the state of Washington. [1988 c 25 § 7; 1921 c 121 § 5; RRS § 2914.]

31.16.040 Articles of association. Any qualified persons desiring to form a crop credit association as herein provided shall execute in triplicate and acknowledge before some officer authorized to take the acknowledgment of deeds articles of association, one copy of which shall be filed in the office of the director, one copy in the office of the secretary of state of the state of Washington, and one copy shall be kept as part of the permanent records and files of such association. [1981 c 302 § 24; 1921 c 121 § 6; RRS § 2915.]

Severability—1981 c 302: See note following RCW 19.76.100.

31.16.050 Temporary association—Articles—Fees. If such association is to be a temporary association, said articles shall state the name of the association, its principal place of business, the amount of the membership fee to be charged and the amount of credit in the aggregate which it is estimated its members will require. In addition thereto, the organizers of such association shall file the application

for a permit to transact business as hereinafter more fully set forth. The organizers of such temporary organization shall also pay to the director a fee of five dollars, and to the secretary of state of Washington a fee of ten dollars. [1921 c 121 § 7; RRS § 2916.]

31.16.060 Permanent associations—Articles—
Contents. The organizers of a permanent crop credit association shall likewise execute in quadruplicate and file as above provided original copies of proposed articles of association therefor. Said articles of association shall set forth:

(1) The name of the association which shall contain the words "Crop Credit Association".

(2) Its principal place of business.

(3) The term for which it is to exist, which shall not exceed fifty years.

(4) The amount of membership fees required of its members, not to exceed one hundred dollars each.

(5) The business desired to be transacted by said association, if any, in addition to the powers and privileges hereinafter set forth. [1921 c 121 § 8; RRS § 2917.]

31.16.070 Certificate of authority. If the director shall be convinced that there is a need for the proposed crop credit association and that the business which it is to do, as shown by said articles of association, is in accordance with the provisions of this chapter, he shall issue a certificate authorizing the filing of the said articles of association in the office of the secretary of state of Washington. [1981 c 302 § 25; 1921 c 121 § 9; RRS § 2918.]

Severability—1981 c 302: See note following RCW 19.76.100.

31.16.080 Permanent association—Fees. The organizers of any permanent crop credit association shall pay the following filing and license fees: To the director, ten dollars; to the secretary of state, fifteen dollars, and the annual license fee required of corporations to be collected by the secretary of state as in the case of other corporations; and thereafter said association shall pay to the secretary of state, annually on or before the first day of July, a license fee of fifteen dollars. [1921 c 121 § 10; RRS § 2919.]

31.16.090 Powers. Upon the issuance of said certificate of authority by the director and the issuance of a license by the secretary of state, every such association shall be a body corporate and politic in fact and in name, by the name stated in the articles of association, and shall have power:

(1) To sue and be sued in any court having competent jurisdiction.

(2) To make and use a common seal.

(3) To purchase, hold, own, mortgage, sell and convey real and personal property[,] to borrow money as shall be necessary for the needs of said corporation and to lend same, or any part thereof, or any of the funds of the association to its members upon such security, real or personal, as it shall require; and to execute, as evidence of money borrowed, any and all forms of notes, bonds, debentures and certificates, and secure same by the execution of any mortgage, lien, deed of trust or the surrender of any property owned or held by it, and to pay, cancel, satisfy and renew the same, and to

receive any of the above evidences of indebtedness and securities for money loaned.

(4) To engage in the warehouse and storage business for the benefit of its members, and to handle, prepare for market, store, ship and sell all agricultural crops for or on account of its members, and to charge and receive compensation for any such service.

(5) To appoint such officers, agents and servants as the business of the corporation shall require, to define their powers, prescribe their duties, and fix their compensation.

(6) To require of them such security as may be thought proper for the fulfillment of their duties and to remove them at will; except that no trustee shall be removed from office unless by vote of a majority of the members thereof.

(7) To make bylaws not inconsistent with the laws of this state or of the United States.

(8) To manage its property, to regulate its affairs, to provide for the transfer of membership therein, and to carry on all kinds of business within the objects and purposes of said association as expressed in the articles of said association or contained in this chapter.

(9) To act as broker for its members in disposing or selling of their crops, and to advance and lend money to any such member on the security of such crops or such other security, real or personal, as it may require.

(10) To hold, own and vote stock or other evidence of ownership in any other cooperative association or corporation.

(11) To buy, sell and deal in and to procure for its members such supplies as shall be necessary or useful in and about the growing, harvesting and marketing of any agricultural crop grown or to be grown by them. [1921 c 121 § 11; RRS § 2920.]

31.16.100 Association may act as broker—Buying, selling, dealing prohibited. No crop credit association shall engage in the business of buying or selling for its own account, directly or indirectly, any crop grown, raised or produced by its members, or others, but such association may be and act as broker, as in this chapter provided, for the sale of the crops of its members. None of the funds or assets of any such association shall ever be used for or expended in and about the business of buying, selling or dealing in any such crops. [1921 c 121 § 12; RRS § 2921.]

31.16.110 Bylaws. The organizers of every crop credit association shall, before it commences business, adopt bylaws for the government of said association, in which provision shall be made for the admission of members thereto; the terms of admission, lapsation and expulsion, and the membership fee of not to exceed one hundred dollars which shall be required from each member. Upon the full payment of any such membership fee the association shall issue a certificate of membership which shall be transferable only to bona fide growers of standard farm crops under such conditions and regulations as shall be provided in such bylaws. No person shall become a member of any crop credit association who is not, at the time of becoming such member, a bona fide grower of standard farm crops in the state of Washington. Such bylaws shall also contain rules and regulations for the proper and orderly government of

such association and the exercise of its lawful powers. Every association shall submit its proposed bylaws to the director for his approval that the government of all crop credit associations in the state of Washington shall be uniform. If said bylaws are not approved by the said director, the same shall be suspended by his order until bylaws approved by him shall be adopted by such crop credit association. [1921 c 121 § 13; RRS § 2922.]

31.16.120 Trustees and officers—Election and removal. Such association shall be managed by a board of not less than three trustees. The trustees shall be elected by and from the members of the association at such time and for such term of office as the bylaws may prescribe and shall hold office during the term for which they are elected and until their successors are elected and qualified; but a majority of the members shall have the power, at any regular or special meeting legally called for that purpose, to remove any trustee or officer for cause, and fill the vacancy. The officers of every such association shall be a president, vice president, secretary and treasurer, who shall be elected by the trustees. Each of said officers must be a member of the association. All elections shall be by ballot. Each member of the association shall be entitled to one vote only. [1921 c 121 § 14; RRS § 2923.]

31.16.130 Loans and security. Any crop credit association organized under the provisions of this chapter shall have authority to make loans to its members, in accordance with their credit needs, not to exceed sixty-six and two-thirds percent of the fair market value of the standard farm crops grown by such member, and in turn may mortgage, transfer or hypothecate the said crops as direct or collateral security for the borrowing of money necessary to make such advances and loans to its members. Each loan by the association to its members shall be evidenced by the negotiable promissory note of the member borrower in an amount exceeding the credit extended to such member by ten percent, with interest at a rate fixed by the association and maturing at least fifteen days prior to the maturity of the crop credit notes herein provided for, which note shall be secured by a negotiable warehouse receipt covering said standard agricultural product; a policy of insurance against loss by fire, and a certificate of inspection by the proper authority of the state of Washington as to the quality and variety of the farm product offered as such security. All such crops so offered as security for such loans must be free and clear of all incumbrances, except inspection, warehouse and insurance charges accruing against same: PROVIDED, That when the standard crop used as the basis of credit is wheat, seventy-five percent of the fair market value may be loaned thereon and no certificate of inspection thereof shall be required. [1921 c 121 § 15; RRS § 2924.]

Warehouse receipts: Article 62A.7 RCW.

31.16.150 Application for authority to issue notes. Every crop credit association which shall desire to issue its notes or commercial paper, secured by the crops of its members as hereinabove provided, shall make application to the director for authority to issue crop credit notes of the

association, which application shall be made upon blanks furnished for that purpose by said director and shall show:

(1) The name and place of business of the association making such application.

(2) The kind of standard farm crop to be used by it for credit purposes, and only one standard farm crop shall be used for each issue of crop credit notes.

(3) The estimated quantity and quality of the crop to be so used.

(4) The estimated amount of money desired to be borrowed against any such crop.

(5) The period of credit desired, not to exceed six months.

(6) The estimated number of growers of such standard crop.

(7) The name of the trustee.

Said application shall be signed by the president and secretary of such association and attested by its seal, and shall be accompanied by a fee of five dollars. [1921 c 121 § 16; RRS § 2925.]

31.16.160 Certificate of authority. Upon the receipt of said application and the filing fee by the director he shall cause investigation thereof to be made covering the information contained in such application, and if he finds the said application in all respects in accordance with this chapter, he shall issue a certificate of authority to the trustee named in said application, in which certificate shall be stated a fair price for credit purposes of the farm crops mentioned in said application, to be used as the basis of credit in the issue of crop credit notes. Said fair price shall be determined by said director from any and all information obtained by him with reference to the particular farm crop, covering the condition of the markets in the United States and elsewhere; the visible supply of such product and the kind, quality and condition of same. Said fair price shall not be considered as in any manner fixing the price at which said products may or shall be bought or sold, but same shall be fixed only for the purpose of further assuring the purchasers of any securities or paper issued on the basis of the credit of such farm crop. [1921 c 121 § 17; RRS § 2926.]

31.16.170 Transfer of security to trustee. Upon the issuance of said certificate of authority to the trustee named in any such application, said trustee shall immediately so inform the officers of the association making such application. The association shall thereupon forthwith deliver to the said trustee all notes, warehouse receipts, securities, insurance policies and certificates of inspection held by it or which shall be required by the director as security for the proposed issue of crop credit notes, and shall convey full title of all property and securities represented by any evidence of indebtedness or constituting a lien thereon to the said trustee, to be by said trustee used as the security for the issuance of the proposed crop credit notes by said association. [1921 c 121 § 18; RRS § 2927.]

31.16.180 Notes—Issuance and payment—Aggregate amount—Denominations—Contents and form. Thereupon said crop credit association may issue, under the seal and signed by the president and secretary of such

association, crop credit notes in the aggregate not to exceed the amount of such issue of notes stated in the certificate of authority of the director to the trustee. Said notes shall be in denominations of not less than fifty dollars nor more than five thousand dollars, payable at a fixed period of maturity, not to exceed six months from the date of the certificate of authority, as shall be determined by the said board of trustees. Said notes shall thereupon be delivered to said trustee, who shall countersign same and deliver them at such times and in such amounts and at such discount as shall be determined by the board of trustees by resolution entered upon the minutes of their proceedings. Said notes shall contain the number of the certificate of authority and the date of issuance thereof, together with the facsimile signature of the director and a series number, and shall state the kind of standard crop held by said trustee as security therefor, and shall otherwise be in such form as the director shall prescribe. [1921 c 121 § 19; RRS § 2928.]

31.16.190 Distribution of proceeds of notes—Brokerage charge. Said trustee shall deliver said notes, properly countersigned, and receive the proceeds of the sale thereof, which proceeds shall be by said trustee immediately distributed to the members of said association in accordance with their credit requirements as shown by a schedule signed by the officers of said association and filed with the trustee showing the name and address of each member borrower, the kind, quantity and value of the crop pledged by him as security for his loan, and the amount borrowed thereon, less a brokerage charge of not to exceed two percent thereof for the use of the association as determined by its trustees. [1921 c 121 § 20; RRS § 2929.]

31.16.200 Compensation of trustee. The trustee holding the said securities herein provided shall be entitled, as compensation for all of its services rendered under this chapter, to a fee not to exceed one percent of the par value of the notes issued by it where such issue shall be fifty thousand dollars or less, and not to exceed one-half of one percent for any such issue of more than fifty thousand dollars, payable from the brokerage charged by the association, as shall be agreed between the association and said trustee, which agreement shall be approved by the director. [1921 c 121 § 21; RRS § 2930.]

31.16.210 Notes, general obligation. All such crop credit notes shall be general obligations of the crop credit association issuing same and shall be secured by the entire number of collateral notes of the members of said association, participating in such issue, deposited with said trustee. [1921 c 121 § 22; RRS § 2931.]

31.16.220 Payment of members' loans. Upon maturity of the notes evidencing the members' indebtedness to the association, the said trustee shall collect and place same in a fund for the retirement of said crop credit notes. Upon the collection of said indebtedness, which shall include the ten percent excess, as hereinbefore provided, any and all warehouse receipts, insurance policies, certificates of inspection, or other security deposited for the security of the indebtedness of said member, shall be delivered to the said

member or to his order. The funds so repaid by the members of the association, upon the order of the trustees of such association may be used for the immediate retirement of any outstanding crop credit notes of said issue, at a price not to exceed the face value of such crop credit notes. All members' notes, money, certificates and securities remaining in the hands of said trustee, after permission given it by the director, shall be returned to the crop credit association issuing same, which association shall collect as quickly as possible any remaining indebtedness under said issue then due to it. All sums so collected, less collection fees and expenses, shall be divided among and paid to the members of said association in proportion to the loans severally made to its members: PROVIDED, HOWEVER, That before any such division of moneys remaining after the retirement of any issue of crop credit notes, a full report of the issuance and sale of said notes and the retirement thereof shall be made to the director, and same shall not be distributed to the members of such association until the approval thereof by said director has been made in writing. [1921 c 121 § 23; RRS § 2932.]

31.16.230 Trustee's reports—Association's annual report. A full report of every issue of such crop credit notes shall be made to the director by the trustee at the time of sale of said notes and again at the time of the redemption thereof, said reports to be made upon blanks furnished therefor by said director. The director shall at all times have the right and privilege of inspecting the crops, securities, warehouse receipts and accounts of the said association or the said trustee until the issue secured by same shall have been fully paid and retired. Each association shall make an annual report to the director, showing the gross returns to said association from the business of the previous year; an itemized statement of its expenses; the amount of its net gain, if any, which shall have been transferred to a surplus account; and the amount of money distributed to its members. [1988 c 25 § 8; 1921 c 121 § 24; RRS § 2933.]

31.16.240 Capital fund. Every permanent association organized under this chapter may establish a capital account which shall be its working capital. It may transfer thereto any membership fees, commissions, fees or charges against its members or profits from sale of supplies to its members, and may use said capital fund in the transaction of any lawful business conducted by the association. [1921 c 121 § 25; RRS § 2934.]

31.16.250 Trustee, banks may act as. Any bank, trust company or mutual savings bank organized under the laws of the state of Washington may be and act as the trustee for the issuance of any crop credit notes provided for herein, and any bank organized under the laws of the United States, may also act as such trustee, subject to the supervision of the directors as in this chapter provided. [1921 c 121 § 26; RRS § 2935.]

31.16.255 Issuance of crop credit notes, restrictions—Rules and regulations. No issue of crop credit notes shall be made without first having secured the authority of the director, nor shall any such issue be founded upon

any other than standard agricultural crops grown in this state. The director shall make general rules and regulations governing the issuance of such notes and for the proper administration and enforcement of this chapter. [1921 c 121 § 27; RRS § 2936. Formerly RCW 31.16.140.]

31.16.260 Refunding notes. For good cause shown the director may permit the issuance of refunding notes to take up any balance of a series upon maturity thereof: PROVIDED, There shall be ample security for said refunding issue in accordance with the requirements of this chapter, said refunding series to be issued at or prior to the maturity of said first series of notes covering any such crop. [1921 c 121 § 28; RRS § 2937.]

31.16.270 Default by association in payment of notes—Procedure. Upon default by any crop credit association in the payment of its crop credit notes promptly at the maturity thereof, notice of protest of which shall be immediately given by the trustee to the director, said director shall take charge of all the business, property, security and assets of said association whether the same be in possession of said association or in the hands of the trustee of its issue of crop credit notes, and shall have the power and authority immediately to market to the best advantage any crops remaining on hand as security for the remainder of said notes. He may make composition with the creditors of said association holding its crop credit notes; he may arrange for an extension of the time of payment thereof, and may otherwise fully liquidate the affairs of said association with all the powers of a receiver, duly and regularly appointed by the court having jurisdiction of the association involved, and said director may make application to the superior court in the county where the principal place of business of such association is located for any additional authority necessary to enable him properly and promptly to liquidate the affairs of said association and to pay its creditors. In any such liquidation the creditors holding crop credit notes shall be considered to have a first lien upon all the property and assets securing said notes, and thereafter shall share equally with the unsecured creditors of said association in any unencumbered assets thereof. [1921 c 121 § 29; RRS § 2938.]

31.16.280 Liability of director, trustee and members. No liability shall attach to the director; nor to the trustee issuing said certificates by reason of the exercise of the authority granted by this chapter, except that said trustee shall be liable for misfeasance or malfeasance in the administration of said trust. No liability in excess of the membership fee charged by said association shall accrue to or against any member thereof by reason of such membership. [1921 c 121 § 30; RRS § 2939.]

31.16.290 Other associations may operate hereunder. Any cooperative marketing association, stock company or association engaged exclusively in harvesting, storing, preparing for market or marketing the crops or products of its members or stockholders, may take advantage of the provisions of this chapter and shall be entitled to all of the privileges hereof upon filing the application for authority to

issue crop credit notes as hereinbefore provided for temporary and permanent crop credit associations. Any certificate of authority issued to or for any corporation so applying shall be deemed to be for one crop season only as in the case of a temporary crop credit association. [1921 c 121 § 31; RRS § 2940.]

31.16.300 Right of member borrower to sell crop. Every member borrower personally or through his duly authorized agent or broker shall have the exclusive right to sell and dispose of the crop pledged by him for his loan: PROVIDED, That after the maturity of the indebtedness from him to the association, the association may forthwith and without notice to the borrower, sell said crops to the best advantage and discharge said indebtedness. [1921 c 121 § 32; RRS § 2941.]

31.16.310 Disposition of fees. All fees collected by the director shall inure to the benefit of the State College of Washington for use in the work of the director and shall be available therefor without any other or further appropriation thereof. A statement of all receipts and expenditures by the director shall be made in his annual report. [1988 c 25 § 9; 1921 c 121 § 33; RRS § 2942.]

31.16.320 Penalty. Every person who shall violate or knowingly aid or abet the violation of any provision of this chapter, and every person who fails to perform any act which it is made his duty to perform herein shall be guilty of a gross misdemeanor. [1921 c 121 § 34; RRS § 2943.]

31.16.900 Short title. This chapter shall be known and may be cited as the "Washington Crop Credit Act." [1921 c 121 § 1; RRS § 2910.]

31.16.910 Severability—1921 c 121. If any section or part of a section of this chapter shall, for any cause, be held unconstitutional, such holding shall not affect the rest of this chapter or any other section hereof. [1921 c 121 § 35; RRS § 2944.]

Chapter 31.20

DEVELOPMENT CREDIT CORPORATIONS

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31.20.040	Minimum capital stock.
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31.20.120	Money deposits prohibited.
31.20.130	Publication of annual statement of assets and liabilities.
31.20.140	Participation in federal act authorized.

31.20.010 Creation under general corporation laws authorized. Organizations to provide development credit are authorized to be created under the general corporation laws of the state, with all of the powers, privileges and immunities conferred on corporations by such laws. [1959 c 213 § 1.]

31.20.020 Purposes specified. The purposes of development credit corporations as authorized herein shall be: (1) To promote, aid, and, through the united efforts of the institutions and corporations which shall from time to time become members thereof, develop and advance the industrial and business prosperity and welfare of the state of Washington; (2) To encourage new industries; (3) To stimulate and help to expand all kinds of business ventures which tend to promote the growth of the state; (4) To act whenever and wherever deemed by it advisable in conjunction with other organizations, the objects of which are the promotion of industrial, agricultural or recreational developments within the state; and (5) To furnish for approved and deserving applicants ready and required money for the carrying on and development of every kind of business or industrial undertaking whereby a medium of credit is established not otherwise readily available therefor. [1959 c 213 § 2.]

31.20.030 Corporate powers. In furtherance of the purposes set forth in RCW 31.20.020, and in addition to the powers conferred by the general laws relating to corporations, this corporation shall, subject to the restrictions and limitations set forth in this chapter, have the following powers:

(1) To borrow money on secured or unsecured notes from any bank, trust company, savings bank, mutual savings bank, savings and loan association, building and loan association, credit union, insurance company or union funds which shall be members of this corporation and to pledge bonds, notes and other securities as collateral therefor: PROVIDED, In no case shall the amount so loaned by any member exceed the limit as hereinafter defined;

(2) To lend money upon secured or unsecured applications: PROVIDED, It shall not be the purpose hereof to take from other institutions within the state any such loans or commitments as may be desired by such institutions generally in the ordinary course of their business;

(3) To establish and regulate the terms and conditions of any such loans and charges for interest or service connected therewith;

(4) To purchase, hold, lease and otherwise acquire and to convey such real estate as may, from time to time, be acquired by it in satisfaction of debts or may be acquired by it in the foreclosure of mortgages thereon or upon judgments for debts or in settlements to secure debts. [1959 c 213 § 3.]

31.20.040 Minimum capital stock. No development credit corporation shall be organized with a capital stock of less than twenty-five thousand dollars, which shall be paid into the treasury of the corporation in cash before the corporation shall be authorized to transact any business other than such as relates to its organization. [1959 c 213 § 4.]

31.20.050 Board of directors. All the corporate powers of a development credit corporation shall be exercised by a board of not less than nine directors who shall be residents of this state. The number of directors and their term of office shall be determined by the stockholders at the first meeting held by the incorporators and at each annual meeting thereafter. In the first instance the directors shall be elected by the stockholders to serve until the first annual meeting. At the first annual meeting, and at each annual meeting thereafter, one-third of the directors shall be elected by a vote of the stockholders and the remaining two-thirds thereof shall be elected by members of the corporation herein provided for, each member having one vote. The removal of any director from this state shall immediately vacate his office. If any vacancy occurs in the board of directors through death, resignation or otherwise, the remaining directors may elect a person to fill the vacancy until the next annual meeting of the corporation. The directors shall be annually sworn to the proper discharge of their duties and they shall hold office until others are elected or appointed and qualified in their stead. [1959 c 213 § 5.]

31.20.060 Members power to loan funds to corporation. Any member, as set forth in RCW 31.20.070, shall have power and authority to loan any of their funds to any development credit corporation of which they are a member, subject to the restrictions as set forth in RCW 31.20.080, notwithstanding any laws to the contrary pertaining to such member. [1959 c 213 § 6.]

31.20.070 Members of corporation enumerated. The members of a development credit corporation shall consist of such banks, trust companies, savings banks, mutual savings banks, savings and loan associations, building and loan associations, credit unions, insurance companies or union funds as may make accepted applications to this corporation to lend funds to it upon call and up to the limit herein provided. [1959 c 213 § 7.]

31.20.080 Members duty to loan funds to corporation—Maximum limits—Proration of calls. Each member of a development credit corporation shall lend funds to the development credit corporation as and when called upon by it to do so to the extent of the member's commitment, but the total amount on loan by any member at any one time shall not exceed the following limit: (1) For banks, trust companies, or insurance companies, three percent of capital and surplus; (2) For mutual savings banks, savings and loan associations, or credit unions, three percent of guaranty and reserve funds; and (3) Comparable limits for other institutions. All loan limits shall be established at the thousand dollars amount nearest to the amount computed on an actual basis. All calls when made by this corporation shall be prorated among the members on the same proportion that the maximum lending commitment of each bears to the aggregate maximum lending commitment of all members. [1959 c 213 § 8.]

31.20.090 Withdrawal from membership. Upon notice given one year in advance a member of the corporation may withdraw from membership in the corporation at

the expiration date of such notice and from said expiration date shall be free from obligations hereunder except as to those accrued prior to said expiration date. [1959 c 213 § 9.]

31.20.100 Surplus reserve required. A development credit corporation shall set apart a surplus of not less than ten percent of its net earnings in each and every year until such surplus, with any unimpaired surplus paid in, shall amount to one-half of the capital stock. The said surplus shall be kept to secure against losses and contingencies, and whenever the same becomes impaired it shall be reimbursed in the manner provided for its accumulation. [1959 c 213 § 10.]

31.20.110 Funds to be deposited in designated depository. A development credit corporation shall not deposit any of its funds in any institution unless such institution has been designated as a depository by a vote of a majority of the directors, exclusive of the vote of any director who is an officer or director of the depository so designated. [1959 c 213 § 11.]

31.20.120 Money deposits prohibited. A development credit corporation shall not receive money on deposit. [1959 c 213 § 12.]

31.20.130 Publication of annual statement of assets and liabilities. A development credit corporation, on or before February 15th of each year, shall publish in three consecutive issues of a newspaper of general circulation in the area or areas where the corporation is located a statement of assets and liabilities as of December 31st of the preceding year. [1959 c 213 § 13.]

31.20.140 Participation in federal act authorized. Any development credit corporation desiring to qualify and participate in the federal Small Business Investment Act of 1958 and as hereafter amended may do so and to that end may comply with all the laws of the United States and all the rules, regulations and requirements promulgated pursuant thereto. [1959 c 213 § 14.]

Chapter 31.24

INDUSTRIAL DEVELOPMENT CORPORATIONS

Sections

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31.24.050	Membership by financial institutions—Loans to corporation by members—Limitations—Interest.
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- 31.24.180 Calendar year adopted as fiscal year.
- 31.24.190 Formation of industrial development corporation for purpose of preservation of historic buildings or areas.
- 31.24.900 Severability—1963 c 162.

Economic development finance authority: RCW 43.163.080.

31.24.010 Definitions. As used in this chapter, the following words and phrases, unless differently defined or described, shall have the meanings and references as follows:

- (1) Corporation means a Washington industrial development corporation created under this chapter.
- (2) Financial institution means any banking corporation or trust company, national banking association, savings and loan association, insurance company or related corporation, partnership, foundation, or other institution engaged primarily in lending or investing funds.
- (3) Member means any financial institution authorized to do business within this state which shall undertake to lend money to a corporation created under this chapter, upon its call, and in accordance with the provisions of this chapter.
- (4) Board of directors means the board of directors of the corporation created under this chapter.
- (5) Loan limit means for any member, the maximum amount permitted to be outstanding at one time on loans made by such member to the corporation, as determined under the provisions of this chapter. [1963 c 162 § 1.]

31.24.020 Articles of incorporation—Contents—Approval. Fifteen or more persons, a majority of whom shall be residents of this state, who may desire to create an industrial development corporation under the provisions of this chapter, for the purpose of promoting, developing and advancing the prosperity and economic welfare of the state and, to that end, to exercise the powers and privileges hereinafter provided, may be incorporated by filing in the office of the secretary of state, as hereinafter provided, articles of incorporation. The articles of incorporation shall contain:

- (1) The name of the corporation, which shall include the words "Development Corporation of Washington."
- (2) The location of the principal office of the corporation, but such corporation may have offices in such other places within the state as may be fixed by the board of directors.
- (3) The purposes for which the corporation is founded, which shall be to promote, stimulate, develop and advance the business prosperity and economic welfare of Washington and its citizens; to encourage and assist through loans, investments or other business transactions in the location of new business and industry in this state and to rehabilitate and assist existing business and industry; to stimulate and assist in the expansion of all kinds of business activity which will tend to promote the business development and maintain the economic stability of this state, provide maximum

opportunities for employment, encourage thrift, and improve the standard of living of citizens of this state; similarly, to cooperate and act in conjunction with other organizations, public or private, in the promotion and advancement of industrial, commercial, agricultural and recreational developments in this state; and to provide financing for the promotion, development, and conduct of all kinds of business activity in this state.

(4) The names and post office addresses of the members of the first board of directors, who, unless otherwise provided by the articles of incorporation or the bylaws, shall hold office for the first year of existence of the corporation or until their successors are elected and have qualified.

(5) Any provision which the incorporators may choose to insert for the regulation of the business and for the conduct of the affairs of the corporation and any provision creating, dividing, limiting and regulating the powers of the corporation, the directors, stockholders or any class of the stockholders, including, but not limited to a list of the officers, and provisions governing the issuance of stock certificates to replace lost or destroyed certificates.

(6) The amount of authorized capital stock and the number of shares into which it is divided, the par value of each share and the amount of capital with which it will commence business and, if there is more than one class of stock, a description of the different classes; the names and post office addresses of the subscribers of stock and the number of shares subscribed by each. The aggregate of the subscription shall be the minimum amount of capital with which the corporation shall commence business which shall not be less than fifty thousand dollars. The articles of incorporation may also contain any provision consistent with the laws of this state for the regulation of the affairs of the corporation.

(7) The articles of incorporation shall be in writing, subscribed by not less than five natural persons competent to contract and acknowledged by each of the subscribers before an officer authorized to take acknowledgments and filed in the office of the secretary of state for approval. A duplicate copy so subscribed and acknowledged may also be filed.

(8) The articles of incorporation shall recite that the corporation is organized under the provisions of this chapter.

The secretary of state shall not approve articles of incorporation for a corporation organized under this chapter until a total of at least ten national banks, state banks, savings banks, industrial savings banks, federal savings and loan associations, domestic building and loan associations, or insurance companies authorized to do business within this state, or any combination thereof, have agreed in writing to become members of said corporation; and said written agreement shall be filed with the secretary of state with the articles of incorporation and the filing of same shall be a condition precedent to the approval of the articles of incorporation by the secretary of state. Whenever the articles of incorporation shall have been filed in the office of the secretary of state and approved by him and all taxes, fees and charges, have been paid, as required by law, the subscribers, their successors and assigns shall constitute a corporation, and said corporation shall then be authorized to commence business, and stock thereof to the extent herein or hereafter duly authorized may from time to time be issued. [1974 ex.s. c 16 § 1; 1963 c 162 § 2.]

31.24.030 Corporate powers. In furtherance of its purposes and in addition to the powers now or hereafter conferred on business corporations by the provisions of Title 23B RCW, the corporation shall, subject to the restrictions and limitations herein contained, have the following powers:

(1) To elect, appoint and employ officers, agents and employees; to make contracts and incur liabilities for any of the purposes of the corporation: PROVIDED, That the corporation shall not incur any secondary liability by way of guaranty or endorsement of the obligations of any person, firm, corporation, joint stock company, association or trust, or in any other manner.

(2) To borrow money from its members and the small business administration and any other similar federal agency, for any of the purposes of the corporation; to issue therefor its bonds, debentures, notes or other evidence of indebtedness, whether secured or unsecured, and to secure the same by mortgage, pledge, deed of trust or other lien on its property, franchises, rights and privileges of every kind and nature or any part thereof or interest therein, without securing stockholder or member approval: PROVIDED, That no loan to the corporation shall be secured in any manner unless all outstanding loans to the corporation shall be secured equally and ratably in proportion to the unpaid balance of such loans and in the same manner.

(3) To make loans to any person, firm, corporation, joint-stock company, association or trust, and to establish and regulate the terms and conditions with respect to any such loans and the charges for interest and service connected therewith: PROVIDED, That the corporation shall not approve any application for a loan unless and until the person applying for said loan shall show that he has applied for the loan through ordinary banking channels and that the loan has been refused by at least one bank or other financial institution.

(4) To purchase, receive, hold, lease, or otherwise acquire, and to sell, convey, transfer, lease or otherwise dispose of real and personal property, together with such rights and privileges as may be incidental and appurtenant thereto and the use thereof, including, but not restricted to, any real or personal property acquired by the corporation from time to time in the satisfaction of debts or enforcement of obligations.

(5) To acquire the good will, business, rights, real and personal property, and other assets, or any part thereof, or interest therein, of any persons, firms, corporations, joint-stock companies, associations or trusts, and to assume, undertake, or pay the obligations, debts and liabilities of any such person, firm, corporation, joint-stock company, association or trust; to acquire improved or unimproved real estate for the purpose of constructing industrial plants or other business establishments thereon or for the purpose of disposing of such real estate to others for the construction of industrial plants or other business establishments; and to acquire, construct or reconstruct, alter, repair, maintain, operate, sell, convey, transfer, lease, or otherwise dispose of industrial plants or business establishments.

(6) To acquire, subscribe for, own, hold, sell, assign, transfer, mortgage, pledge or otherwise dispose of the stock, shares, bonds, debentures, notes or other securities and evidences of interest in, or indebtedness of, any person, firm, corporation, joint-stock company, association or trust, and

while the owner or holder thereof to exercise all the rights, powers and privileges of ownership, including the right to vote thereon.

(7) To mortgage, pledge, or otherwise encumber any property, right or things of value, acquired pursuant to the powers contained in subsections (4), (5), or (6) of this section, as security for the payment of any part of the purchase price thereof.

(8) To cooperate with and avail itself of the facilities of the United States department of commerce, the department of trade and economic development, and any other similar state or federal governmental agencies; and to cooperate with and assist, and otherwise encourage organizations in the various communities of the state in the promotion, assistance and development of the business prosperity and economic welfare of such communities or of this state or of any part thereof.

(9) To do all acts and things necessary or convenient to carry out the powers expressly granted in this chapter. [1991 c 72 § 49; 1985 c 466 § 42; 1983 c 3 § 51; 1963 c 162 § 3.]

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

31.24.040 Organizations authorized to acquire, hold and dispose of corporate bonds, securities, stock, etc.—Membership—Rights and powers—Limitation on stock ownership. Notwithstanding any rule at common law or any provision of any general or special law or any provision in their respective charters, agreements of association, articles of organization or trust indentures:

(1) Any person including all domestic corporations organized for the purpose of carrying on business within this state and further including without implied limitation public utility companies and insurance companies, and foreign corporations licensed to do business within this state, and all financial institutions as defined herein, and all trustees, are hereby authorized to acquire, purchase, hold, sell, assign, transfer, mortgage, pledge or otherwise dispose of any bonds, securities or other evidences of indebtedness created by, or the shares of the capital stock of, the corporation, and while owners of said stock to exercise all the rights, powers and privileges of ownership, including the right to vote thereon, all without the approval of any regulatory authority of the state except as otherwise provided in this chapter: PROVIDED, That a financial institution which does not become a member of the corporation shall not be permitted to acquire any shares of the capital stock of the corporation;

(2) All financial institutions are hereby authorized to become members of the corporation and to make loans to the corporation as provided herein; and

(3) Each financial institution which becomes a member of the corporation is hereby authorized to acquire, purchase, hold, sell, assign, transfer, mortgage, pledge or otherwise dispose of, any bonds, securities or other evidences of indebtedness created by, or the shares of the capital stock of, the corporation, and while owners of said stock, to exercise all the rights, powers and privileges of ownership, including the right to vote thereon, all without the approval of any regulatory authority of the state: PROVIDED, That the amount of the capital stock of the corporation which may be acquired by any member pursuant to the authority granted

herein shall not exceed ten percent of the loan limit of such member.

The amount of capital stock of the corporation which any member is authorized to acquire pursuant to the authority granted herein is in addition to the amount of capital stock in corporations which such member may otherwise be authorized to acquire. [1963 c 162 § 4.]

31.24.050 Membership by financial institutions—Loans to corporation by members—Limitations—Interest. Any financial institution may request membership in the corporation by making application to the board of directors on such form and in such manner as said board of directors may require, and membership shall become effective upon acceptance of such application by said board.

Each member of the corporation shall make loans to the corporation as and when called upon by it to do so on such terms and other conditions as shall be approved from time to time by the board of directors, subject to the following conditions:

(1) All loan limits shall be established at the thousand dollar amount nearest to the amount computed in accordance with the provisions of this section.

(2) No loan to the corporation shall be made if immediately thereafter the total amount of the obligations of the corporation would exceed fifteen times the amount then paid in on the outstanding capital stock of the corporation.

(3) The total amount outstanding on loans to the corporation made by any member at any time, when added to the amount of the investment in the capital stock of the corporation then held by such member, shall not exceed:

(a) Thirty percent of the total amount then outstanding on loans to the corporation by all members, including in said total amount outstanding, amounts validly called for loan but not yet loaned.

(b) The following limit, to be determined as of the time such member becomes a member on the basis of the audited balance sheet of such member at the close of its fiscal year immediately preceding its application for membership, or thereafter on the basis of the preceding fiscal year, or in the case of an insurance company, its last annual statement to the state insurance commissioner; or thereafter on the basis of its last annual statement to the insurance commissioner, two and one-half percent of the capital and surplus of commercial banks and trust companies; one-half of one percent of the total outstanding loans made by savings and loan associations, and building and loan associations; two and one-half percent of the capital and unassigned surplus of stock insurance companies, except fire insurance companies; two and one-half percent of the unassigned surplus of mutual insurance companies, except fire insurance companies; one-tenth of one percent of the assets of fire insurance companies; and such limits as may be approved by the board of directors of the corporation for other financial institutions.

(4) Subject to subsection (3)(a) of this section, each call made by the corporation shall be prorated among the members of the corporation in substantially the same proportion that the adjusted loan limit of each member bears to the aggregate of the adjusted loan limits of all members. The adjusted loan limit of a member shall be the amount of such member's loan limit, reduced by the balance of

outstanding loans made by such member to the corporation and the investment in capital stock of the corporation held by such member at the time of such call.

(5) All loans to the corporation by members shall be evidenced by bonds, debentures, notes, or other evidences of indebtedness of the corporation, which shall be freely transferable at all times, and which shall bear interest at a rate of not less than one-quarter of one percent in excess of the rate of interest determined by the board of directors to be the prime rate prevailing at the date of issuance thereof on unsecured commercial loans. [1974 ex.s. c 16 § 2; 1973 1st ex.s. c 90 § 1; 1963 c 162 § 5.]

31.24.060 Membership—Duration—Withdrawal. Membership in the corporation shall be for the duration of the corporation: PROVIDED, That upon written notice given to the corporation five years in advance, a member may withdraw from membership in the corporation at the expiration date of such notice.

A member shall not be obligated to make any loans to the corporation pursuant to calls made subsequent to notice of the intended withdrawal of said member. [1963 c 162 § 6.]

31.24.070 Powers of stockholders and members—Voting rights—Proxy voting. The stockholders and the members of the corporation shall have the following powers of the corporation:

(1) To determine the number of and elect directors as provided in RCW 31.24.090;

(2) To make, amend and repeal bylaws;

(3) To amend this charter as provided in RCW 31.24.080;

(4) To dissolve the corporation as provided in RCW 31.24.150;

(5) To do all things necessary or desirable to secure aid, assistance, loans and other financing from any financial institutions, and from any agency established under the small business investment act of 1958, public law 85-699, 85th congress, or other similar federal laws now or hereafter enacted.

(6) To exercise such other of the powers of the corporation consistent with this chapter as may be conferred on the stockholders and the members by the bylaws.

As to all matters requiring action by the stockholders and the members of the corporation, said stockholders and said members shall vote separately thereon by classes, and, except as otherwise herein provided, such matters shall require the affirmative vote of a majority of the votes to which the stockholders present or represented at the meeting shall be entitled and the affirmative vote of a majority of the votes to which the members present or represented at the meeting shall be entitled.

Each stockholder shall have one vote, in person or by proxy, for each share of capital stock held by him, and each member shall have one vote, in person or by proxy, except that any member having a loan limit of more than one thousand dollars shall have one additional vote, in person or by proxy, for each additional one thousand dollars which such member is authorized to have outstanding on loans to

the corporation at any one time as determined under subsection (3)(b) of RCW 31.24.050. [1963 c 162 § 7.]

31.24.080 Amendment of articles—Articles of amendment—Contents—Filing. The articles of incorporation may be amended by the votes of the stockholders and the members of the corporation, voting separately by classes, and such amendments shall require approval by the affirmative vote of two-thirds of the votes to which the stockholders shall be entitled and two-thirds of the votes to which the members shall be entitled: PROVIDED, That no amendment of the articles of incorporation which is inconsistent with the general purposes expressed herein or which authorizes any additional class of capital stock to be issued, or which eliminates or curtails the right of the state supervisor of banking to examine the corporation or the obligation of the corporation to make reports as provided in RCW 31.24.120, shall be made: PROVIDED, FURTHER, That no amendment of the articles of incorporation which increases the obligation of a member to make loans to the corporation, or makes any charge in the principal amount, interest rate, maturity date, or in the security or credit position of an outstanding loan of a member to the corporation, or affects a member's right to withdraw from membership as provided herein, or affects a member's voting rights as provided herein, shall be made without the consent of each membership affected by such amendment.

Within thirty days after any meeting at which an amendment of the articles of incorporation has been adopted, articles of amendment signed and sworn to by the president, treasurer, and a majority of the directors, setting forth such amendment and due adoption thereof, shall be submitted to the secretary of state, who shall examine them and if he finds that they conform to the requirements of this chapter, shall so certify and endorse his approval thereon. Thereupon, the articles of amendment shall be filed in the office of the secretary of state and no such amendment shall take effect until such articles of amendment shall have been filed as aforesaid. [1963 c 162 § 8.]

31.24.090 Board of directors. The business and affairs of the corporation shall be managed and conducted by a board of directors, a president, a vice president, a secretary, a treasurer, and such other officers and such agents as the corporation by its bylaws shall authorize. The board of directors shall consist of such number, not less than eleven nor more than twenty-one, as shall be determined in the first instance by the incorporators and thereafter annually by the members and the stockholders of the corporation. The board of directors may exercise all the powers of the corporation except such as are conferred by law or by the bylaws of the corporation upon the stockholders or members and shall choose and appoint all the agents and officers of the corporation and fill all vacancies except vacancies in the office of director which shall be filled as hereinafter provided. The board of directors shall be elected in the first instance by the incorporators and thereafter at the annual meeting, the day and month of which shall be established by the bylaws of the corporations, or, if no annual meeting shall be held in the year of incorporation, then within ninety days after the approval of the articles of incorporation at a special meeting

as hereinafter provided. At each annual meeting, or at each special meeting held as provided in this section, the members of the corporation shall elect two-thirds of the board of directors and the stockholders shall elect the remaining directors. The directors shall hold office until the next annual meeting of the corporation or special meeting held in lieu of the annual meeting after the election and until their successors are elected and qualified unless sooner removed in accordance with the provisions of the bylaws. Any vacancy in the office of a director elected by the members shall be filled by the directors elected by the members, and any vacancy in the office of a director elected by the stockholders shall be filled by the directors elected by the stockholders.

Directors and officers shall not be responsible for losses unless the same shall have been occasioned by the wilful misconduct of such directors and officers. [1974 ex.s. c 16 § 3; 1963 c 162 § 9.]

31.24.100 Earnings and surplus—Reserves. Each year the corporation shall set apart as earned surplus not less than ten percent of its net earnings for the preceding fiscal year until such surplus shall be equal in value to one-half of the amount paid in on the capital stock then outstanding. Whenever the amount of surplus established herein shall become impaired, it shall be built up again to the required amount in the manner provided for its original accumulation. Net earnings and surplus shall be determined by the board of directors, after providing for such reserves as said directors deem desirable, and the determination of the directors made in good faith shall be conclusive on all persons. [1963 c 162 § 10.]

31.24.110 Funds to be deposited in designated depository—Money deposits prohibited. The corporation shall not deposit any of its funds in any banking institution unless such institution has been designated as a depository by a vote of a majority of the directors present at an authorized meeting of the board of directors, exclusive of any director who is an officer or director of the depository so designated. The corporation shall not receive money on deposit. [1963 c 162 § 11.]

31.24.120 Examinations by supervisor—Reports—Authority of supervisor. The corporation shall be examined at least once annually by the state supervisor of banking and shall make reports of its condition not less than annually to said state supervisor of banking and more frequently upon call of the state supervisor of banking, who in turn shall make copies of such reports available to the state insurance commissioner and the governor; and the corporation shall also furnish such other information as may from time to time be required by the state supervisor of banking and secretary of state. The corporation shall pay the actual cost of said examinations. The state supervisor of banking shall exercise the same power and authority over corporations organized under this chapter as is now exercised over banks and trust companies by the provisions of the Title 30 RCW, where the provisions of Title 30 RCW are not in conflict with this chapter. [1963 c 162 § 12.]

31.24.130 First meeting. The first meeting of the corporation shall be called by a notice signed by three or more of the incorporators, stating the time, place and purpose of the meeting, a copy of which notice shall be mailed, or delivered, to each incorporator at least five days before the day appointed for the meeting. Said first meeting may be held without such notice upon agreement in writing to that effect signed by all the incorporators. There shall be recorded in the minutes of the meeting a copy of said notice or of such unanimous agreement of the incorporators.

At such first meeting, the incorporators shall organize by the choice, by ballot, of a temporary clerk; by the adoption of bylaws, by the election by ballot of directors; and by action upon such other matters within the powers of the corporation as the incorporators may see fit. The temporary clerk shall be sworn and shall make and attest a record of the proceedings. Ten of the incorporators shall be a quorum for the transaction of business. [1963 c 162 § 13.]

31.24.140 Duration of corporation. Unless otherwise provided in the articles of incorporation, the period of duration of the corporation shall be perpetual, subject, however, to the right of the stockholders and the members to dissolve the corporation prior to the expiration of said period as provided in RCW 31.24.150. [1963 c 162 § 14.]

31.24.150 Dissolution—Method—Distribution of assets. The corporation may upon the affirmative vote of two-thirds of the votes to which the stockholders shall be entitled and two-thirds of the votes to which the member shall be entitled dissolve said corporation as provided by Title 23B RCW, insofar as Title 23B RCW is not in conflict with the provisions of this chapter. Upon any dissolution of the corporation, none of the corporation's assets shall be distributed to the stockholders until all sums due the members of the corporation as creditors thereof have been paid in full. [1991 c 72 § 50; 1983 c 3 § 52; 1963 c 162 § 15.]

31.24.160 Credit of state not pledged. Under no circumstances shall the credit of the state of Washington be pledged to any corporation organized under the provisions of this chapter. [1963 c 162 § 16.]

31.24.170 Corporations designated state development companies—Scope of operations. Any corporation organized under the provisions of this chapter shall be a state development company, as defined in the small business investment act of 1958, public law 85-699, 85th congress, or any other similar federal legislation, and shall be authorized to operate on a state-wide basis. [1963 c 162 § 17.]

31.24.180 Calendar year adopted as fiscal year. Corporations organized under this chapter shall adopt the calendar year as their fiscal year. [1963 c 162 § 18.]

31.24.190 Formation of industrial development corporation for purpose of preservation of historic buildings or areas. In addition to the purposes specified in RCW 31.24.020(2) [(3)] an industrial development corporation may be formed to encourage and stimulate the preserva-

tion of historic buildings or areas by returning them to economically productive uses which are compatible with or enhance the historic character of such buildings or areas; to stimulate and assist in the development of business or other activities which have an impact upon the preservation of historic buildings or areas; to cooperate and act in conjunction with other organizations, public or private, in the promotion and advancement of historical preservation activities; and to provide financing through loans, investments of other business transactions for the promotion, development, and conduct of all kinds of business activity which encourages or relates to historic preservation. An industrial development corporation created to carry out the purposes of this section shall not engage in the broad economic and business promotion activities permitted by RCW 31.24.020(3) which are not related to the purposes of this section. Any such industrial development corporation shall in all other respects be subject to the provisions of this chapter. [1973 1st ex.s. c 90 § 2.]

31.24.900 Severability—1963 c 162. The provisions of this chapter are severable, and if any of its provisions shall be held unconstitutional by any court of competent jurisdiction, the decision of such court shall not affect or impair any of the remaining provisions. [1963 c 162 § 19.]

Chapter 31.30

WASHINGTON LAND BANK

Sections

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 31.30.270 Removal of directors—Lack of quorum—Temporary directors.
 31.30.900 Severability—1986 c 284.

31.30.010 Establishment of Washington land bank required—"Farmer and rancher" defined. The director of general administration, by rule, shall provide for the establishment, incorporation, operation, and regulation of a borrower-owned corporate entity to be known as the Washington land bank. The Washington land bank shall be patterned after the federal land banks organized under the Farm Credit Act of 1971, as amended, within state constitutional limits. The Washington land bank shall be organized by eligible borrowers and shall be designed to accomplish the objective of furnishing sound, adequate, and constructive long-term credit to farmer and rancher borrowers in the state of Washington. For purposes of this chapter, "farmer and rancher" includes producers of privately cultured aquatic products. [1986 c 284 § 1.]

31.30.020 Powers of land bank. The Washington land bank shall be a body corporate and, subject to regulation as provided by rules promulgated by the director of general administration, shall have the power to:

- (1) Adopt and use a corporate seal.
- (2) Have succession until dissolved under this chapter or rules promulgated pursuant to RCW 31.30.010.
- (3) Make contracts.
- (4) Sue and be sued.
- (5) Acquire, hold, dispose, and otherwise exercise all the usual incidents of ownership of real and personal property necessary or convenient to its business.
- (6) Make and participate in loans, make commitments for credit, accept advance payments, and provide services and other assistance as authorized in this chapter, and charge fees therefor.
- (7) Operate under the direction of its board of directors.
- (8) Elect by its board of directors a president, any vice-president, a secretary, and a treasurer, and provide for such other officers, employees, and agents as may be necessary, define their duties, and require surety bonds or make other provision against losses occasioned by employees.
- (9) Prescribe by its board of directors its bylaws not inconsistent with law providing for the classes of its stock and the manner in which its stock shall be issued, transferred, and retired; its officers, employees, and agents are elected or provided for; its property acquired, held, and transferred; its loans and appraisals made; its general business conducted; and the privileges granted it by law exercised and enjoyed.
- (10) Borrow money and issue notes, bonds, debentures, or other obligations of such character, terms, conditions, and rates of interest as may be determined.
- (11) Participate with one or more other lenders, including federal land banks existing under the Farm Credit Act of 1971, as amended, in loans that the corporation is authorized to make under this chapter.
- (12) Deposit its securities and its current funds with any member bank of the federal reserve system or any insured

state nonmember bank as defined in section 2 of the Federal Deposit Insurance Act and pay fees therefor and receive interest thereon as may be agreed.

(13) Buy and sell obligations of or insured by the United States or of any agency thereof, and, as may be authorized by its board of directors and by rule promulgated pursuant to RCW 31.30.010, (a) sell to other lenders interests in loans, (b) buy from other lenders interests in loans which the corporation could make directly under this chapter, and (c) make other investments.

(14) Conduct studies and make and adopt standards for lending.

(15) Amend and modify loan contracts, documents, and payment schedules, and release, subordinate, or substitute security for any of them.

(16) Exercise by its board of directors or authorized officers, employees, or agents all such incidental powers as may be necessary or expedient to carry on the business of the corporation. [1986 c 284 § 2.]

31.30.030 Stock. The voting stock of the Washington land bank shall be held only by borrowers who are farmers or ranchers, which stock shall not be transferred, pledged, or hypothecated except to other eligible borrowers. The rules promulgated by the director pursuant to RCW 31.30.010 shall provide for the amount, par value, classes, voting, dividends, and other attributes of the stock of the corporation. [1986 c 284 § 3.]

31.30.040 Long-term real estate mortgage loans in rural areas. The Washington land bank is authorized to make or participate with other lenders in long-term real estate mortgage loans in rural areas to eligible borrowers, and to make continuing commitments to make such loans under specified circumstances, for a term of not less than five nor more than forty years. [1986 c 284 § 4.]

31.30.050 Rates and charges on loans. Loans made by the Washington land bank shall bear interest at a rate or rates, and on such terms and conditions, as may be determined by the board of directors of the bank from time to time, in accordance with rules promulgated pursuant to RCW 31.30.010. In setting rates and charges, it shall be the objective to provide the credit needed by eligible borrowers at the lowest reasonable cost on a sound business basis, taking into account the cost of money to the corporation, necessary reserves and expenses of the corporation, and providing services to stockholders and members. The loan documents may provide for the interest rate or rates to vary from time to time during the repayment period of the loan, in accordance with the rate or rates currently being charged by the corporation. [1986 c 284 § 5.]

31.30.060 Availability of services to farmer or rancher stockholders or members. The services authorized in this chapter may be made available to persons who are or become stockholders or members in the Washington land bank and are bona fide farmers or ranchers. [1986 c 284 § 6.]

31.30.070 Limitation on loans—Security. Loans originated by the Washington land bank or in which it participates with another lender, including principal and all accrued interest the payment of which has been deferred pursuant to RCW 31.30.080, shall not exceed sixty-five percent of the appraised value of the real estate security, and shall be secured by first liens on interests in real estate of such classes as may be provided by rule promulgated pursuant to RCW 31.30.010. The value of security shall be determined by appraisal under appraisal standards prescribed by such rules. Additional security may be required to supplement real estate security. [1986 c 284 § 7.]

31.30.080 Deferral of payments for five years—Election—Approval—Recomputation of payment schedule. With approval by the Washington land bank, a borrower may elect, during the first five years of a loan originated by the Washington land bank or in which it participates with another lender, to defer payment of all or any portion of the principal and/or interest due from the borrower to the corporation if deferral of such payment will not cause the principal and accrued interest on such loan to exceed sixty-five percent of the original appraised value or the current appraised value, whichever is less. Upon such election, the payment schedule related to such loan shall be recomputed and modified to provide for repayment of the principal amount of the loan plus accrued but unpaid interest and all interest which shall accrue during the period of deferral and thereafter over a term equal to the original term of the loan, commencing as of the date of such deferral. [1987 c 29 § 1; 1986 c 284 § 8.]

31.30.090 Loans to be based on long-term profitability. Loans made by the Washington land bank shall be made on the basis of long-term profitability rather than short-term cash flow. [1986 c 284 § 9.]

31.30.100 Loans—Origination or service by other entities. The Washington land bank may, in accordance with rules adopted pursuant to RCW 31.30.010, cause loans to be originated or serviced by other entities, including cooperative associations organized specifically for the purposes of this chapter, and may pay or charge a fee therefor. [1986 c 284 § 10.]

31.30.110 Loans for agricultural needs—Leasing of needed facilities. Loans made by the Washington land bank to farmers and ranchers may be for any agricultural need of the borrower. The bank may own and lease, or lease with option to purchase, to persons eligible for assistance under this chapter, facilities needed in the operations of such persons. [1986 c 284 § 11.]

31.30.120 Application of corporation laws. The provisions of the general corporation laws of this state, and all powers and rights thereunder, shall apply to the corporation organized under this chapter, except where such provisions are in conflict with or inconsistent with the express provisions of this chapter or rules adopted pursuant to RCW 31.30.010. [1986 c 284 § 12.]

31.30.130 Indebtedness not obligation of state—Funds not public funds. Bonds and other evidences of indebtedness issued pursuant to this chapter shall not be obligations of the state of Washington and shall be obligations only of the Washington land bank established pursuant to this chapter. Funds of the Washington land bank shall not be or constitute public moneys or funds of the state of Washington but shall at all times be kept segregated and set apart from other funds. [1986 c 284 § 13.]

31.30.150 Examinations of land bank—Annual report of condition. (1) The Washington land bank shall be examined by the department of general administration, division of banking, at such times as the supervisor may determine, but in no event less than once each year. Such examinations shall include, but are not limited to, an analysis of credit and collateral quality and capitalization of the institution, and an appraisal of the effectiveness of the institution's management and application of policies for the carrying out [of] the requirements of chapter 31.30 RCW, and servicing all eligible borrowers. At the direction of the supervisor, the division of banking shall examine the condition of any organization with which the Washington land bank contemplates making a loan or discounting paper. For the purposes of this chapter, bank analysts shall be subject to the same requirements, responsibilities, and penalties as are applicable to examiners under Title 30 RCW, the Federal Reserve Act, and Federal Deposit Insurance Act, and other provisions of law and shall have the same powers and privileges as are vested in such examiners by law.

(2) The Washington land bank shall make and publish an annual report of condition. Each such report shall contain financial statements prepared in accordance with generally accepted accounting principles and contain such additional information as may be required by the board of directors. Such financial statements shall be audited by an independent certified public accountant. [1987 c 420 § 5.]

31.30.160 Regular reports on resources and liabilities—Publication—Special reports. The Washington land bank shall make at least three regular reports each year to the supervisor, as of the dates designated, according to form prescribed, verified by the president, vice-president, or secretary and attested by at least two directors, which shall exhibit under appropriate heads the resources and liabilities of the bank. Each such report in condensed form, to be prescribed by the supervisor, shall be published once in a newspaper of general circulation, published in a place where the corporation is located, or if there be no newspaper published in such place, then in some newspaper published in the same county. The Washington land bank shall also make such special reports as the supervisor shall call for. [1987 c 420 § 6.]

31.30.170 Filing of reports—Penalty. Every regular report shall be filed with the supervisor within thirty days from the date of issuance of the notice therefor and proof of publication of such report shall be filed with the supervisor within forty days from such date. Every special report shall

be filed with the supervisor within such time as shall be specified in the notice therefor.

Failure of the Washington land bank to file any report, required to be filed as aforesaid within the time herein specified, shall be subject to a penalty of fifty dollars per day for each day's delay. A civil action for the recovery of any such penalty may be brought by the attorney general in the name of the state. [1987 c 420 § 7.]

31.30.180 Application, investigation, and examination fees. The supervisor shall collect from the Washington land bank for application and investigations and for each examination of its condition a fee as set by applicable regulation of the division of banking. [1987 c 420 § 8.]

31.30.190 Confidentiality of examination reports and information—Exceptions—Penalty. (1) All examination reports and all information obtained by the supervisor and the supervisor's staff in conducting examinations of the Washington land bank is confidential and privileged information and 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 supervisor may furnish all or any part of examination reports prepared by the supervisor's office to:

(a) Officials empowered to investigate criminal charges subject to legal process, valid search warrant, or subpoena. If the supervisor furnishes any examination report to officials empowered to investigate criminal charges, the supervisor may only furnish that part of the report which is necessary and pertinent to the investigation, and the supervisor may do this only after notifying the Washington land bank and any customer of the Washington land bank who is named in that part of the examination or report ordered to be furnished unless the officials requesting the report first obtain a waiver of the notice requirement from a court of competent jurisdiction for good cause;

(b) The Washington land bank;

(c) The attorney general in his or her role as legal advisor to the supervisor;

(d) A person or organization officially connected with the Washington land bank as officer, director, attorney, auditor, or independent attorney or independent auditor.

(3) All examination reports furnished under subsections (2) and (4) of this section shall remain the property of the division of banking, and be confidential and no person, agency, or authority to whom reports are furnished or any officer, director, or employee thereof shall disclose or make public any of the reports or any information contained therein except in published statistical material that does not disclose the affairs of any individual or corporation: PROVIDED, That nothing herein shall prevent the use in a criminal prosecution of reports furnished under subsection (2) of this section.

(4) The examination report made by the division of banking is designed for use in the supervision of the Washington land bank. The report shall remain the property of the supervisor and will be furnished to the Washington land bank for its confidential use. Under no circumstances shall the Washington land bank, or any of its directors, officers,

or employees disclose or make public in any manner the report or any portion thereof, to any person or organization not connected with the Washington land bank as officer, director, employee, attorney, auditor, or candidate for executive office with the bank.

(5) Examination reports and information obtained by the supervisor and the supervisor's staff in conducting examinations shall not be subject to public disclosure under chapter 42.17 RCW.

(6) In any civil action in which the reports are sought to be discovered or used as evidence, any party may, upon notice to the supervisor, petition the court for an in camera review of the report. The court may permit discovery and introduction of only those portions of the report which are relevant and otherwise unobtainable by the requesting party. This subsection shall not apply to an action brought or defended by the supervisor.

(7) This section shall not apply to investigation reports prepared by the supervisor and the supervisor's staff concerning an application for establishment of the Washington land bank: PROVIDED, That the supervisor may adopt rules making confidential portions of the reports if in the supervisor's opinion the public disclosure of the portions of the report would impair the ability to obtain the information which the supervisor considers necessary to fully evaluate the application.

(8) Every person who violates any provision of this section shall be guilty of a gross misdemeanor. [1987 c 420 § 9.]

31.30.200 Violations or unsafe practices—Notice of charges—Contents of notice—Hearing—Cease and desist order. (1) The supervisor may issue and serve upon the Washington land bank a notice of charges if in the opinion of the supervisor, the Washington land bank:

(a) Is engaging or has engaged in an unsafe or unsound practice in conducting its business;

(b) Is violating or has violated the law, rule, or any condition imposed in writing by the supervisor in connection with the granting of any application or other request by the bank or any written agreement made with the supervisor; or

(c) Is about to do the acts prohibited in (a) or (b) of this subsection when the opinion that the threat exists is based upon reasonable cause.

(2) The notice shall contain a statement of the facts constituting the alleged violation or violations or the practice or practices and shall fix a time and place at which a hearing will be held to determine whether an order to cease and desist should issue against the bank. The hearing shall be set not earlier than ten days nor later than thirty days after service of the notice unless a later date is set by the supervisor at the request of the bank.

Unless the bank shall appear at the hearing by a duly authorized representative it shall be deemed to have consented to the issuance of the cease and desist order. In the event of this consent or if upon the record made at the hearing the supervisor finds that any violation or practice specified in the notice of charges has been established, the supervisor may issue and serve upon the bank an order to cease and desist from the violation or practice. The order may require the bank and its directors, officers, employees, and agents to

cease and desist from the violation or practice and may require the bank to take affirmative action to correct the conditions resulting from the violation or practice.

(3) A cease and desist order shall become effective at the expiration of ten days after the service of the order upon the bank except that a cease and desist order issued upon consent shall become effective at the time specified in the order and shall remain effective as provided therein unless it is stayed, modified, terminated, or set aside by action of the supervisor or a reviewing court. [1987 c 420 § 10.]

31.30.210 Violations or unsafe practices—Temporary cease and desist order. Whenever the supervisor determines that the acts specified in RCW 31.30.200 or their continuation is likely to cause insolvency or substantial dissipation of assets or earnings of the bank, the supervisor may also issue a temporary order requiring the bank to cease and desist from the violation or practice. The order shall become effective upon service on the bank and shall remain effective unless set aside, limited, or suspended by a court in proceedings under RCW 31.30.180 pending the completion of the administrative proceedings under the notice and until such time as the supervisor shall dismiss the charges specified in the notice or until the effective date of a cease and desist order issued against the bank pursuant to RCW 31.30.180. [1987 c 420 § 11.]

31.30.220 Violations or unsafe practices—Injunction to set aside, limit, or suspend temporary cease and desist order. Within ten days after the bank has been served with a temporary cease and desist order, the bank may apply to the superior court in the county of its principal place of business for an injunction setting aside, limiting, or suspending the order pending the completion of the administrative proceedings pursuant to the notice served. The superior court shall have jurisdiction to issue the injunction. [1987 c 420 § 12.]

31.30.230 Violation of temporary cease and desist order—Injunction to enforce order. In the case of a violation or threatened violation of a temporary cease and desist order issued, the supervisor may apply to the superior court of the county of the principal place of business of the bank for an injunction to enforce the order, and the court shall issue an injunction if it determines that there has been a violation or threatened violation. [1987 c 420 § 13.]

31.30.240 Administrative hearing—Procedure—Order—Judicial review. (1) Any administrative hearing may be held at such place as is designated by the supervisor and shall be conducted in accordance with chapter 34.05 RCW. The hearing shall be private unless the supervisor determines that a public hearing is necessary to protect the public interest after fully considering the views of the party afforded the hearing.

Within sixty days after the hearing the supervisor shall render a decision which shall include findings of fact upon which the decision is based and shall issue and serve upon each party to the proceedings an order or orders.

Unless a petition for review is timely filed in the superior court of the county of the principal place of

business of the bank and until the record in the proceeding has been filed as therein provided, the supervisor may at any time modify, terminate, or set aside any order upon such notice and in such manner as deemed proper. Upon filing the record, the supervisor may modify, terminate, or set aside any order only with permission of the court.

The judicial review provided in this section for an order shall be exclusive.

(2) Any party to the proceeding or any person required by an order to refrain from any of the violations or practices stated therein may obtain a review of any order served under subsection (1) of this section other than one issued upon consent by filing in the superior court of the county of the principal place of business of the bank within ten days after the date of service of the order a written petition praying that the order of the supervisor be modified, terminated, or set aside. A copy of the petition shall be immediately served upon the supervisor and the supervisor shall then file in the court the record of the proceeding. The court shall have jurisdiction upon the filing of the petition, which jurisdiction shall become exclusive upon the filing of the record to affirm, modify, terminate, or set aside in whole or in part the order of the supervisor except that the supervisor may modify, terminate, or set aside an order with the permission of the court. The judgment and decree of the court shall be final, except that it shall be subject to appellate review under the rules of court.

(3) The commencement of proceedings for judicial review under subsection (2) of this section shall not operate as a stay of any order issued by the supervisor unless specifically ordered by the court. [1987 c 420 § 14.]

31.30.250 Removal of director, officer, or employee or prohibition from participation in conduct of affairs—Grounds—Notice. The supervisor may serve upon a director, officer, or employee of the Washington land bank a written notice of the supervisor's intention to remove the person from office or to prohibit the person from participation in the conduct of the affairs of the bank whenever:

(1) In the opinion of the supervisor any director, officer, or employee of the bank has committed or engaged in:

(a) Any violation of law or rule or of a cease and desist order which has become final;

(b) Any unsafe or unsound practice in connection with the bank; or

(c) Any act, omission, or practice which constitutes a breach of his fiduciary duty as director, officer, or employee; and

(2) The supervisor determines that:

(a) The bank has suffered or may suffer substantial financial loss or other damage; or

(b) The interests of its investors could be seriously prejudiced by reason of the violation or practice or breach of fiduciary duty; and

(c) The violation or practice or breach of fiduciary duty is one involving personal dishonesty, recklessness, or incompetence on the part of the director, officer, or employee. [1987 c 420 § 15.]

31.30.260 Notice of intention to remove or prohibit participation in conduct of affairs—Hearing—Order. A

notice of an intention to remove a director, officer, or employee from office or to prohibit participation in the conduct of the affairs of the bank shall contain a statement of the facts which constitute grounds therefor and shall fix a time and place at which a hearing will be held. The hearing shall be set not earlier than ten days nor later than [than] thirty days after the date of service of the notice unless an earlier or later date is set by the supervisor at the request of the director, officer, or employee for good cause shown or of the attorney general of the state.

Unless the director, officer, or employee appears at the hearing personally or by a duly authorized representative, the person shall be deemed to have consented to the issuance of an order of removal or prohibition or both. In the event of such consent or if upon the record made at the hearing the supervisor finds that any of the grounds specified in the notice have been established, the supervisor may issue such orders of removal from office or prohibition from participation in the conduct of the affairs of the bank as the supervisor may consider appropriate.

Any order shall become effective at the expiration of ten days after service upon the bank and the director, officer, or employee concerned except that an order issued upon consent shall become effective at the time specified in the order.

An order shall remain effective except to the extent it is stayed, modified, terminated, or set aside by the supervisor or a reviewing court. [1987 c 420 § 16.]

31.30.270 Removal of directors—Lack of quorum—Temporary directors. If at any time because of the removal of one or more directors under this chapter there shall be on the board of directors of the bank less than a quorum of directors, all powers and functions vested in or exercisable by the board shall vest in and be exercisable by the director or directors remaining until such time as there is a quorum on the board of directors. If all of the directors of the bank are removed under this chapter, the supervisor shall appoint persons to serve temporarily as directors until such time as their respective successors take office. [1987 c 420 § 17.]

31.30.900 Severability—1986 c 284. 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 284 § 16.]

Chapter 31.35

AGRICULTURAL LENDERS—LOAN GUARANTY PROGRAM

Sections

31.35.010	Findings—Intent.
31.35.020	Definitions.
31.35.030	Administration—Rules—Duties of supervisor.
31.35.040	Participation by agricultural lender—Powers and privileges.
31.35.050	Costs of supervision—Fees.
31.35.060	Responsibility of agricultural lender—Recordkeeping—Loan loss reserve.
31.35.070	Examination of agricultural lender.
31.35.080	Enforcement—Responsibility of supervisor—Penalty.

31.35.090	Enforcement—Court order.
31.35.100	Notice—Investments not insured.
31.35.900	Severability—Administrative review—1990 c 134.

Supervisor of banking and bank examiners: Chapter 43.19 RCW.

31.35.010 Findings—Intent. The legislature finds and declares that nondepository agricultural lenders can enhance their access to working capital for the purpose of financing agricultural borrowers by using the United States farmers home administration loan guaranty program. The farmers home administration loan guaranty program provides financing to agricultural borrowers needing working capital and longer term financing for the purchase of real estate, agricultural production expenses, debt refinancing, equipment, and the purchase of other fixed assets. Loans can be made to agricultural borrowers by nondepository lenders and guaranteed by the farmers home administration only if the state provides an ongoing opportunity for examination of such entities to confirm good lending practices and solvency.

It is the intent of the legislature to empower the supervisor of banking to examine nondepository agricultural lenders for the purpose of allowing such lenders to qualify for participation in the farmers home administration loan guaranty program. [1990 c 134 § 1.]

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

(1) "Agricultural lender" means a Washington corporation incorporated under Title 23B or 24 RCW and qualified as such under this chapter and the jurisdiction of the federal government agency sponsoring the loan guaranty program.

(2) "Supervisor" means the state supervisor of banking.

(3) "Loan guaranty program" means the farmers home administration loan guaranty program, or any other government program for which the agricultural lender is eligible and which has as its function the provision, facilitation, or financing of agricultural business operations. [1990 c 134 § 2.]

31.35.030 Administration—Rules—Duties of supervisor. (1) The supervisor shall administer this chapter. The supervisor may issue orders and adopt rules that, in the opinion of the supervisor, are necessary to execute, enforce, and effectuate the purposes of this chapter. Rules to enforce the provisions of this chapter shall be adopted under the administrative procedure act, chapter 34.05 RCW.

(2) An application filed with the supervisor under this chapter shall be in such form and contain such information as required by the supervisor by rule and be consistent with the requirements of the loan guaranty program.

(3) After the supervisor is satisfied that the applicant has satisfied all the conditions necessary for approval, the supervisor shall issue a license to the applicant authorizing it to be an agricultural lender under this chapter.

(4) Any change of control of an agricultural lender shall be subject to the approval of the supervisor. Such approval shall be subject to the same criteria as the criteria for approval of the original license. For purposes of this subsection, "change of control" means directly or indirectly, alone or in concert with others, to own, control, or hold the

power to vote ten percent or more of the outstanding voting stock of an agricultural lender or the power to elect or control the election of a majority of the board of directors of an agricultural lender.

(5) The supervisor may deny, suspend, or revoke a license if the agricultural lender violates any provision of this chapter or any rules promulgated pursuant to this chapter. [1990 c 134 § 3.]

31.35.040 Participation by agricultural lender—Powers and privileges. (1) An agricultural lender may participate in a loan guaranty program. If an agricultural lender participates in a loan guaranty program, the agricultural lender shall comply with the requirements of that program.

(2) An agricultural lender may be incorporated under either the Washington business corporation act, Title 23B RCW, or the Washington nonprofit corporation act, Title 24 RCW. In addition to the powers and privileges provided to an agricultural lender by this chapter, an agricultural lender has all the powers and privileges conferred by its incorporating statute that are not inconsistent with or limited by this chapter. [1990 c 134 § 4.]

31.35.050 Costs of supervision—Fees. (1) The supervisor is authorized to charge a fee for the estimated direct and indirect costs for examination and supervision by the supervisor of an agricultural lender or a subsidiary of an agricultural lender. Excess examiner time shall be billed at a reasonable rate established by rule.

(2) All such fees shall be deposited in the banking examination fund and administered consistent with the provisions of RCW 43.19.095. [1990 c 134 § 5.]

31.35.060 Responsibility of agricultural lender—Recordkeeping—Loan loss reserve. (1) An agricultural lender shall keep books, accounts, and other records in such form and manner as required by the supervisor. These records shall be kept at such place and shall be preserved for such length of time as specified by the supervisor by rule.

(2) Not more than ninety days after the close of each calendar year, or within a period specified by the supervisor, an agricultural lender shall file with the supervisor a report containing the following:

(a) Financial statements, including the balance sheet, the statement of income or loss, the statement of changes in capital accounts, and the statement of changes in financial position; and

(b) Other information that the supervisor may require.

(3) Each agricultural lender shall provide for a loan loss reserve sufficient to cover projected loan losses that are not guaranteed by the United States government or any agency thereof. [1990 c 134 § 6.]

31.35.070 Examination of agricultural lender. (1) The supervisor, the deputy supervisor, or a bank examiner shall visit each agricultural lender at least every twenty-four months for the purpose of assuring that the agricultural lender remains in compliance with and qualified for the loan guaranty program.

(a) The supervisor may accept timely audited financial statements and other timely reports the supervisor determines to be relevant and accurate as part of a full and complete examination of the agricultural lender. The supervisor shall make an independent review of loans guaranteed by the loan guaranty program.

(b) The agricultural lender shall be exempt from examination under this subsection if it terminates its activities under the loan guaranty program and no loans guaranteed by the loan guaranty program remain on the books. This exemption becomes effective upon notification to the supervisor. The supervisor shall confirm termination of activities under the loan guaranty program with the appropriate federal agency.

(c) All examination reports and all information obtained by the supervisor and the supervisor's staff in conducting examinations of an agricultural lender are confidential to the same extent bank examinations are confidential under RCW 30.04.075.

(d) All examination reports may be shared with other state or federal agencies consistent with chapter 30.04 RCW.

(2) A director, officer, or employee of an agricultural lender or of a subsidiary of an agricultural lender being examined by the supervisor or a person having custody of any of the books, accounts, or records of the agricultural lender or of the subsidiary shall facilitate the examination so far as it is in his or her power to do so.

(3) If in the supervisor's opinion it is necessary in the examination of an agricultural lender or of a subsidiary of an agricultural lender, the supervisor may retain any certified public accountant, attorney, appraiser, or other person to assist the supervisor. The agricultural lender being examined shall pay the fees of a person retained by the supervisor under this subsection. [1990 c 134 § 7.]

31.35.080 Enforcement—Responsibility of supervisor—Penalty. (1) The supervisor shall adopt rules to enforce the intent and purposes of this chapter. Such rules shall include, but not be limited to, the following:

(a) Disclosure of conflicts of interest;

(b) Prohibition of false statements made to the supervisor on any form required by the supervisor or during any examination; or

(c) Prevention of fraud and undue influence within an agricultural lender.

(2) A violation of any provision of this chapter or any rule of the supervisor adopted under this chapter by an agent, employee, officer, or director of the agricultural lender shall be punishable by a fine, established by the supervisor, not to exceed one hundred dollars for each offense. Each day's continuance of the violation shall be a separate and distinct offense. All fines shall be credited to the banking examination fund.

(3) The supervisor may issue and serve upon an agricultural lender a notice of charges if, in the opinion of the supervisor, the agricultural lender is violating or has violated the law, rule, or any condition imposed in writing by the supervisor or any written agreement made by the supervisor.

(a) The notice shall contain a statement of the facts constituting the alleged violation or practice and shall fix a

time and place at which a hearing will be held to determine whether an order to cease and desist should issue against the agricultural lender. The hearing shall be set not earlier than ten days nor later than thirty days after service of the notice unless a later date is set by the supervisor at the request of the agricultural lender.

Unless the agricultural lender appears at the hearing by a duly authorized representative, it shall be deemed to have consented to the issuance of the cease and desist order. In the event of consent or if, upon the record made at the hearing, [the supervisor] finds that any violation or practice specified in the notice of charges has been established, the supervisor may issue and serve upon the agricultural lender an order to cease and desist from the violation or practice. The order may require the agricultural lender and its directors, officers, employees, and agents to cease and desist from the violation or practice and may require the agricultural lender to take affirmative action to correct the conditions resulting from the violation or practice.

(b) A cease and desist order shall become effective at the expiration of ten days after the service of the order upon the agricultural lender concerned, except that a cease and desist order issued upon consent shall become effective at the time specified in the order and shall remain effective as provided in the order unless it is stayed, modified, terminated, or set aside by action of the supervisor or a reviewing court. [1990 c 134 § 8.]

31.35.090 Enforcement—Court order. If, in the opinion of the supervisor, an agricultural lender violates or there is reasonable cause to believe that an agricultural lender is about to violate any provision of this chapter or any rule adopted under this chapter, the supervisor may bring an action in the appropriate court to enjoin the violation or to enforce compliance. Upon a proper showing, a restraining order, [or] preliminary or permanent injunction, shall be granted, and a receiver or a conservator may be appointed for the agricultural lender or the agricultural lender's assets. [1990 c 134 § 9.]

31.35.100 Notice—Investments not insured. All agricultural lenders shall notify their members at the time of membership and annually thereafter that their investment in the agricultural lender, although regulated by the supervisor, is not insured, guaranteed, or protected by any federal or state agency. [1990 c 134 § 10.]

31.35.900 Severability—Administrative review—1990 c 134. If any provision of this act or its application to any person or circumstance is held invalid or, if in the written opinion of the farmers home administration, is contrary to the intent and purposes of the loan guaranty program, the supervisor shall not enforce such provision, but the remainder of the act or the application of the provision to other persons or circumstances shall not be affected. [1990 c 134 § 11.]

Chapter 31.40

FEDERALLY GUARANTEED SMALL BUSINESS LOANS

Sections

31.40.010	Intent.
31.40.020	Definitions.
31.40.030	Supervisor—Powers and duties.
31.40.040	Licensee—Powers and duties.
31.40.050	License approval.
31.40.060	Prohibited loans—Exception.
31.40.070	Fees.
31.40.080	Records—Reports—Loan loss reserve.
31.40.090	Examination of licensees.
31.40.100	Application denial.
31.40.110	Rules—Penalties.
31.40.120	Injunction.
31.40.130	Penalty—License impairment.
31.40.900	Severability—1989 c 212.

31.40.010 Intent. The legislature finds and declares that small and moderate-size companies can enhance their access to working capital and to capital for acquiring and equipping commercial and industrial facilities by using the United States small business administration national small business loan program known as the 7(a) loan guaranty program. The 7(a) loan guaranty program provides financing to small firms needing working capital and longer term financing for equipment and other fixed assets. Such loans can be made to small businesses by nondepository lenders and guaranteed by the small business administration only if the state provides for the on-going regulation and examination of such entities.

It is the intent of the legislature that the supervisor of banking license, regulate, and subject to on-going examination, nondepository lenders for the purpose of allowing such lenders to participate in the small business administration's 7(a) loan guaranty program. [1989 c 212 § 1.]

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

(1) "Licensee" means a Washington corporation licensed under the terms of this chapter.

(2) "Supervisor" means the state supervisor of banking. [1989 c 212 § 2.]

31.40.030 Supervisor—Powers and duties. (1) The supervisor shall administer this chapter. The supervisor may issue orders and adopt rules that, in the opinion of the supervisor, are necessary to execute, enforce, and effectuate the purposes of this chapter. Rules to enforce the provisions of this chapter shall be adopted under the administrative procedure act, chapter 34.05 RCW.

(2) Whenever the supervisor issues an order or a license under this chapter, the supervisor may impose conditions that are necessary, in the opinion of the supervisor, to carry out the purposes of this chapter.

(3) An application filed with the supervisor under this chapter shall be in such a form and contain such information as the supervisor may require.

(4) Any change of control of a licensee shall be subject to the approval of the supervisor. Such approval shall be

subject to the same criteria as the criteria for approval of the original license. For purposes of this subsection, "change of control" means directly or indirectly, alone or in concert with others, to own, control, or hold the power to vote ten percent or more of the outstanding voting stock of a licensee or the power to elect or control the election of a majority of the board of directors of the licensee. [1989 c 212 § 3.]

31.40.040 Licensee—Powers and duties. (1) A licensee may participate in the 7(a) loan guaranty program of the small business administration pursuant to section 7(a) of the federal small business investment act of 1958, 15 U.S.C. Sec. 636(a), or any other government program for which the licensee is eligible and which has as its function the provision or facilitation of financing or management assistance to business firms. If a licensee participates in a program referred to in this section, the licensee shall comply with the requirements of that program.

(2) A licensee may be incorporated under either the Washington business corporation act or the Washington nonprofit corporation act. In addition to the powers and privileges provided to a licensee by this chapter, a licensee has all the powers and privileges conferred by its incorporating statute which are not inconsistent with or limited by this chapter. [1989 c 212 § 4.]

31.40.050 License approval. After a review of information regarding the directors, officers, and controlling persons of the applicant for a license, a review of the applicant's business plan, including at least three years of detailed financial projections and other relevant information, and a review of such additional information as is considered relevant by the supervisor, the supervisor shall approve an application for a license if, and only if, the supervisor determines that:

(1) The applicant is capitalized in an amount that is not less than five hundred thousand dollars and that such sum is adequate for the applicant to transact business as a nondepository 7(a) lender and that in evaluating the capital position of the applicant the supervisor may consider and include the net worth of any corporate shareholder of the applicant corporation if the shareholder guarantees the liabilities of the applicant: PROVIDED, That such corporate shareholder be subject to the reporting requirements of RCW 31.40.080;

(2) Each director, officer, and controlling person of the applicant is of good character and sound financial standing; that the directors and officers of the applicant are competent to perform their functions with respect to the applicant; and that the directors and officers of the applicant are collectively adequate to manage the business of the applicant as a nondepository 7(a) lender;

(3) The business plan of the applicant will be honestly and efficiently conducted in accordance with the intent and purposes of this chapter; and

(4) The proposed activity possesses a reasonable prospect for success. [1989 c 212 § 5.]

31.40.060 Prohibited loans—Exception. (1) Either by itself or in concert with a director, officer, principal shareholder, or affiliate, or with another licensee, a licensee

shall not hold control of a business firm to which it has made a loan under section 7(a) of the federal small business investment act of 1958, 15 U.S.C. Sec. 636(a), except that, to the extent necessary to protect the licensee's interest as creditor of the business firm, a licensee that provides financing assistance to a business firm may acquire and hold control of that business firm. Unless the supervisor approves a longer period, a licensee holding control of a business firm under this section shall divest itself of the interest which constitutes holding control as soon as practicable or within five years after acquiring that interest, whichever is sooner.

(2) For the purposes of subsection (1) of this section, "hold control" means alone or in concert with others:

(a) Ownership, directly or indirectly, of record or beneficially, of voting securities greater than:

(i) For a business firm with outstanding voting securities held by fewer than fifty shareholders, forty percent of the outstanding voting securities;

(ii) For a business firm with outstanding voting securities held by fifty or more shareholders, twenty-five percent of the outstanding voting securities;

(b) Being able to elect or control the election of a majority of the board of directors. [1989 c 212 § 6.]

31.40.070 Fees. (1) The supervisor is authorized to charge a fee for the estimated direct and indirect costs of the following:

(a) An application for a license and the investigation thereof;

(b) An application for approval to acquire control of a licensee and the investigation thereof;

(c) An application for approval for a licensee to merge with another corporation, an application for approval for a licensee to purchase all or substantially all of the business of another person, or an application for approval for a licensee to sell all or substantially all of its business or of the business of any of its offices to another licensee and the investigation thereof;

(d) An annual license;

(e) An examination by the supervisor of a licensee or a subsidiary of a licensee. Excess examiner time shall be billed at a reasonable rate established by rule.

(2) A fee for filing an application with the supervisor shall be paid at the time the application is filed with the supervisor.

(3) All such fees shall be deposited in the banking examination fund and administered consistent with the provisions of RCW 43.19.095. [1989 c 212 § 7.]

Construction—1989 c 212 § 7: "Nothing in section 7 of this act shall be construed to prevent repayment to the general fund of the twenty-five thousand dollar start-up appropriation set forth in *section 15 of this act." [1989 c 212 § 14.]

***Reviser's note:** "section 15 of this act" [1989 c 212] is an uncodified appropriation section.

31.40.080 Records—Reports—Loan loss reserve.

(1) A licensee shall keep books, accounts, and other records in such a form and manner as the supervisor may require. These records shall be kept at such a place and shall be preserved for such a length of time as the supervisor may specify.

(2) Not more than ninety days after the close of each calendar year or within a period specified by the supervisor, a licensee shall file with the supervisor a report containing the following:

(a) Financial statements, including the balance sheet, the statement of income or loss, the statement of changes in capital accounts and the statement of changes in financial position; and

(b) Other information that the supervisor may require.

(3) Each licensee shall provide for a loan loss reserve sufficient to cover projected loan losses which are not guaranteed by the United States government or any agency thereof. [1989 c 212 § 8.]

31.40.090 Examination of licensees. (1) The supervisor shall examine each licensee not less than once each year.

(2) The supervisor may with or without notice and at any time during regular business hours examine a licensee or a subsidiary of a licensee.

(3) A director, officer, or employee of a licensee or of a subsidiary of a licensee being examined by the supervisor or a person having custody of any of the books, accounts, or records of the licensee or of the subsidiary shall otherwise facilitate the examination so far as it is in his or her power to do so.

(4) If in the supervisor's opinion it is necessary in the examination of a licensee, or of a subsidiary of a licensee, the supervisor may retain any certified public accountant, attorney, appraiser, or other person to assist the supervisor. The licensee being examined shall pay the fees of a person retained by the supervisor under this subsection. [1989 c 212 § 9.]

31.40.100 Application denial. If the supervisor denies an application, the supervisor shall provide the applicant with a written statement explaining the basis for the denial. [1989 c 212 § 10.]

31.40.110 Rules—Penalties. (1) The supervisor shall adopt rules to enforce the intent and purposes of this chapter. Such rules shall include, but need not be limited to, the following:

(a) Disclosure of conflicts of interest;

(b) Prohibition of false statements made to the supervisor on any form required by the supervisor or during any examination requested by the supervisor; or

(c) Prevention of fraud and undue influence by a licensee.

(2) A violation of any provision of this chapter or any rule of the supervisor adopted under this chapter by an agent, employee, officer, or director of the licensee shall be punishable by a fine, established by the supervisor, not to exceed one hundred dollars for each offense. Each day's continuance of the violation shall be a separate and distinct offense. Each such fine shall be credited to the bank examination fund. [1989 c 212 § 11.]

31.40.120 Injunction. If, in the opinion of the supervisor, a person violates or there is reasonable cause to believe that a person is about to violate any provision of this chapter or any rule adopted under this chapter, the supervisor

may bring an action in the appropriate court to enjoin the violation or to enforce compliance. Upon a proper showing, a restraining order, preliminary or permanent injunction, shall be granted, and a receiver or a conservator may be appointed for the defendant or the defendant's assets. [1989 c 212 § 12.]

31.40.130 Penalty—License impairment. The supervisor may deny, suspend, or revoke a license if the applicant or holder violates any provision of this chapter or any rules promulgated pursuant to this chapter. [1989 c 212 § 13.]

31.40.900 Severability—1989 c 212. If any provision of this act or its application to any person or circumstance is held invalid or, if in the written opinion of the small business administration, is contrary to the intent and purposes of the 7(a) loan guaranty program, the supervisor shall not enforce such provision but the remainder of the act or the application of the provision to other persons or circumstances shall not be affected. [1989 c 212 § 16.]

Chapter 31.45

CHECK CASHERS AND SELLERS

Sections

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

(1) "Check casher" means an individual, partnership, unincorporated association, or corporation that, for compensation, engages, in whole or in part, in the business of cashing checks, drafts, money orders, or other commercial paper serving the same purpose.

(2) "Check seller" means an individual, partnership, unincorporated association, or corporation that, for compen-

sation, engages, in whole or in part, in the business of or selling checks, drafts, money orders, or other commercial paper serving the same purpose.

(3) "Licensee" means a check casher or seller licensed by the supervisor to engage in business in accordance with this chapter.

(4) "Supervisor" means the supervisor of banking. [1991 c 355 § 1.]

31.45.020 Application of chapter. (1) This chapter does not apply to:

(a) Any bank, trust company, savings bank, savings and loan association, or credit union;

(b) The cashing of checks, drafts, or money orders by any corporation, partnership, association, or person who cashes checks, drafts, or money orders as a convenience, as a minor part of its customary business, and not for profit;

(c) The issuance or sale of checks, drafts, or money orders by any corporation, partnership, or association that has a net worth of not less than three million dollars as shown by audited financial statements; and

(d) The issuance or sale of checks, drafts, money orders, or other commercial paper serving the same purpose by any agent of a corporation, partnership, or association described in (c) of this subsection.

(2) Upon application to the supervisor, the supervisor may exempt a corporation, partnership, association, or other person from any or all provisions of this chapter upon a finding by the supervisor that although not otherwise exempt under this section, the applicant is not primarily engaged in the business of cashing or selling checks and a total or partial exemption would not be detrimental to the public. [1991 c 355 § 2.]

31.45.030 License required—Application—Fee—Bond—Supervisor's duties. (1) Except as provided in RCW 31.45.020, no check casher or seller may engage in business without first obtaining a license from the supervisor in accordance with this chapter.

(2) Each application for a license shall be in writing in a form prescribed by the supervisor and shall contain the following information:

(a) The legal name, residence, and business address of the applicant and, if the applicant is a partnership, association, or corporation, of every member, officer, and director thereof;

(b) The location where the initial registered office of the applicant will be located in this state;

(c) The complete address of any other locations at which the applicant proposes to engage in business as a check casher or seller;

(d) Such other data, financial statements, and pertinent information as the supervisor may require with respect to the applicant, its directors, trustees, officers, members, or agents.

(3) Any information in the application regarding the personal residential address or telephone number of the applicant is exempt from the public records disclosure requirements of chapter 42.17 RCW.

(4) The application shall be filed together with an investigation and supervision fee established by rule by the supervisor. Such fees collected shall be deposited to the

credit of the banking examination fund in accordance with RCW 43.19.095.

(5)(a) If the applicant intends to engage in the business of selling checks, drafts, money orders, or other commercial paper serving the same purpose, the supervisor shall require the applicant to obtain and maintain an adequate fidelity bond or blanket fidelity bond covering each officer, employee, or agent having access to funds collected by or for the licensee. The bond shall be for the protection of the public against loss suffered through embezzlement by any person having access to funds collected by or for the licensee or having authority to draw against such funds, or from mysterious disappearance, theft, holdup, or burglary.

(b) In lieu of providing a bond, the licensee may deposit with the supervisor security in the form and amount determined by the supervisor sufficient to protect the public against loss suffered through embezzlement by any person having access to funds collected by or for the licensee or having authority to draw against such funds, or from mysterious disappearance, theft, holdup, or burglary.

(c) Such security may be sold by the supervisor at public auction if it becomes necessary to satisfy the requirements of this chapter. Notice of the sale shall be served upon the licensee who placed the security personally or by mail. If notice is served by mail, service shall be addressed to the licensee at its address as it appears in the records of the supervisor. Bearer bonds of the United States or the state of Washington without a prevailing market price must be sold at public auction. Such bonds having a prevailing market price may be sold at private sale not lower than the prevailing market price. Upon any sale, any surplus above amounts due shall be returned to the licensee, and the licensee shall deposit with the supervisor additional security sufficient to meet the amount required by the supervisor. A deposit given instead of the bond required by this section shall not be deemed an asset of the licensee for the purpose of complying with the liquid asset provisions of this chapter. [1991 c 355 § 3.]

31.45.040 Application for license—Financial responsibility—Supervisor's investigation. (1) The supervisor shall conduct an investigation of every applicant to determine the financial responsibility, experience, character, and general fitness of the applicant. The supervisor shall issue the applicant a license to engage in the business of cashing or selling checks, or both, if the supervisor determines to his or her satisfaction that:

(a) The applicant is financially responsible and appears to be able to conduct the business of cashing or selling checks in an honest, fair, and efficient manner with the confidence and trust of the community; and

(b) The applicant has the required bonds.

(2) The supervisor may refuse to issue a license if he or she finds that the applicant, or any person who is a director, officer, partner, agent, or substantial stockholder of the applicant, has been convicted of a felony in any jurisdiction or is associating or consorting with any person who has been convicted of a felony in any jurisdiction. The term "substantial stockholder" as used in this subsection, means a person owning or controlling ten percent or more of the total outstanding shares of the applicant corporation.

(3) No license may be issued to an applicant whose license to conduct business under this chapter had been revoked by the supervisor within the twelve-month period preceding the application.

(4) A license issued under this chapter shall be conspicuously posted in the place of business of the licensee. The license is not transferable or assignable.

(5) A license issued in accordance with this chapter remains in force and effect through the remainder of the calendar year following its date of issuance unless earlier surrendered, suspended, or revoked.

(6) The supervisor's investigation and fees required under this chapter shall differentiate between check cashing and check selling activities and take into consideration the level of risk and potential harm to the public related to each such activity. [1991 c 355 § 4.]

31.45.050 License—Renewal—Fee—Notice. (1) A license may be renewed upon the filing of an application containing such information as the supervisor may require and by the payment of a fee in an amount determined by the supervisor as necessary to cover the costs of supervision. Such fees collected shall be deposited to the credit of the bank [banking] examination fund in accordance with RCW 43.19.095. The supervisor shall renew the license in accordance with the standards for issuance of a new license.

(2) If a licensee intends to do business at a new location, to close an existing place of business, or to relocate an existing place of business, the licensee shall provide written notification of that intention to the supervisor no less than thirty days before the proposed establishing, closing, or moving of a place of business. [1991 c 355 § 5.]

31.45.060 Licensee—Schedule of fee and charges—Recordkeeping. (1) A schedule of the fees and the charges for the cashing and selling of checks, drafts, money orders, or other commercial paper serving the same purpose shall be conspicuously and continuously posted in every location licensed under this chapter. The licensee shall provide to its customer a receipt for each transaction. The receipt must include the name of the licensee, the type and amount of the transaction, and the fee or fees charged for the transaction.

(2) Each licensee shall keep and maintain such business books, accounts, and records as the supervisor may require to fulfill the purposes of this chapter. Every licensee shall preserve such books, accounts, and records for at least two years.

(3) A check, draft, or money order sold by a licensee shall be drawn on an account of a licensee maintained at a bank, savings bank, or savings and loan association authorized to do business in the state of Washington. [1991 c 355 § 6.]

31.45.070 Licensee—Permissible transactions—Restrictions. (1) Except for the activities of a pawnbroker as defined in RCW 19.60.010, no licensee may engage in a loan business or the negotiation of loans or the discounting of notes, bills of exchange, checks, or other evidences of debt on the same premises where a check cashing or selling business is conducted, unless such loan business is a properly licensed consumer finance company or industrial

loan company office or other lending activity permitted in the state of Washington and is physically separated from the check cashing or selling business in a manner approved by the supervisor.

(2) No licensee may at any time cash or advance any moneys on a postdated check or draft. However, a licensee may cash a check payable on the first banking day following the date of cashing if:

(a) The check is drawn by the United States, the state of Washington, or any political subdivision of the state, or by any department or agency of the state or its subdivisions; or

(b) The check is a payroll check drawn by an employer to the order of its employee in payment for services performed by the employee.

(3) No licensee may agree to hold a check or draft for later deposit. A licensee shall deposit all checks and drafts cashed by the licensee as soon as practicable.

(4) No licensee may issue or cause to be issued any check, draft, or money order, or other commercial paper serving the same purpose, that is drawn upon the trust account of a licensee without concurrently receiving the full principal amount, in cash, or by check, draft, or money order from a third party believed to be valid.

(5) No licensee may advertise, print, display, publish, distribute, or broadcast or cause or permit to be advertised, printed, displayed, published, distributed, or broadcast, any statement or representation that is false, misleading, or deceptive, or that omits material information, or that refers to the supervision of the licensee by the state of Washington or any department or official of the state.

(6) Each licensee shall comply with all applicable federal statutes governing currency transaction reporting. [1991 c 355 § 7.]

31.45.080 Trust funds—Deposit requirements—Rules. (1) All funds received by a licensee or its agents from the sale of checks, drafts, money orders, or other commercial paper serving the same purpose constitute trust funds owned by and belonging to the person from whom they were received or to the person who has paid the checks, drafts, money orders, or other commercial paper serving the same purpose.

(2) All such trust funds shall be deposited in a bank, savings bank, or savings and loan association located in Washington state in an account or accounts in the name of the licensee designated "trust account," or by some other appropriate name indicating that the funds are not the funds of the licensee or of its officers, employees, or agents. Such funds are not subject to attachment, levy of execution, or sequestration by order of a court except by a payee, assignee, or holder in due course of a check, draft, or money order sold by a licensee or its agent. Funds in the trust account, together with funds and checks on hand and in the hands of agents held for the account of the licensee at all times shall be at least equal to the aggregate liability of the licensee on account of checks, drafts, money orders, or other commercial paper serving the same purpose that are sold.

(3) The supervisor shall adopt rules requiring the licensee to periodically withdraw from the trust account the portion of trust funds earned by the licensee from the sale of

checks, drafts, money orders, or other commercial paper serving the same purpose. If a licensee has accepted, in payment for a check, draft, money order, or commercial paper serving the same purpose issued by the licensee, a check or draft that is subsequently dishonored, the supervisor shall prohibit the withdrawal of earned funds in an amount necessary to cover the dishonored check or draft.

(4) If a licensee or its agent commingles trust funds with its own funds, all assets belonging to the licensee or its agent are impressed with a trust in favor of the persons specified in subsection (1) of this section in an amount equal to the aggregate funds that should have been segregated. Such trust continues until an amount equal to the necessary aggregate funds have been deposited in accordance with subsection (2) of this section.

(5) Upon request of the supervisor, a licensee shall furnish to the supervisor an authorization for examination of financial records of any trust fund account established for compliance with this section.

(6) The supervisor may adopt any rules necessary for the maintenance of trust accounts, including rules establishing procedures for distribution of trust account funds if a license is suspended, terminated, or not renewed. [1991 c 355 § 8.]

31.45.090 Report requirements—Rules. (1) Each licensee shall submit to the supervisor, in a form approved by the supervisor, a report containing financial statements covering the calendar year or, if the licensee has an [an] established fiscal year, then for such fiscal year, within one hundred five days after the close of each calendar or fiscal year. The licensee shall also file such additional relevant information as the supervisor may require.

(2) A licensee whose license has been suspended or revoked shall submit to the supervisor, at the licensee's expense, within one hundred five days after the effective date of such surrender or revocation, a closing audit report containing audited financial statements as of such effective date for the twelve months ending with such effective date.

(3) The supervisor shall adopt rules specifying the form and content of such audit reports and may require additional reporting as is necessary for the supervisor to ensure compliance with this chapter. [1991 c 355 § 9.]

31.45.100 Examination—Supervisor's duty. The supervisor may at any time investigate the business and examine the books, accounts, records, and files of any licensee or person who the supervisor has reason to believe is engaging in the business governed by this chapter. The supervisor shall collect from the licensee, the actual cost of the examination. [1991 c 355 § 10.]

31.45.110 Violation or unsound practice—Notice of charges—Hearing—Cease and desist order—Supervisor's duty. (1) The supervisor may issue and serve upon a licensee a notice of charges if, in the opinion of the supervisor, any licensee:

(a) Is engaging or has engaged in an unsafe or unsound practice in conducting the business governed by this chapter;

(b) Is violating or has violated the law, rule, or any condition imposed in writing by the supervisor in connection

with the granting of any application or other request by the licensee or any written agreement made with the supervisor; or

(c) Is about to do the acts prohibited in (a) or (b) of this subsection when the opinion that the threat exists is based upon reasonable cause.

(2) The notice shall contain a statement of the facts constituting the alleged violation or violations or the practice or practices and shall fix a time and place at which a hearing will be held to determine whether an order to cease and desist should be issued against the licensee. The hearing shall be set not earlier than ten days nor later than thirty days after service of the notice unless a later date is set by the supervisor at the request of the licensee.

Unless the licensee personally appears at the hearing or by a duly authorized representative, the licensee is deemed to have consented to the issuance of the cease and desist order. In the event of this consent or if upon the record made at the hearing the supervisor finds that any violation or practice specified in the notice of charges has been established, the supervisor may issue and serve upon the licensee an order to cease and desist from the violation or practice. The order may require the licensee and its directors, officers, employees, and agents to cease and desist from the violation or practice and may require the licensee to take affirmative action to correct the conditions resulting from the violation or practice.

(3) A cease and desist order becomes effective upon the expiration of ten days after the service of the order upon the licensee concerned, except that a cease and desist order issued upon consent becomes effective at the time specified in the order and remains effective as provided in the order unless it is stayed, modified, terminated, or set aside by action of the supervisor or a reviewing court. [1991 c 355 § 11.]

31.45.120 Violation or unsound practice—Temporary cease and desist order—Supervisor's duty. Whenever the supervisor determines that the acts specified in RCW 31.45.110 or their continuation is likely to cause insolvency or substantial injury to the public, the supervisor may also issue a temporary order requiring the licensee to cease and desist from the violation or practice. The order becomes effective upon service upon the licensee and remains effective unless set aside, limited, or suspended by a court under RCW 31.45.130 pending the completion of the administrative proceedings under the notice and until such time as the supervisor dismisses the charges specified in the notice or until the effective date of the cease and desist order issued against the licensee under RCW 31.45.110. [1991 c 355 § 12.]

31.45.130 Temporary cease and desist order—Licensee's application for injunction. Within ten days after a licensee has been served with a temporary cease and desist order, the licensee may apply to the superior court in the county of its principal place of business for an injunction setting aside, limiting, or suspending the order pending the completion of the administrative proceedings pursuant to the notice served under RCW 31.45.120. The superior court has jurisdiction to issue the injunction. [1991 c 355 § 13.]

31.45.140 Violation of temporary cease and desist order—Supervisor's application for injunction. In the case of a violation or threatened violation of a temporary cease and desist order issued under RCW 31.45.120, the supervisor may apply to the superior court of the county of the principal place of business of the licensee for an injunction. [1991 c 355 § 14.]

31.45.150 Licensee's failure to perform obligations—Supervisor's duty. Whenever as a result of an examination or report it appears to the supervisor that:

- (1) The capital of any licensee is impaired;
 - (2) Any licensee is conducting its business in such an unsafe or unsound manner as to render its further operations hazardous to the public;
 - (3) Any licensee has suspended payment of its trust obligations;
 - (4) Any licensee has refused to submit its books, papers, and affairs to the inspection of the supervisor or the supervisor's examiner;
 - (5) Any officer of any licensee refuses to be examined under oath regarding the business of the licensee;
 - (6) Any licensee neglects or refuses to comply with any order of the supervisor made pursuant to this chapter unless the enforcement of such order is restrained in a proceeding brought by such licensee;
- the supervisor may immediately take possession of the property and business of the licensee and retain possession until the licensee resumes business or its affairs are finally liquidated as provided in RCW 31.45.160. The licensee may resume business upon such terms as the supervisor may prescribe. [1991 c 355 § 15.]

31.45.160 Supervisor's possession of property and business—Appointment of receiver. Whenever the supervisor has taken possession of the property and business of a licensee, the supervisor may petition the superior court for the appointment of a receiver to liquidate the affairs of the licensee. During the time that the supervisor retains possession of the property and business of a licensee, the supervisor has the same powers and authority with reference to the licensee as is vested in the supervisor with respect to industrial loan companies, and the licensee has the same rights to hearings and judicial review as are granted to industrial loan companies. [1991 c 355 § 16.]

31.45.170 Violation—Penalty. Every licensee violating or failing to comply with any provision of this chapter or any lawful direction or requirement of the supervisor is subject, in addition to any penalty otherwise provided, to a penalty of not more than one hundred dollars for each offense, to be recovered by the attorney general in a civil action in the name of the state. Each day's continuance of the violation is a separate and distinct offense. [1991 c 355 § 17.]

31.45.180 Violation—Misdemeanor. Any person who violates or participates in the violation of any provision of the rules or orders of the supervisor or of this chapter is guilty of a misdemeanor. [1991 c 355 § 18.]

31.45.190 Violation—Consumer protection act—Remedies. The legislature finds and declares that any violation of this chapter substantially affects the public interest and is an unfair and deceptive act or practice and an unfair method of competition in the conduct of trade or commerce as set forth in RCW 19.86.020. Remedies available under chapter 19.86 RCW shall not affect any other remedy the injured party may have. [1991 c 355 § 19.]

31.45.200 Supervisor—Broad administrative discretion. The supervisor has the power, and broad administrative discretion, to administer and interpret the provisions of this chapter to ensure the protection of the public. [1991 c 355 § 20.]

31.45.900 Effective date, implementation—1991 c 355. This act shall take effect January 1, 1992. The supervisor shall take such steps as are necessary to ensure that this act is implemented on its effective date. [1991 c 355 § 24.]

Title 32

MUTUAL SAVINGS BANKS

Chapters

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- 32.08** Organization and powers.
- 32.12** Deposits—Earnings—Dividends—Interest.
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- 32.34** Merger, consolidation, conversion, etc.
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Credit life insurance and credit accident and health insurance: Chapter 48.34 RCW.

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Chapter 32.04

GENERAL PROVISIONS

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- 32.04.300 Jurisdiction of courts as to cease and desist orders, orders to remove trustee, officer, or employee, etc.

Corporate seals, effect of absence from instrument: RCW 64.04.105.

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Negotiable instruments: Title 62A RCW.

Powers of appointment: Chapter 11.95 RCW.

Safe deposit companies: Chapter 22.28 RCW.

32.04.010 Scope of title. This title shall not be construed as amending or repealing any other law of the state authorizing the incorporation of banks or regulating the same, but shall be deemed to be additional legislation for the sole purpose of authorizing the incorporation and operation of mutual savings banks and mutual savings banks converted under chapter 32.32 RCW to stock form, as herein prescribed. Savings banks incorporated on the stock plan, other than converted mutual savings banks, and other stock banks having savings departments as authorized by RCW 30.20.060, or by any other law of the state heretofore or hereafter enacted, shall not be in any manner affected by the provisions of this title, or any amendment thereto. [1981 c 85 § 105; 1955 c 13 § 32.04.010. Prior: 1915 c 175 § 52; RRS § 3381.]

32.04.020 Definitions. The use of the term "savings bank" in this title refers to mutual savings banks and converted mutual savings banks only.

The use of the words "mutual savings" as part of a name under which business of any kind is or may be transacted by any person, firm, or corporation, except such as were organized and in actual operation on June 9, 1915, or as may be thereafter organized and operated under the requirements of this title is hereby prohibited.

The use of the term "supervisor" in this title refers to the supervisor of banking.

The use of the word "branch" in this title refers to an established manned place of business or manned mobile

facility or other manned facility of a savings bank, other than the principal office, at which deposits may be taken. [1985 c 56 § 1; 1981 c 85 § 106; 1955 c 13 § 32.04.020. Prior: 1915 c 175 § 49; RRS § 3378.]

32.04.022 "Mortgage" includes deed of trust. The word "mortgage" as used in this title includes deed of trust. [1969 c 55 § 13.]

32.04.025 Powers as to horizontal property regimes or condominiums. The words "real estate" and "real property" as used in this title shall include apartments or other portions, however designated, of horizontal property regimes, or a condominium interest in property, as may be created under any laws now in existence or hereafter enacted. A mutual savings bank may do any act necessary or appropriate in connection with its interest in or ownership of any portion of a horizontal property regime or condominium. [1963 c 176 § 10.]

Horizontal property regimes: Chapter 64.32 RCW.

32.04.030 Branches. A savings bank, with the written approval of the supervisor, may establish and operate branches in any place within the state.

A savings bank desiring to establish a branch shall file a written application therefor with the supervisor, who shall approve or disapprove the application.

The supervisor's approval shall be conditioned on a finding that the resources in the market area of the proposed location offer a reasonable promise of adequate support for the proposed branch and that the proposed branch is not being formed for other than the legitimate purposes under this title. A branch shall not be established or permitted if the capital of the savings bank, including paid-in surplus, guaranty fund, and undivided profits, is less than the aggregate paid-in capital which would be required by law as a prerequisite to the establishment and operation of an equal number of branches in like locations by a commercial bank. If the application for a branch is not approved, the savings bank shall have the right to appeal in the same manner and within the same time as provided by RCW 32.08.050 and 32.08.060. The savings bank when delivering the application to the supervisor shall transmit to the supervisor a check in an amount established by rule to cover the expense of the investigation. A savings bank shall not move any branch more than two miles from its existing location without prior approval of the supervisor. Not less than twenty days prior to the date on which it opens any office at which it will transact business, a mutual savings bank shall give written notice to the supervisor of the location and business hours of this office. No such notice shall become effective until it has been delivered to the office of the supervisor.

The board of trustees of a savings bank, after notice to the supervisor, may discontinue the operation of a branch. The savings bank shall keep the supervisor informed in the matter and shall notify the supervisor of the date operation of the branch is discontinued. [1985 c 56 § 2; 1955 c 80 § 1; 1955 c 13 § 32.04.030. Prior: 1933 c 143 § 1; 1925 ex.s. c 86 § 10; 1915 c 175 § 15; RRS § 3344.]

32.04.040 Changing place of business. Any savings bank may make a written application to the supervisor for leave to change its place of business to another place in the same county. The application shall state the reasons for the proposed change, and shall be signed and acknowledged by a majority of its board of trustees. If the proposed place of business is within the limits of the city or town in which the present place of business of the savings bank is located, the change may be made upon the written approval of the supervisor; if beyond the limits, notice of intention to make the application, signed by two principal officers of the savings bank, shall be published once a week for two successive weeks immediately preceding the application in a newspaper of general circulation in the city of Olympia and shall be published in like manner in a newspaper to be designated by the supervisor, of general circulation in the county in which the present place of business of the bank is located. If the supervisor grants his certificate authorizing the change of location, which in his discretion he may do, the savings bank shall cause the certificate to be published once in each week for two successive weeks in the newspapers in which the notice of application was published. When the requirements of this section have been fully complied with, the savings bank may, upon or after the day specified in the certificate, remove its property and effects to the location designated therein, and thereafter its principal place of business shall be the location so specified; and it shall have all the rights and powers in the new location which it possessed at its former location. [1985 c 469 § 16; 1955 c 13 § 32.04.040. Prior: 1915 c 175 § 48; RRS § 3377.]

32.04.050 Reports. A savings bank shall render to the supervisor, in such form as he shall prescribe, at least three regular reports each year exhibiting its resources and liabilities as of such dates as the supervisor shall designate, which shall be the dates designated by the comptroller of the currency of the United States for reports of national banking associations. Every such report, in a condensed form to be prescribed by the supervisor, shall be published once in a newspaper of general circulation, published in the place where the bank is located. A savings bank shall also make such special reports as the supervisor shall call for. A regular report shall be filed with the supervisor within thirty days and proof of the publication thereof within forty days from the date of the issuance of the call for the report. A special report shall be filed within such time as the supervisor shall indicate in the call therefor. A savings bank that fails to file within the prescribed time any report required by this section or proof of the publication of any report required to be published shall be subject to a penalty to the state of fifty dollars for each day's delay, recoverable by a civil action brought by the attorney general in the name of the state. [1977 ex.s. c 241 § 1; 1955 c 13 § 32.04.050. Prior: 1925 ex.s. c 86 § 13; 1915 c 175 § 39; RRS § 3368a.]

32.04.060 Expenses of operation limited. No savings bank shall in the course of any fiscal year (which fiscal year shall be deemed to expire on the last day of December in each year) pay or become liable to pay either directly or indirectly for expenses of management and operation more than three percent of its average assets during such year:

PROVIDED, That a mutual savings bank with less than five hundred million dollars in deposits may pay or become liable to pay either directly or indirectly for expenses of management and operation up to six percent of its average assets during the year. [1981 c 86 § 1; 1977 ex.s. c 171 § 1; 1955 c 13 § 32.04.060. Prior: 1915 c 175 § 44; RRS § 3373.]

Severability—1981 c 86: "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 86 § 17.]

32.04.070 Certified copies of records as evidence.

Copies from the records, books, and accounts of a savings bank shall be competent evidence in all cases, equal with originals thereof, if there is annexed to such copies an affidavit taken before a notary public or clerk of a court under seal, stating that the affiant is the officer of the bank having charge of the original records, and that the copy is true and correct and is full so far as the same relates to the subject matter therein mentioned. [1955 c 13 § 32.04.070. Prior: 1915 c 175 § 47; RRS § 3376.]

32.04.080 Employees' pension plan. A mutual savings bank may provide for pensions for its disabled or superannuated employees and may pay a part or all of the cost of providing such pensions in accordance with a plan adopted by its board of trustees and approved in writing by the supervisor of banking. Whenever the trustees of the bank shall have formulated and adopted a plan providing for such pensions it shall, within ten days thereafter, transmit the same to the supervisor of banking. The supervisor of banking shall thereupon examine such plan and investigate the feasibility and practicability thereof and within thirty days of the receipt thereof by him notify the bank in writing of his approval or rejection of the same. After the approval of the supervisor the mutual savings bank shall be authorized and empowered to put such plan into effect. The board of trustees of a savings bank may set aside from current earnings reserves in such amounts as the board shall deem wise to provide for the payment of future pensions. [1955 c 80 § 2; 1955 c 13 § 32.04.080. Prior: 1949 c 119 § 1; 1937 c 64 § 2; 1935 c 87 § 1; Rem. Supp. 1949 § 3366-1.]

32.04.082 Pension benefits—Waiver by bank of offsets attributable to social security. With respect to pension payments or retirement benefits payable by a mutual savings bank to any employee heretofore or hereafter retired, such bank may waive all or any part of any offsets thereto attributable to social security benefits receivable by such employee. [1957 c 80 § 7.]

32.04.085 Pension benefits—Supplementation. Any pension payment or retirement benefits payable by a mutual savings bank to a former officer or employee, or to a person or persons entitled thereto by virtue of service performed by such officer or employee, in the discretion of a majority of all the trustees of such bank, may be supplemented from time to time. Whenever the trustees of the bank shall have formulated and adopted a plan providing for such supplemental payments, within ten days thereafter said trustees shall transmit the same to the supervisor of banking. The

supervisor of banking shall thereupon examine such plan and investigate the feasibility and practicability thereof and, within thirty days of the receipt thereof by him, notify the bank in writing of his approval or rejection of the same. After the approval of the supervisor the mutual savings bank shall be authorized and empowered to put such plan into effect. The board of trustees of a savings bank may set aside from current earnings, reserves in such amounts as the board shall deem appropriate to provide for the payments of future supplemental payments. [1971 ex.s. c 222 § 1.]

Severability—1971 ex.s. c 222: "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 222 § 9.]

32.04.100 Penalty for falsification. Every person who knowingly subscribes to or makes or causes to be made any false statement or false entry in the books of any savings bank, or knowingly subscribes to or exhibits any false or fictitious security, document or paper, with the intent to deceive any person authorized to examine into the affairs of any savings bank, or makes or publishes any false statement of the amount of the assets or liabilities of any such savings bank shall be guilty of a felony. [1955 c 13 § 32.04.100. Prior: 1931 c 132 § 11; RRS § 3379b.]

32.04.110 Penalty for concealing or destroying evidence. Every trustee, officer, employee, or agent of any savings bank who for the purpose of concealing any fact suppresses any evidence against himself, or against any other person, or who abstracts, removes, mutilates, destroys, or secretes any paper, book, or record of any savings bank, or of the supervisor of banking, or anyone connected with his office shall be guilty of a felony. [1955 c 13 § 32.04.110. Prior: 1931 c 132 § 12; RRS § 3379c.]

32.04.120 Specific penalties invoked. The provisions of RCW 9.24.050, 9.24.040 and 9.24.030 shall apply to the corporations authorized under this title. [1955 c 13 § 32.04.120. Prior: 1915 c 175 § 50; RRS § 3379.]

32.04.130 General penalty. Any person who does anything forbidden by chapter 32.04, 32.08, 32.12, 32.16 or 32.24 RCW of this title for which a penalty is not provided in this title, or in some other law of the state, shall be guilty of a gross misdemeanor and be punished accordingly. [1955 c 13 § 32.04.130. Prior: 1915 c 175 § 51; RRS § 3380.]

32.04.140 Official communications. See RCW 30.04.270.

32.04.150 Cost of examination. See RCW 30.04.070.

32.04.170 Conversion to mutual savings bank of savings and loan association. See chapter 33.44 RCW.

32.04.190 Bank stabilization act. See chapter 30.56 RCW.

32.04.200 Capital notes or debentures. See chapter 30.36 RCW.

32.04.210 Saturday closing authorized. See RCW 30.04.330.

32.04.211 Examinations directed—Cooperative agreements and actions. (1) The supervisor, the deputy supervisor, or a bank examiner shall visit each savings bank at least once every eighteen months, and oftener if necessary, for the purpose of making a full investigation into the condition of such corporation, and for that purpose they are hereby empowered to administer oaths and to examine under oath any director, officer, employee, or agent of such corporation. The supervisor may make such other full or partial examinations as deemed necessary and may examine any holding company that owns any portion of a savings bank chartered by the state of Washington and obtain reports of condition for any holding company that owns any portion of a savings bank chartered by the state of Washington. The supervisor may visit and examine into the affairs of any nonpublicly held corporation in which the savings bank or holding company has an investment or any publicly held corporation the capital stock of which is controlled by the savings bank or holding company; may appraise and revalue such corporations' investments and securities; and shall have full access to all the books, records, papers, securities, correspondence, bank accounts, and other papers of such corporations for such purposes. The supervisor may, in his or her discretion, accept in lieu of the examinations required in this section the examinations conducted at the direction of the federal reserve board or the Federal Deposit Insurance Corporation. Any willful false swearing in any examination is perjury in the second degree.

(2) The supervisor may enter into cooperative and reciprocal agreements with the bank regulatory authorities of the United States, any state, the District of Columbia, or any trust territory of the United States for the periodic examination of domestic savings banks or holding companies owning banking institutions in other states, the District of Columbia, or trust territories, and subsidiaries of such domestic savings banks and holding companies, or of out-of-state holding companies owning a savings bank the principal operations of which are conducted in this state. The supervisor may accept reports of examination and other records from such authorities in lieu of conducting his or her own examinations. The supervisor may enter into joint actions with other regulatory bodies having concurrent jurisdiction or may enter into such actions independently to carry out his or her responsibilities under this title and assure compliance with the laws of this state. [1989 c 180 § 4.]

32.04.220 Examination reports and information—Confidential—Privileged—Penalty. (1) All examination reports and all information obtained by the supervisor and the supervisor's staff in conducting examinations of mutual savings banks, and information obtained by the supervisor and the supervisor's staff from other state or federal bank regulatory authorities with whom the supervisor has entered into agreements pursuant to RCW 32.04.211, and information obtained by the supervisor and the supervisor's staff

relating to examination and supervision of holding companies owning a savings bank in this state or subsidiaries of such holding companies, is confidential and privileged information and 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 supervisor may furnish all or any part of examination reports prepared by the supervisor's office to:

(a) Federal agencies empowered to examine mutual savings banks;

(b) Bank regulatory authorities with whom the supervisor has entered into agreements pursuant to RCW 32.04.211, and other bank regulatory authorities who are the primary regulatory authority or insurer of accounts for a holding company owning a savings bank the principal operations of which are conducted in this state or a subsidiary of such holding company; provided that the supervisor shall first find that the reports of examination to be furnished shall receive protection from disclosure comparable to that accorded by this section;

(c) Officials empowered to investigate criminal charges subject to legal process, valid search warrant, or subpoena. If the supervisor furnishes any examination report to officials empowered to investigate criminal charges, the supervisor may only furnish that part of the report which is necessary and pertinent to the investigation, and the supervisor may do this only after notifying the affected mutual savings bank and any customer of the mutual savings bank who is named in that part of the report of the order to furnish the part of the examination report unless the officials requesting the report first obtain a waiver of the notice requirement from a court of competent jurisdiction for good cause;

(d) The examined savings bank or holding company thereof;

(e) The attorney general in his or her role as legal advisor to the supervisor;

(f) Liquidating agents of a distressed savings bank;

(g) A person or organization officially connected with the savings bank as officer, director, attorney, auditor, or independent attorney or independent auditor;

(h) The Washington public deposit protection commission as provided by RCW 39.58.105.

(3) All examination reports furnished under subsections (2) and (4) of this section shall remain the property of the division of banking, and be confidential, and no person, agency, or authority to whom reports are furnished or any officer, director, or employee thereof shall disclose or make public any of the reports or any information contained therein except in published statistical material that does not disclose the affairs of any individual or corporation: PROVIDED, That nothing herein shall prevent the use in a criminal prosecution of reports furnished under subsection (2) of this section.

(4) The examination report made by the division of banking is designed for use in the supervision of the mutual savings bank, and the supervisor may furnish a copy of the report to the mutual savings bank examined. The report shall remain the property of the supervisor and will be furnished to the mutual savings bank solely for its confidential use. Under no circumstances shall the mutual savings bank or any of its trustees, officers, or employees disclose or

make public in any manner the report or any portion thereof, to any person or organization not connected with the savings bank as officer, director, employee, attorney, auditor, or candidate for executive office with the bank. The savings bank may also, after execution of an agreement not to disclose information in the report, disclose the report or relevant portions thereof to a party proposing to acquire or merge with the savings bank.

(5) Examination reports and information obtained by the supervisor and the supervisor's staff in conducting examinations, or from other state and federal bank regulatory authorities with whom the supervisor has entered into agreements pursuant to RCW 32.04.211, or relating to examination and supervision of holding companies owning a savings bank the principal operations of which are conducted in this state or a subsidiary of such holding company, shall not be subject to public disclosure under chapter 42.17 RCW.

(6) In any civil action in which the reports are sought to be discovered or used as evidence, any party may, upon notice to the supervisor, petition the court for an in camera review of the report. The court may permit discovery and introduction of only those portions of the report which are relevant and otherwise unobtainable by the requesting party. This subsection shall not apply to an action brought or defended by the supervisor.

(7) This section shall not apply to investigation reports prepared by the supervisor and the supervisor's staff concerning an application for a new mutual savings bank or an application for a branch of a mutual savings bank: PROVIDED, That the supervisor may adopt rules making confidential portions of the reports if in the supervisor's opinion the public disclosure of the portions of the report would impair the ability to obtain the information which the supervisor considers necessary to fully evaluate the application.

(8) Every person who violates any provision of this section shall forfeit the person's office or employment and be guilty of a gross misdemeanor. [1989 c 180 § 5; 1977 ex.s. c 245 § 2.]

Severability—1977 ex.s. c 245: See note following RCW 30.04.075.

32.04.250 Violations or unsafe practices—Notice of charges—Grounds—Contents of notice—Hearing—Cease and desist orders. (1) The supervisor may issue and serve upon a mutual savings bank a notice of charges if in the opinion of the supervisor any mutual savings bank:

(a) Is engaging or has engaged in an unsafe or unsound practice in conducting the business of the mutual savings bank;

(b) Is violating or has violated the law, rule, or any condition imposed in writing by the supervisor in connection with the granting of any application or other request by the mutual savings bank or any written agreement made with the supervisor; or

(c) Is about to do the acts prohibited in (a) or (b) of this subsection when the opinion that the threat exists is based upon reasonable cause.

(2) The notice shall contain a statement of the facts constituting the alleged violation or violations or the practice or practices and shall fix a time and place at which a hearing

will be held to determine whether an order to cease and desist should issue against the mutual savings bank. The hearing shall be set not earlier than ten days nor later than thirty days after service of the notice, unless a later date is set by the supervisor at the request of the mutual savings bank.

Unless the mutual savings bank shall appear at the hearing by a duly authorized representative, it shall be deemed to have consented to the issuance of the cease and desist order. In the event of this consent or if upon the record made at the hearing the supervisor finds that any violation or practice specified in the notice of charges has been established, the supervisor may issue and serve upon the mutual savings bank an order to cease and desist from the violation or practice. The order may require the mutual savings bank and its trustees, officers, employees, and agents to cease and desist from the violation or practice and may require the mutual savings bank to take affirmative action to correct the conditions resulting from the violation or practice.

(3) A cease and desist order shall become effective at the expiration of ten days after the service of the order upon the mutual savings bank concerned, except that a cease and desist order issued upon consent shall become effective at the time specified in the order and shall remain effective as provided therein, unless it is stayed, modified, terminated, or set aside by action of the supervisor or a reviewing court. [1979 c 46 § 1.]

Severability—1979 c 46: "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 46 § 11.]

32.04.260 Violations or unsafe practices—Temporary cease and desist orders. Whenever the supervisor determines that the acts specified in RCW 32.04.250 or their continuation is likely to cause insolvency or substantial dissipation of assets or earnings of the mutual savings bank or to otherwise seriously prejudice the interest of its depositors, the supervisor may also issue a temporary order requiring the mutual savings bank to cease and desist from the violation or practice. The order shall become effective upon service on the mutual savings bank and, unless set aside, limited, or suspended by a court in proceedings under RCW 32.04.270, shall remain effective pending the completion of the administrative proceedings under the notice and until such time as the supervisor shall dismiss the charges specified in the notice or until the effective date of a cease and desist order issued against the mutual savings bank under RCW 32.04.250. [1979 c 46 § 2.]

Severability—1979 c 46: See note following RCW 32.04.250.

32.04.270 Violations or unsafe practices—Injunction to set aside temporary cease and desist order. Within ten days after a mutual savings bank has been served with a temporary cease and desist order, the mutual savings bank may apply to the superior court in the county of its principal place of business for an injunction setting aside, limiting, or suspending the order pending the completion of the administrative proceedings pursuant to the notice served under RCW 32.04.250.

The superior court shall have jurisdiction to issue the injunction. [1979 c 46 § 3.]

Severability—1979 c 46: See note following RCW 32.04.250.

32.04.280 Violation of temporary cease and desist order—Injunction to enforce order. In the case of a violation or threatened violation of a temporary cease and desist order issued under RCW 32.04.260, the supervisor may apply to the superior court of the county of the principal place of business of the mutual savings bank for an injunction to enforce the order. The court shall issue an injunction if it determines there has been a violation or threatened violation. [1979 c 46 § 4.]

Severability—1979 c 46: See note following RCW 32.04.250.

32.04.290 Administrative hearing provided for in RCW 32.04.250 or 32.16.093—Procedure—Order—Judicial review. (1) Any administrative hearing provided in RCW 32.04.250 or 32.16.093 may be held at such place as is designated by the supervisor and shall be conducted in accordance with chapter 34.05 RCW. The hearing shall be private unless the supervisor determines that a public hearing is necessary to protect the public interest after fully considering the views of the party afforded the hearing.

Within sixty days after the hearing, the supervisor shall render a decision which shall include findings of fact upon which the decision is based and shall issue and serve upon each party to the proceeding an order or orders consistent with RCW 32.04.250 or 32.16.093, as the case may be.

Unless a petition for review is timely filed in the superior court of the county of the principal place of business of the affected mutual savings bank under subsection (2) of this section, and until the record in the proceeding has been filed as provided therein, the supervisor may at any time modify, terminate, or set aside any order upon such notice and in such manner as he shall deem proper. Upon filing the record, the supervisor may modify, terminate, or set aside any order only with permission of the court.

The judicial review provided in this section shall be exclusive for orders issued under RCW 32.04.250 and 32.16.093.

(2) Any party to the proceeding or any person required by an order, temporary order, or injunction issued under RCW 32.04.250, 32.04.260, 32.04.280, or 32.16.093 to refrain from any of the violations or practices stated therein may obtain a review of any order served under subsection (1) of this section other than one issued upon consent by filing in the superior court of the county of the principal place of business of the affected mutual savings bank within ten days after the date of service of the order a written petition praying that the order of the supervisor be modified, terminated, or set aside. A copy of the petition shall be immediately served upon the supervisor and the supervisor shall then file in the court the record of the proceeding. The court shall have jurisdiction upon the filing of the petition, which jurisdiction shall become exclusive upon the filing of the record, to affirm, modify, terminate, or set aside in whole or in part the order of the supervisor except that the supervisor may modify, terminate, or set aside an order with the permission of the court. The judgment and decree of the court shall be final, except that it shall be subject to appellate review under the rules of court.

(3) The commencement of proceedings for judicial review under subsection (2) of this section shall not operate as a stay of any order issued by the supervisor unless specifically ordered by the court.

(4) Service of any notice or order required to be served under RCW 32.04.250, 32.04.260, or 32.16.093, or under RCW 32.16.090, as now or hereafter amended, shall be accomplished in the same manner as required for the service of process in civil actions in superior courts of this state. [1979 c 46 § 5.]

Severability—1979 c 46: See note following RCW 32.04.250.

32.04.300 Jurisdiction of courts as to cease and desist orders, orders to remove trustee, officer, or employee, etc. The supervisor may apply to the superior court of the county of the principal place of business of the mutual savings bank affected for the enforcement of any effective and outstanding order issued under RCW 32.04.250 or 32.16.093, and the court shall have jurisdiction to order compliance therewith.

No court shall have jurisdiction to affect by injunction or otherwise the issuance or enforcement of any such order, or to review, modify, suspend, terminate, or set aside any such order, except as provided in RCW 32.04.270, 32.04.280, and 32.04.290. [1979 c 46 § 6.]

Severability—1979 c 46: See note following RCW 32.04.250.

Chapter 32.08

ORGANIZATION AND POWERS

Sections

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32.08.010 Authority to organize—Incorporators—Certificate. When authorized by the supervisor, as hereinafter provided, not less than nine nor more than thirty persons may form a corporation to be known as a "mutual savings bank." Such persons must be citizens of the United States; at least four-fifths of them must be residents of this state, and at least two-thirds of them must be residents of the county where the bank is to be located and its business transacted. They shall subscribe and acknowledge an incorporation certificate in triplicate which shall specifically state:

(1) The name by which the savings bank is to be known, which name shall include the words "mutual savings bank";

(2) The place where the bank is to be located, and its business transacted, naming the city or town and county;

(3) The name, occupation, residence, and post office address of each incorporator;

(4) The sums which each incorporator will contribute in cash to the initial guaranty fund, and to the expense fund respectively, as provided in RCW 32.08.090 and 32.08.100;

(5) A declaration that each incorporator will accept the responsibilities and faithfully discharge the duties of a trustee of the savings bank, and is free from all the disqualifications specified in RCW 32.16.010. [1955 c 13 § 32.08.010. Prior: 1915 c 175 § 1; 1905 c 129 § 2; RRS § 3313.]

32.08.020 Notice of intention. At the time of executing the incorporation certificate, the proposed incorporators shall sign a notice of intention to organize the mutual savings bank, which shall specify their names, the name of the proposed corporation, and its location as set forth in the incorporation certificate. The original of such notice shall be filed in the office of the supervisor within sixty days after the date of its execution, and a copy thereof shall be published at least once a week for four successive weeks in a newspaper designated by the supervisor, the publication to be commenced within thirty days after such designation. At least fifteen days before the incorporation certificate is submitted to the supervisor for examination, as provided in RCW 32.08.030, a copy of such notice shall be served upon each savings bank doing business in the city or town named in the incorporation certificate, by mailing such copy (postage prepaid) to such bank. [1955 c 13 § 32.08.020. Prior: 1915 c 175 § 2; RRS § 3314.]

32.08.030 Submission of certificate—Proof of service of notice. After the lapse of at least twenty-eight days from the date of the first due publication of the notice of intention to incorporate, and within ten days after the date of the last publication thereof, the incorporation certificate executed in triplicate shall be submitted for examination to the supervisor at his office in Olympia, with affidavits showing due publication and service of the notice of intention to organize prescribed in RCW 32.08.020. [1955 c 13 § 32.08.030. Prior: 1915 c 175 § 3; RRS § 3315.]

32.08.040 Examination and action by supervisor. When any such certificate has been filed for examination the

supervisor shall thereupon ascertain from the best source of information at his command, and by such investigation as he may deem necessary, whether the character, responsibility, and general fitness of the person or persons named in such certificate are such as to command confidence and warrant belief that the business of the proposed bank will be honestly and efficiently conducted in accordance with the intent and purpose of this title, and whether the public convenience and advantage will be promoted by allowing such proposed bank to be incorporated and engage in business, and whether greater convenience and access to a savings bank would be afforded to any considerable number of depositors by opening a mutual savings bank in the place designated, whether the population in the neighborhood of such place, and in the surrounding country, affords a reasonable promise of adequate support for the proposed bank, and whether the contributions to the initial guaranty fund and expense fund have been paid in cash. After the supervisor has satisfied himself by such investigation whether it is expedient and desirable to permit such proposed bank to be incorporated and engage in business, he shall within sixty days after the date of the filing of the certificate for examination indorse upon each of the triplicates thereof over his official signature the word "approved" or the word "refused," with the date of such indorsement. In case of refusal he shall forthwith return one of the triplicates so indorsed to the proposed incorporators from whom the certificate was received. [1955 c 13 § 32.08.040. Prior: 1915 c 175 § 4, part; RRS § 3316, part.]

32.08.050 Appeal from adverse decision. From the supervisor's refusal to issue a certificate of authorization, the applicants or a majority of them, may within thirty days from the date of the filing of the certificate of refusal with the secretary of state, appeal to a board of appeal composed of the governor or the governor's designee, the attorney general and the supervisor of banking by filing in the office of the supervisor a notice that they appeal to such board from his refusal. The procedure upon the appeal shall be such as the board may prescribe, and its determination shall be certified, filed, and recorded in the same manner as the supervisor's, and shall be final. [1979 ex.s. c 57 § 6; 1955 c 13 § 32.08.050. Prior: 1915 c 175 § 4, part; RRS § 3316, part.]

32.08.060 Procedure upon approval. In case of approval, the supervisor shall forthwith give notice thereof to the proposed incorporators, and file one of the duplicate certificates in his own office, and shall transmit the other to the secretary of state. Upon receipt from the proposed incorporators of the same fees as are required for filing and recording other incorporation certificates, the secretary of state shall file the certificate and record the same. Upon the filing of said incorporation certificate in duplicate approved as aforesaid in the offices of the supervisor and the secretary of state, the persons named therein and their successors shall thereupon become and be a corporation, which corporation shall have the powers and be subject to the duties and obligations prescribed in this title and its corporate existence shall be perpetual, unless sooner terminated pursuant to law, but such corporation shall not receive deposits or engage in

business until authorized so to do by the supervisor as provided in RCW 32.08.070. [1981 c 302 § 26; 1957 c 80 § 1; 1955 c 13 § 32.08.060. Prior: 1915 c 175 § 4, part; RRS § 3316, part.]

Severability—1981 c 302: See note following RCW 19.76.100.

32.08.061 Extension of period of existence—Procedure. A mutual savings bank may amend its incorporation certificate to extend the period of its corporate existence for a further definite time or perpetually by a resolution adopted by a majority vote of its board of trustees. Duplicate copies of the resolution, subscribed and acknowledged by the president and secretary of such bank, shall be filed in the office of the supervisor within thirty days after its adoption. If the supervisor finds that the resolution conforms to law he shall, within sixty days after the date of the filing thereof, endorse upon each of the duplicates thereof, over his official signature, his approval and forthwith give notice thereof to the bank and shall file one of the certificates in his own office and shall transmit the other to the secretary of state. Upon receipt from the mutual savings bank of the same fees as are required of general corporations for filing corresponding instruments, the secretary of state shall file the resolution and record the same. Upon the filing of said resolution in duplicate, approved as aforesaid in the offices of the supervisor and the secretary of state, the corporate existence of said bank shall continue for the period set forth in said resolution unless sooner terminated pursuant to law. [1981 c 302 § 27; 1963 c 176 § 1; 1957 c 80 § 8.]

Severability—1981 c 302: See note following RCW 19.76.100.

32.08.070 Authorization certificate. Before a mutual savings bank shall be authorized to do any business the supervisor shall be satisfied that the corporation has in good faith complied with all the requirements of law and fulfilled all the conditions precedent to commencing business imposed by this title. If satisfied that the corporation has in good faith complied with all the requirements of law, and fulfilled all the conditions precedent to commencing business imposed by this title, the supervisor shall within six months after the date upon which the proposed organization certificate was filed with him for examination, but in no case after the expiration of that period, issue under his hand and official seal in triplicate an authorization certificate to such corporation. Such authorization certificate shall state that the corporation therein named has complied with all the requirements of law, that it is authorized to transact at the place designated in its certificate of incorporation, the business of a mutual savings bank. One of the triplicate authorization certificates shall be transmitted by the supervisor to the corporation therein named, and the other two authorization certificates shall be filed by the supervisor in the same public offices where the certificate of incorporation is filed, and shall be attached to said incorporation certificate. [1981 c 302 § 28; 1955 c 13 § 32.08.070. Prior: 1915 c 175 § 5; RRS § 3317.]

Severability—1981 c 302: See note following RCW 19.76.100.

32.08.080 Conditions precedent to reception of deposits. Before such corporation shall be authorized to

receive deposits or transact business other than the completion of its organization, the supervisor shall be satisfied that:

(1) The incorporators have made the deposit of the initial guaranty fund required by this title;

(2) That the incorporators have made the deposit of the expense fund required by RCW 32.08.090 and if the supervisor shall so require, have entered into the agreement or undertaking with him and have filed the same and the security therefor as prescribed in said section;

(3) That the corporation has transmitted to the supervisor the name, residence, and post office address of each officer of the corporation;

(4) That its certificate of incorporation in triplicate has been filed in the respective public offices designated in this title. [1955 c 13 § 32.08.080. Prior: 1915 c 175 § 6; RRS § 3318.]

32.08.090 Expense fund—Agreement to contribute further—Security. Before any mutual savings bank shall be authorized to do business, its incorporators shall create an expense fund from which the expense of organizing such bank and its operating expenses may be paid, until such time as its earnings are sufficient to pay its operating expenses in addition to such dividends as may be declared and credited to its depositors from its earnings. The incorporators shall deposit to the credit of such savings bank in cash as an expense fund the sum of five thousand dollars. They shall also enter into such an agreement or undertaking with the supervisor as trustee for the depositors with the savings bank as he may require to make such further contributions in cash to the expense fund as may be necessary to pay its operating expenses until such time as it can pay them from its earnings, in addition to such dividends as may be declared and credited to its depositors. Such agreement or undertaking shall fix the maximum liability assumed thereby which shall be a reasonable amount approved by the supervisor and the same shall be secured to his satisfaction, which security in his discretion may be by a surety bond executed by a domestic or foreign corporation authorized to transact within this state the business of surety. The agreement or undertaking and security shall be filed in the office of the supervisor. Such agreement or undertaking and such security need not be made or furnished unless the supervisor shall require the same. The amounts contributed to the expense fund of said savings bank by the incorporators or trustees shall not constitute a liability of the savings bank except as hereinafter provided. [1955 c 13 § 32.08.090. Prior: 1915 c 175 § 8; RRS § 3320.]

32.08.100 Guaranty fund. Before any mutual savings bank shall be authorized to do business, its incorporators shall create a guaranty fund for the protection of its depositors against loss on its investments, whether arising from depreciation in the market value of its securities or otherwise:

(1) Such guaranty fund shall consist of payments in cash made by the original incorporators and of all sums credited thereto from the earnings of the savings bank as hereinafter required.

(2) The incorporators shall deposit to the credit of such savings bank in cash as an initial guaranty fund at least five thousand dollars.

(3) Prior to the liquidation of any such savings bank such guaranty fund shall not be in any manner encroached upon, except for losses and the repayment of contributions made by incorporators or trustees as hereinafter provided, until such fund together with undivided profits exceeds twenty-five percent of the amount due depositors.

(4) The amounts contributed to such guaranty fund by the incorporators or trustees shall not constitute a liability of the savings bank, except as hereinafter provided, and any loss sustained by the savings bank in excess of that portion of the guaranty fund created from earnings may be charged against such contributions pro rata. [1955 c 13 § 32.08.100. Prior: 1915 c 175 § 7; RRS § 3319.]

32.08.110 Guaranty fund—Purpose. The contributions of the incorporators, or trustees of any such savings bank under the provisions of RCW 32.08.100, and the sums credited thereto from its net earnings under the provisions of RCW 32.08.120, shall constitute a guaranty fund for the security of its depositors, and shall be held to meet any contingency or loss in its business from depreciation of its securities or otherwise, and for no other purpose except as provided in RCW 32.08.130, and RCW 32.12.090(5). [1955 c 13 § 32.08.110. Prior: 1915 c 175 § 21; RRS § 3350.]

32.08.115 Guaranty fund—Payment of interest and dividends—Legislative declaration. It is hereby recognized that the savings banks of the state of Washington are affected adversely by the uncertainties and ambiguities in the law relating to guaranty funds. It is the express purpose of the legislature in enacting RCW 32.08.116 to clarify that the law permits payment of interest and dividends from the guaranty funds of savings banks and RCW 32.08.116 shall be liberally construed to that end. [1982 c 5 § 1.]

32.08.116 Guaranty fund—Payment of interest and dividends—When authorized. A savings bank not having net earnings or undivided profits or other surplus may pay interest and dividends from its guaranty fund upon prior written approval of the supervisor, which approval shall not be withheld unless the supervisor has determined that such payments would place the savings bank in an unsafe and unsound condition. [1982 c 5 § 2.]

32.08.120 Guaranty fund—Replenishment—Dividends. (1) If at the close of any dividend period the guaranty fund of a savings bank is less than ten percent of the amount due to depositors, there shall be deducted from its net earnings and credited to its guaranty fund not less than five percent of its net earnings for such period.

(2) The balance of its net earnings for such dividend period, plus any earnings from prior accounting periods not previously disbursed and not reserved for losses or other contingencies or required to be maintained in the guaranty fund, shall be available for dividends.

While the trustees of such savings bank are paying its expenses or any portion thereof, the amounts to be credited to its guaranty fund shall be computed at the same percent-

age upon the total dividends credited to its depositors instead of upon its net earnings. If the guaranty fund accumulated from earnings equals or exceeds ten percent of the amount due to depositors, the minimum dividend shall be four percent, if the net earnings for such period are sufficient therefor. [1955 c 13 § 32.08.120. Prior: 1941 c 15 § 4; 1929 c 123 § 3; 1927 c 184 § 6; 1915 c 175 § 24; Rem. Supp. 1941 § 3353.]

32.08.130 Reimbursement fund. When the portion of the guaranty fund created from earnings amounts to not less than five thousand dollars (including in the case of a savings bank converted from a building and loan or savings and loan association or society the amount of the initial guaranty fund), the board of trustees, with the written consent of the supervisor, may establish a reimbursement fund from which to repay contributors to the expense fund and the initial guaranty fund (excepting the initial guaranty fund in the case of a bank converted from a building and loan or savings and loan association or society), and may transfer to the reimbursement fund any unexpended balance of contributions to the expense fund. At the close of each dividend period the trustees may place to the credit of the reimbursement fund not more than one percent of the net earnings of the bank during that period. Payments from the reimbursement fund may be made from time to time in such amounts as the board of trustees shall determine, and shall be made first to the contributors to the expense fund in proportion to their contributions thereto until they shall have been repaid in full, and then shall be made to the contributors to the guaranty fund in proportion to their contributions thereto until they shall have been repaid in full. In case of the liquidation of the savings bank before the contributions to the expense fund and the initial guaranty fund have been fully repaid as above contemplated, any portion of the contributions not needed for the payment of the expenses of liquidation and the payment of depositors in full shall be paid to the contributors to the expense fund in proportion to their contributions thereto until they have been repaid in full, and then shall be paid to the contributors to the guaranty fund in proportion to their contributions thereto until they have been repaid in full. [1955 c 13 § 32.08.130. Prior: 1945 c 135 § 1; 1927 c 178 § 1; 1915 c 175 § 9; Rem. Supp. 1945 § 3321.]

32.08.140 Powers of bank. Every mutual savings bank incorporated under this title shall have, subject to the restrictions and limitations contained in this title, the following powers:

(1) To receive deposits of money, to invest the same in the property and securities prescribed in this title, to declare dividends in the manner prescribed in this title, and to exercise by its board of trustees or duly authorized officers or agents, subject to law, all such incidental powers as shall be necessary to carry on the business of a savings bank.

(2) To issue transferable certificates showing the amounts contributed by any incorporator or trustee to the guaranty fund of such bank, or for the purpose of paying its expenses. Every such certificate shall show that it does not constitute a liability of the savings bank, except as otherwise provided in this title.

(3) To purchase, hold and convey real property as prescribed in RCW 32.20.280.

(4) To pay depositors as hereinafter provided, and when requested, pay them by drafts upon deposits to the credit of the savings bank in any city in the United States, and to charge current rates of exchange for such drafts.

(5) To borrow money in pursuance of a resolution adopted by a vote of a majority of its board of trustees duly entered upon its minutes whereon shall be recorded by ayes and noes the vote of each trustee, for the purpose of repaying depositors, and to pledge or hypothecate securities as collateral for loans so obtained. Immediate written notice shall be given to the supervisor of all amounts so borrowed, and of all assets so pledged or hypothecated.

(6) Subject to such regulations and restrictions as the supervisor finds to be necessary and proper, to borrow money in pursuance of a resolution adopted by a vote of a majority of its board of trustees duly entered upon its minutes whereon shall be recorded by ayes and noes the vote of each trustee, for purposes other than that of repaying depositors and to pledge or hypothecate its assets as collateral for any such loans, provided that no amount shall at any time be borrowed by a savings bank pursuant to this subsection (6), if such amount, together with the amount then remaining unpaid upon prior borrowings by such savings bank pursuant to this subsection (6), exceeds thirty percent of the assets of the savings bank.

The sale of securities or loans by a bank subject to an agreement to repurchase the securities or loans shall not be considered a borrowing. Borrowings from federal, state, or municipal governments or agencies or instrumentalities thereof shall not be subject to the limits of this subsection.

(7) To collect or protest promissory notes or bills of exchange owned by such bank or held by it as collateral, and remit the proceeds of the collections by drafts upon deposits to the credit of the savings bank in any city in the United States, and to charge the usual rates or fees for such collection and remittance for such protest.

(8) To sell gold or silver received in payment of interest or principal of obligations owned by the savings bank or from depositors in the ordinary course of business.

(9) To act as insurance agent for the purpose of writing fire insurance on property in which the bank has an insurable interest, the property to be located in the city in which the bank is situated and in the immediate contiguous suburbs, notwithstanding anything in any other statute to the contrary.

(10) To let vaults, safes, boxes or other receptacles for the safekeeping or storage of personal property, subject to laws and regulations applicable to, and with the powers possessed by, safe deposit companies.

(11) To elect or appoint in such manner as it may determine all necessary or proper officers, agents, boards, and committees, to fix their compensation, subject to the provisions of this title, and to define their powers and duties, and to remove them at will.

(12) To make and amend bylaws consistent with law for the management of its property and the conduct of its business.

(13) To wind up and liquidate its business in accordance with this title.

(14) To adopt and use a common seal and to alter the same at pleasure.

(15) To do all other acts authorized by this title. [1981 c 86 § 2; 1977 ex.s. c 104 § 1; 1963 c 176 § 2; 1957 c 80 § 2; 1955 c 13 § 32.08.140. Prior: 1927 c 184 § 1; 1925 ex.s. c 86 § 1; 1915 c 175 § 10; RRS § 3322.]

Severability—1981 c 86: See note following RCW 32.04.060.

Mutual savings banks may act as trustee for issuance of crop credit notes: RCW 31.16.250.

Safe deposit repository lease agreements ineffective to create joint ownership or transfer property at death: RCW 11.02.090.

32.08.142 Additional powers—Powers of federal mutual savings bank. Notwithstanding any restrictions, limitations, and requirements of law, in addition to all powers, express or implied, that a mutual savings bank has under the laws of this state, a mutual savings bank shall have the powers and authorities of federal mutual savings banks formed under the provisions of 12 U.S.C. Sec. 1464.

The restrictions, limitations, and requirements applicable to specific powers or authorities of federal mutual savings banks shall apply to mutual savings banks exercising those powers or authorities permitted under this section but only insofar as the restrictions, limitations, and requirements relate to exercising the powers or authorities granted mutual savings banks solely under this section. [1985 c 56 § 3; 1981 c 86 § 10.]

Severability—1981 c 86: See note following RCW 32.04.060.

32.08.145 Safe deposit companies. See chapter 22.28 RCW.

32.08.150 Certificates of deposit. A mutual savings bank may issue savings certificates of deposit in such form and upon such terms as the bank may determine. [1981 c 86 § 3; 1979 c 51 § 1; 1975 c 15 § 1; 1969 c 55 § 1; 1959 c 41 § 1; 1959 c 14 § 1; 1957 c 80 § 3; 1955 c 13 § 32.08.150. Prior: 1915 c 175 § 13; RRS § 3342.]

Severability—1981 c 86: See note following RCW 32.04.060.

32.08.160 Writing of fire insurance restricted. When a savings bank is itself acting as an insurance agent, a trustee, officer, or employee of the bank shall not act as an insurance agent to write fire insurance on property in which the bank has an insurable interest, and no part of a room used by a savings bank in the transaction of its business shall be occupied or used by any person other than the bank in the writing of fire insurance. [1955 c 13 § 32.08.160. Prior: 1925 ex.s. c 86 § 7; RRS § 3342a.]

32.08.170 Effect of failure to organize or commence business. See RCW 30.08.070.

32.08.180 Extension of existence. See RCW 30.08.080.

32.08.190 May borrow from home loan bank. See RCW 30.32.030.

32.08.200 May act as trustee for crop credit notes. See RCW 31.16.250.

32.08.210 Power to act as trustee—Authorized trusts—Limitations—Application to act as trustee, fee—Approval or refusal of application—Right of appeal—Use of word "trust". A mutual savings bank shall have the power to act as trustee under:

(1) A trust established by an inter vivos trust agreement or under the will of a deceased person.

(2) A trust established in connection with any collective bargaining agreement or labor negotiation wherein the beneficiaries of the trust include the employees concerned under the agreement or negotiation, or a trust established in connection with any pension, profit sharing, or retirement benefit plan of any corporation, partnership, association, or individual, including but not limited to retirement plans established pursuant to the provisions of the act of congress entitled "Self-Employed Individuals Tax Retirement Act of 1962", as now constituted or hereafter amended, or plans established pursuant to the provisions of the act of congress entitled "Employee Retirement Income Security Act of 1974", as now constituted or hereafter amended.

A mutual savings bank may be appointed to and accept the appointment of personal representative of the last will and testament, or administrator with will annexed, of the estate of any deceased person and to be appointed and to act as guardian of the estate of minors and incompetent and disabled persons.

The restrictions, limitations and requirements in Title 30 RCW shall apply to a mutual savings bank exercising the powers granted under this section insofar as the restrictions, limitations, and requirements relate to exercising the powers granted under this section. The incidental trust powers to act as agent in the management of trust property and the transaction of trust business in Title 30 RCW shall apply to a mutual savings bank exercising the powers granted under this section insofar as the incidental powers relate to exercising the powers granted under this section.

Before engaging in trust business, a mutual savings bank shall apply to the supervisor of banking on such form as he shall determine and pay the same fee as required for a state bank to engage in trust business. In considering such application the supervisor shall ascertain from the best source of information at his command and by such investigation as he may deem necessary whether the management and personnel of the mutual savings bank are such as to command confidence and warrant belief that the trust business will be adequately and efficiently conducted in accordance with law, whether the resources in the neighborhood of such place and in the surrounding country afford a reasonable promise of adequate support for the proposed trust business and whether the resources of the mutual savings bank are sufficient to support the conduct of such trust business, and that the mutual savings bank has and maintains, in addition to its guaranty fund, undivided profits against which the depositors have no prior claim in an amount not less than would be required of a state bank or trust company, which undivided profits shall be eligible for investment in the same manner as the guaranty fund of a mutual savings bank. Within sixty days after receipt of such application, the supervisor shall either approve or refuse the same and forthwith return to the mutual savings bank a copy of the application upon which his decision has been endorsed. The supervisor shall not be required to approve or refuse an

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application until thirty days after any appropriate approval has been obtained from a federal regulatory agency. The applicant shall have the right to appeal from an unfavorable determination in accordance with the procedures of the administrative procedure act, chapter 34.05 RCW, as now or hereafter amended. A mutual savings bank shall not use the word "trust" in its name, but may use the word "trust" in its business or advertising. [1975 1st ex.s. c 265 § 1; 1969 c 55 § 12.]

32.08.215 Power to act as trustee for common trust funds under multiple trust agreements—Conditions. No mutual savings bank or wholly owned subsidiary thereof shall act as trustee for common trust funds established for the benefit of more than one beneficiary under more than one trust agreement, unless the savings bank or subsidiary trust company shall first give written notice to the supervisor, at least sixty days prior to the creation of any such fund. [1985 c 56 § 4.]

32.08.220 Findings—Purpose. The legislature finds that [the] state of Washington needs investment of funds from out of state and from investors in the state of Washington to keep money for real estate and other forms of financing reasonably available for the needs of Washington citizens. Many innovations have taken place in the last several years to aid in the sale of loans or portions thereof to others including the sale of mortgage passthrough certificates, mortgage backed bonds, participation sales with varying rates, terms or priorities to various participants and the like. As the marketing of such investments continues, further innovations can be expected. It will benefit the state if mutual savings banks subject to the laws of this state have the broadest powers possible commensurate with their safety and soundness to take part in such activities. It is the purpose of RCW 32.08.225 and 32.08.230 to grant a broad power. [1981 c 86 § 11.]

Severability—1981 c 86: See note following RCW 32.04.060.

32.08.225 Sale, purchase, etc., of interest rate exchange agreements, loans, or interests therein. Any mutual savings bank may through any device sell, purchase, exchange, issue evidence of a sale or exchange of, or in any manner deal in any form of sale or exchange of interest rate exchange agreements, loans, or any interest therein including but not being limited to mortgage passthrough issues, mortgage backed bond issues, and loan participations and may purchase a subordinated portion thereof, issue letters of credit to insure against losses on a portion thereof, agree to repurchase all or a portion thereof, guarantee all or a portion of the payments thereof, and without any implied limitation by the foregoing or otherwise, do any and all things necessary or convenient to take part in or effectuate any such sales or exchanges by a mutual savings bank itself or by a subsidiary thereof. [1985 c 56 § 5; 1981 c 86 § 12.]

Severability—1981 c 86: See note following RCW 32.04.060.

32.08.230 Restrictions and requirements by supervisor. Any mutual savings bank engaging in any activity contemplated in RCW 32.08.225, whereby it holds or purchases subordinated securities, issues letters of credit to

secure a portion of any sale or issue of loans sold or exchanged, or in any manner acts as a partial guarantor or insurer or repurchaser of any loans sold or exchanged, shall do so only in accordance with such reasonable restrictions and requirements as the supervisor of banking shall require and shall report and carry such transactions on its books and records in such manner as the supervisor shall require. In establishing any requirements and restrictions hereunder, the supervisor shall consider the effect the transaction and the reporting thereof will have on the safety and soundness of the mutual savings bank engaging in it. [1981 c 86 § 13.]

Severability—1981 c 86: See note following RCW 32.04.060.

Chapter 32.12

DEPOSITS—EARNINGS—DIVIDENDS—INTEREST

Sections

- 32.12.010 Deposits by individuals governed by chapter 30.22 RCW—Other deposits which a savings bank may establish—Limitations.
- 32.12.020 Repayment of deposits and dividends.
- 32.12.025 Withdrawals by savings bank's drafts in accordance with depositor's instructions authorized.
- 32.12.050 Accounting—Entry of assets, real estate, securities, etc.
- 32.12.060 Bad debts—Uncollected judgments.
- 32.12.070 Computation of earnings.
- 32.12.080 Misleading advertisement of surplus or guaranty fund.
- 32.12.090 Interest—Rate—Extra dividend—Notice of changed rate.
- 32.12.120 Adverse claim to a deposit to be accompanied by court order or bond—Exceptions.

Depositaries

city: Chapter 35.38 RCW.

county: Chapter 36.48 RCW.

of state funds: Chapter 43.85 RCW.

Receiving deposits after insolvency prohibited: State Constitution Art. 12 § 12; RCW 9.24.030.

Uniform unclaimed property act: Chapter 63.29 RCW.

32.12.010 Deposits by individuals governed by chapter 30.22 RCW—Other deposits which a savings bank may establish—Limitations. Deposits made by individuals in a mutual savings bank under this chapter are governed by chapter 30.22 RCW. In addition, other deposits which a savings bank may establish include but are not limited to the following:

- (1) Deposits in the name of, or on behalf of, a partnership or other form of multiple ownership enterprise.
- (2) Deposits in the name of a corporation, society, or unincorporated association.
- (3) Deposits maintained by a person, society, or corporation as administrator, executor, guardian, or trustee under a will or trust agreement.

Every such bank may limit the aggregate amount which an individual or any corporation or society may have to his or its credit to such sum as such bank may deem expedient to receive; and may in its discretion refuse to receive a deposit, or may at any time return all or any part of any deposits or require the withdrawal of any dividends or interest. Any account in excess of one hundred thousand dollars may only be accepted or held in accordance with such regulations as the supervisor may establish. [1981 c 192 § 27; 1967 c 145 § 1; 1961 c 80 § 1; 1959 c 41 § 2; 1957 c 80 § 4; 1955 c 13 § 32.12.010. Prior: 1953 c 238 § 1; 1949 c 119 § 4; 1941 c 15 § 2; 1929 c 123 § 1; 1927

c 184 § 5; 1921 c 156 § 2; 1919 c 200 § 2; 1915 c 175 § 17; Rem. Supp. 1949 § 3346.]

Effective date—1981 c 192: See RCW 30.22.900.

32.12.020 Repayment of deposits and dividends.

The sums deposited with any savings bank, together with any dividends or interest credited thereto, shall be repaid to the depositors thereof respectively, or to their legal representatives, after demand in such manner, and at such times, and under such regulations, as the board of trustees shall prescribe, subject to the provisions of this section and chapter 30.22 RCW. Such regulations shall be posted in a conspicuous place in the room where the business of such savings bank shall be transacted, and shall be available to depositors upon request. All such rules and regulations, and all amendments thereto, from time to time in effect, shall be binding upon all depositors.

(1) Such bank may at any time by a resolution of its board of trustees require a notice of not more than six months before repaying deposits, in which event no deposit shall be due or payable until the required notice of intention to withdraw the same shall have been personally given by the depositor: PROVIDED, That such bank at its option may pay any deposit or deposits before the expiration of such notice. But no bank shall agree with its depositors or any of them in advance to waive the requirement of notice as herein provided: PROVIDED, That the bank may create a special class of depositors who shall be entitled to receive their deposits upon demand.

(2) Except as provided in subdivisions (3), (4), and (5) of this section the savings bank shall not pay any dividend, or interest, or deposit, or portion thereof, or any check drawn upon it by a depositor unless the certificate of deposit is produced or bears a legend stating it may be paid without production, or the passbook of the depositor is produced and the proper entry is made therein, at the time of the payment.

(3) The board of trustees of any such bank may by its bylaws provide for making payments in cases of loss of passbook or certificate of deposit, or other exceptional cases where the passbooks or certificates of deposit cannot be produced without loss or serious inconvenience to depositors, the right to make such payments to cease when so directed by the supervisor upon his being satisfied that such right is being improperly exercised by any such bank; but payments may be made at any time upon the judgment or order of a court.

(4) The board of trustees of any such bank may by its bylaws provide for making payments to depositors at their request, of dividends or interest payable on any deposit, without requiring the production of the passbook or certificate of deposit of the depositor, and any payment made in accordance with any such request and the receipt or acquittance of the one to whom such payment is made shall be a valid and sufficient release and discharge to such savings bank for all payments made on account of such request prior to receipt by such savings bank of notice in writing not to pay such sums in accordance with the terms of such request.

(5) The issuance of a passbook or certificate of deposit may be omitted for any account if an adequate record thereof is maintained, in lieu of a passbook or certificate of deposit, on which shall be entered deposits, withdrawals, and interest

credited: PROVIDED, That in any event a passbook shall be issued upon the request of any passbook account depositor. [1985 c 56 § 6; 1983 c 3 § 53; 1981 c 192 § 28; 1974 ex.s. c 117 § 40; 1969 c 55 § 2; 1967 c 145 § 2; 1963 c 176 § 3; 1961 c 80 § 2; 1959 c 41 § 3; 1955 c 13 § 32.12.020. Prior: 1945 c 228 § 6; 1921 c 156 § 3; 1915 c 175 § 18; Rem. Supp. 1945 § 3347.]

Effective date—1981 c 192: See RCW 30.22.900.

Application, construction—Severability—Effective date—1974 ex.s. c 117: See RCW 11.02.080 and notes following.

32.12.025 Withdrawals by savings bank's drafts in accordance with depositor's instructions authorized. Subject to the provisions of RCW 32.12.020(1), a savings bank may, on instructions from a depositor, effect withdrawals from a savings account by the savings bank's drafts payable to parties and on terms as so instructed; to the extent of the subjection of accounts to such withdrawal instruction, such accounts may be specifically classified under RCW 32.12.090(2) and ineligible to receive interest or eligible only for limited interest. [1967 c 145 § 3.]

32.12.050 Accounting—Entry of assets, real estate, securities, etc. (1) No savings bank shall by any system of accounting, or any device of bookkeeping, directly or indirectly, enter any of its assets upon its books in the name of any other individual, partnership, unincorporated association, or corporation, or under any title or designation that is not in accordance with the actual facts.

(2) The bonds, notes, mortgages, or other interest bearing obligations purchased or acquired by a savings bank, shall not be entered on its books at more than the actual cost thereof, and shall not thereafter be carried upon its books for a longer period than until the next declaration of dividends, or in any event for more than one year, at a valuation exceeding their present cost as determined by amortization, that is, by deducting from the cost of any such security purchased for a sum in excess of the amount payable thereon at maturity and charging to "profit and loss" a sufficient sum to bring it to par at maturity, or adding to the cost of any such security purchased at less than the amount payable thereon at maturity and crediting to "profit and loss" a sufficient sum to bring it to par at maturity.

(3) No such bank shall enter, or at any time carry on its books, the real estate and the building or buildings thereon used by it as its place of business at a valuation exceeding their actual cost to the bank.

(4) Every such bank shall conform its methods of keeping its books and records to such orders in respect thereof as shall have been made and promulgated by the supervisor. Any officer, agent, or employee of any savings bank who refuses or neglects to obey any such order shall be punished as hereinafter provided.

(5) Real estate acquired by a savings bank, other than that acquired for use as a place of business, may be entered on the books of the bank at the actual cost thereof but shall not be carried beyond the current dividend period at an amount in excess of the amount of the debt in protection of which such real estate was acquired, plus the cost of any improvements thereto.

An appraisal shall be made by a qualified person of every such parcel of real estate within six months from the date of conveyance. If the value at which such real estate is carried on the books is in excess of the value found on appraisal the book value shall, at the end of the dividend period during which such appraisal was made, be reduced to an amount not in excess of such appraised value.

(6) No such bank shall enter or carry on its books any asset which has been disallowed by the supervisor or the trustees of such bank, or any debt owing to it which has remained due without prosecution and upon which no interest has been paid for more than one year, or on which a judgment has been recovered which has remained unsatisfied for more than two years, unless the supervisor upon application by such savings bank has fixed a valuation at which such debt may be carried as an asset, or unless such debt is secured by first mortgage upon real estate, in which latter case it may be carried at the actual cash value of such real estate as determined by written appraisal signed by two or more persons appointed by the board of trustees and filed with it.

(7) Notwithstanding the prohibitions of this section, a savings bank may maintain its books and records and may enter and carry on its books any asset or liability at any valuation in accordance with any accounting rules promulgated or adopted by the federal deposit insurance corporation or the financial accounting standards board or the supervisor of banking. [1985 c 56 § 7; 1983 c 44 § 1; 1955 c 13 § 32.12.050. Prior: 1941 c 15 § 1; 1915 c 175 § 16; Rem. Supp. 1941 § 3345.]

32.12.060 Bad debts—Uncollected judgments. Any debt due a savings bank on which interest is one year or more past due and unpaid, unless such debt is well secured and in course of collection by legal process or probate proceedings, shall be considered a bad debt, and shall be charged off of the books of such bank. A judgment held by a savings bank shall not be considered an asset of the corporation after two years from the date of its rendition, unless with the written permission of the supervisor specifying an additional period: PROVIDED, That time consumed by any appeal shall be excluded. [1955 c 13 § 32.12.060. Prior: 1931 c 132 § 1; RRS § 3354a.]

32.12.070 Computation of earnings. (1) Gross current operating earnings. Every savings bank shall close its books, for the purpose of computing its net earnings, at the end of any period for which a dividend is to be paid, and in no event less frequently than semiannually. To determine the amount of gross earnings of a savings bank during any dividend period the following items may be included:

(a) All earnings actually received during such period, less interest accrued and uncollected included in the last previous calculation of earnings;

(b) Interest accrued and uncollected upon debts owing to it secured by authorized collateral, upon which there has been no default for more than one year, and upon corporate bonds, or other interest bearing obligations owned by it upon which there is no default;

(c) The sums added to the cost of securities purchased for less than par as a result of amortization;

(d) Any profits actually received during such period from the sale of securities, real estate or other property owned by it;

(e) Such other items as the supervisor, in his discretion and upon his written consent, may permit to be included.

(2) Net current earnings. To determine the amount of its net earnings for each dividend period the following items shall be deducted from gross earnings:

(a) All expenses paid or incurred, both ordinary and extraordinary, in the transaction of its business, the collection of its debts and the management of its affairs, less expenses incurred and interest accrued upon its debts deducted at the last previous calculation of net earnings for dividend purposes;

(b) Interest paid or accrued and unpaid upon debts owing by it;

(c) The amounts deducted through amortization from the cost of bonds or other interest bearing obligations purchased above par in order to bring them to par at maturity;

(d) Contributions to any corporation or any community chest fund or foundation organized and operated exclusively for religious, charitable, scientific, literary or educational purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual and no substantial part of the activities of which is carrying on propaganda or otherwise attempting to influence legislation. The total contributions for any calendar year shall not exceed a sum equal to one-half of one percent of the net earnings of such savings bank for the preceding calendar year.

The balance thus obtained shall constitute the net earnings of the savings bank for such period.

(3) Earnings paid by a savings bank on deposits may be referred to as "dividends" or as "interest". [1955 c 80 § 3; 1955 c 13 § 32.12.070. Prior: 1953 c 238 § 2; 1941 c 15 § 3; 1915 c 175 § 23; Rem. Supp. 1941 § 3352.]

32.12.080 Misleading advertisement of surplus or guaranty fund. No savings bank shall put forth any sign or notice or publish or circulate any advertisement or advertising literature upon which or in which it is stated that such savings bank has a surplus or guaranty fund other than as determined in the manner prescribed by law. [1955 c 13 § 32.12.080. Prior: 1929 c 123 § 5; 1915 c 175 § 27; RRS § 3356.]

32.12.090 Interest—Rate—Extra dividend—Notice of changed rate. (1) Every savings bank shall regulate the rate of interest upon the amounts to the credit of depositors therewith, in such manner that depositors shall receive as nearly as may be all the earnings of the bank after transferring the amount required by RCW 32.08.120 and such further amounts as its trustees may deem it expedient and for the security of the depositors to transfer to the guaranty fund, which to the amount of ten percent of the amount due its depositors the trustees shall gradually accumulate and hold. Such trustees may also deduct from its net earnings, and carry as reserves for losses, or other contingencies, or as undivided profits, such additional sums as they may deem wise.

(2) Every savings bank may classify its depositors according to the character, amount, regularity, or duration of

their dealings with the savings bank, and may regulate the interest in such manner that each depositor shall receive the same ratable portion of interest as all others of his class.

(3) Unimpaired contributions to the initial guaranty fund and to the expense fund, made by the incorporators or trustees of a savings bank, shall be entitled to have dividends apportioned thereon, which may be credited and paid to such incorporators or trustees.

Whenever the guaranty fund of any savings bank is sufficiently large to permit the return of such contributions, the contributors may receive interest thereon not theretofore credited or paid at the same rate paid to depositors.

(4) A savings bank shall not:

(a) Declare, credit or pay any interest except as authorized by a vote of a majority of the board of trustees duly entered upon its minutes, whereon shall be recorded by ayes and noes the vote of each trustee;

(b) Pay any interest other than the regular quarterly or semiannual interest, or the interest on savings certificates of deposit, or the extra dividends prescribed elsewhere in this title: PROVIDED, That such bank may pay interest not less often than annually on the anniversary dates of accounts separately classified for this purpose: PROVIDED, FURTHER, That such bank may pay interest monthly at the rate or rates last authorized by a majority vote of the board of trustees duly entered in its minutes whereon shall be recorded by ayes and noes the vote of each trustee;

(c) Declare, credit or pay interest on any amount to the credit of a depositor for a longer period than the same has been credited: PROVIDED, That deposits made not later than the tenth day of any month (unless the tenth day is not a business day, in which case it may be the next succeeding business day), or withdrawn upon one of the last three business days of the month ending any quarterly or semiannual interest period, may have interest paid upon them for the whole of the period or month when they were so deposited or withdrawn: PROVIDED FURTHER, That if the bylaws so provide, accounts closed between interest periods may be credited with interest at the rate determined by its board of trustees, computing from the last interest period to the date when closed.

(5) The trustees of any savings banks, other than a savings bank converted under chapter 32.32 RCW, whose undivided profits and guaranty fund, determined in the manner prescribed in RCW 32.12.070, amount to more than twenty-five percent of the amount due its depositors, shall at least once in three years divide equitably the accumulation beyond such twenty-five percent as an extra dividend to depositors in excess of the regular dividend authorized.

A notice posted conspicuously in a savings bank of a change in the rate of interest shall be equivalent to a personal notice. [1983 c 44 § 2; 1977 ex.s. c 104 § 2; 1969 c 55 § 3; 1961 c 80 § 3; 1957 c 80 § 5; 1955 c 13 § 32.12.090. Prior: 1953 c 238 § 3; 1921 c 156 § 4; 1919 c 200 § 3; 1915 c 175 § 25; RRS § 3354.]

32.12.120 Adverse claim to a deposit to be accompanied by court order or bond—Exceptions. Notice to any mutual savings bank doing business in this state of an adverse claim to a deposit standing on its books to the credit of any person shall not be effectual to cause said bank to

recognize said adverse claimant unless said adverse claimant shall also either procure a restraining order, injunction or other appropriate process against said bank from a court of competent jurisdiction in a cause therein instituted by him wherein the person to whose credit the deposit stands is made a party and served with summons or shall execute to said bank, in form and with sureties acceptable to it, a bond, in an amount which is double either the amount of said deposit or said adverse claim, whichever is the lesser, indemnifying said bank from any and all liability, loss, damage, costs and expenses, for and on account of the payment of such adverse claim or the dishonor of the check or other order of the person to whose credit the deposit stands on the books of said bank: PROVIDED, That this law shall not apply in any instance where the person to whose credit the deposit stands is a fiduciary for such adverse claimant, and the facts constituting such relationship as also the facts showing reasonable cause of belief on the part of said claimant that the said fiduciary is about to misappropriate said deposit, are made to appear by the affidavit of such claimant.

This section shall not apply to accounts subject to chapter 30.22 RCW. [1981 c 192 § 31; 1963 c 176 § 13. Cf. 1961 c 280 § 4; RCW 30.20.090.]

Effective date—1981 c 192: See RCW 30.22.900.

Chapter 32.16

OFFICERS AND EMPLOYEES

Sections

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32.16.010 Board of trustees—Number—Qualifications. (1) There shall be a board of trustees who shall have the entire management and control of the affairs of the savings bank. The persons named in the certificate of authorization shall be the first trustees. The board shall consist of not less than nine nor more than thirty members.

(2) A person shall not be a trustee of a savings bank, if he

(a) Is not a resident of a state of the United States;

(b) Has been adjudicated a bankrupt or has taken the benefit of any insolvency law, or has made a general assignment for the benefit of creditors;

(c) Has suffered a judgment recovered against him for a sum of money to remain unsatisfied of record or unsecured on appeal for a period of more than three months;

(d) Is a trustee, officer, clerk, or other employee of any other savings bank.

(3) Nor shall a person be a trustee of a savings bank solely by reason of his holding public office. [1985 c 56 § 8; 1955 c 13 § 32.16.010. Prior: 1915 c 175 § 28; RRS § 3357.]

32.16.012 Age requirements. The bylaws of a savings bank may prescribe a maximum age beyond which no person shall be eligible for election to the board of trustees and may prescribe a mandatory retirement age of seventy-five years or less for trustees subject to the following limitations:

(1) No person shall be eligible for initial election as a trustee after December 31, 1969, who is seventy years of age or more; and

(2) No person shall continue to serve as a trustee after December 31, 1973, who is seventy-five years of age or more and the office of any such trustee shall become vacant on the last day of the month in which the trustee reaches his seventy-fifth birthday or December 31, 1973, whichever is the latest.

If a savings bank does not adopt a bylaw prescribing a mandatory retirement age for trustees prior to January 1, 1970, or does not maintain thereafter a bylaw prescribing a mandatory retirement age, the office of a trustee of such savings bank shall become vacant on the last day of the month in which such trustee reaches his seventieth birthday or on December 31, 1969, whichever is the latest. [1969 c 55 § 14.]

32.16.020 Oath of trustees—Declaration of incumbency. (1) Each trustee, whether named in the certificate of authorization or elected to fill a vacancy, shall, when such certificate of authorization has been issued, or when notified of such election, take an oath that he will, so far as it devolves on him, diligently and honestly administer the affairs of the savings bank, and will not knowingly violate, or willingly permit to be violated, any of the provisions of law applicable to such savings bank. Such oath shall be subscribed by the trustee making it and certified by the officer before whom it is taken, and shall be immediately transmitted to the supervisor and filed and preserved in his office.

(2) Prior to the first day of March in each year, every trustee of every savings bank shall subscribe a declaration to the effect that he is, at the date thereof, a trustee of the savings bank, and that he has not resigned, become ineligible, or in any other manner vacated his office as such trustee. Such declaration shall be acknowledged in like manner as a deed to be entitled to record and shall be transmitted to the supervisor and filed in his office prior to the tenth day of March in each year. [1955 c 13 § 32.16.020. Prior: 1915 c 175 § 29; RRS § 3358.]

32.16.030 Vacancies, when to be filled. A vacancy in the board of trustees shall be filled by the board as soon as practicable, at a regular meeting thereof. [1955 c 13 § 32.16.030. Prior: 1915 c 175 § 36; RRS § 3365.]

32.16.040 Quorum—Meetings—Statement of securities dealings and loans. (1) A quorum at any regular or special or adjourned meeting of the board of trustees shall consist of not less than five of whom the chief executive officer shall be one, except when he is prevented from attending by sickness or other unavoidable detention, when he may be represented in forming a quorum by such other officer as the board may designate; but less than a quorum shall have power to adjourn from time to time until the next regular meeting. However, a savings bank may adopt procedures which provide that, in the event of a national emergency, any trustee may act on behalf of the board to continue the operations of the savings bank. For purposes of this subsection, a national emergency is an emergency declared by the president of the United States or the person performing the president's functions, or a war, or natural disaster.

Regular meetings of the board of trustees shall be held as established from time to time by the board, not less than nine times during each year.

(2) The board of trustees shall by resolution duly recorded in the minutes, designate an officer or officers whose duty it shall be to prepare and submit to the trustees at each regular meeting of the board, or to an executive committee of not less than five members of such board, a written statement of the purchases and sales of securities, and of loans, made since the last regular meeting of the board. The statement shall be in such form as the board from time to time shall determine and there may be omitted from the statement such purchases and sales of securities and such loans as determined by the board. [1985 c 56 § 9; 1969 c 55 § 4; 1955 c 13 § 32.16.040. Prior: 1915 c 175 § 31; RRS § 3360.]

32.16.050 Compensation of trustees. (1) A trustee of a savings bank shall not directly or indirectly receive any pay or emolument for services as trustee, except as provided in this section.

(2) A trustee may receive, by affirmative vote of a majority of all the trustees, reasonable compensation for (a) attendance at meetings of the board of trustees; (b) service as an officer of the savings bank, provided his duties as officer require and receive his regular and faithful attendance at the savings bank; (c) service in appraising real property for the savings bank; and (d) service as a member of a committee of the board of trustees: PROVIDED, That a trustee receiving compensation for service as an officer pursuant to (b) shall not receive any additional compensation for service under (a), (c) or (d).

(3) An attorney for a savings bank, although he is a trustee thereof, may receive a reasonable compensation for his professional services, including examinations and certificates of title to real property on which mortgage loans are made by the savings bank; or if the bank requires the borrowers to pay all expenses of searches, examinations, and certificates of title, including the drawing, perfecting, and

recording of papers, such attorney may collect of the borrower and retain for his own use the usual fees for such services, excepting any commissions as broker or on account of placing or accepting such mortgage loans.

(4) All incentive compensation, bonus, or supplemental compensation plans for officers and employees of a savings bank shall be approved by a majority of nonofficer trustees of the savings bank. No such plan shall permit any officer or employee of a savings bank who has or exercises final authority with regard to any loan or investment to receive any commission on such loan or investment.

(5) If an officer or attorney of a savings bank receives, on any loan made by the bank, any commission which he is not authorized by this section to retain for his own use, he shall immediately pay the same over to the savings bank. [1985 c 56 § 10; 1957 c 80 § 6; 1955 c 13 § 32.16.050. Prior: 1915 c 175 § 32; RRS § 3361.]

32.16.060 Change in number of trustees. The board of trustees of every savings bank may, by resolution incorporated in its bylaws, increase or reduce the number of trustees named in the original charter or certificate of authorization.

(1) The number may be increased to a number designated in the resolution not exceeding thirty: PROVIDED, That reasons therefor are shown to the satisfaction of the supervisor and his written consent thereto is first obtained.

(2) The number may be reduced to a number designated in the resolution but not less than nine. The reduction shall be effected by omissions to fill vacancies occurring in the board. [1955 c 13 § 32.16.060. Prior: 1915 c 175 § 33; RRS § 3362.]

32.16.070 Restrictions on trustees. (1) A trustee of a savings bank shall not

(a) Have any interest, direct or indirect, in the gains or profits of the savings bank, except to receive dividends (i) upon the amounts contributed by him to the guaranty fund and the expense fund of the savings bank as provided in RCW 32.08.090 and 32.08.100, and (ii) upon any deposit he may have in the bank, the same as any other depositor and under the same regulations and conditions.

(b) Become a member of the board of directors of a bank, trust company, or national banking association of which board enough other trustees of the savings bank are members to constitute with him a majority of the board of trustees.

(2) Neither a trustee nor an officer of a savings bank shall

(a) For himself or as agent or partner of another, directly or indirectly use any of the funds or deposits held by the savings bank, except to make such current and necessary payments as are authorized by the board of trustees.

(b) Receive directly or indirectly and retain for his own use any commission on or benefit from any loan made by the savings bank, or any pay or emolument for services rendered to any borrower from the savings bank in connection with such loan, except as authorized by RCW 32.16.050.

(c) Become an indorser, surety, or guarantor, or in any manner an obligor, for any loan made by the savings bank.

(d) For himself or as agent or partner of another, directly or indirectly borrow any of the funds or deposits held by the savings bank, or become the owner of real property upon which the savings bank holds a mortgage. A loan to or a purchase by a corporation in which he is a stockholder to the amount of fifteen percent of the total outstanding stock, or in which he and other trustees of the savings bank hold stock to the amount of twenty-five percent of the total outstanding stock, shall be deemed a loan to or a purchase by such trustee within the meaning of this section, except when the loan to or purchase by such corporation occurred without his knowledge or against his protest. A deposit in a bank shall not be deemed a loan within the meaning of this section. [1955 c 13 § 32.16.070. Prior: 1925 ex.s. c 86 § 12; 1915 c 175 § 34; RRS § 3363.]

32.16.080 Removal of trustees—Vacancies—

Eligibility to reelection. (1) Whenever, in the judgment of three-fourths of the trustees, the conduct and habits of a trustee of any savings bank are of such character as to be injurious to such bank, or he has been guilty of acts that are detrimental or hostile to the interests of the bank, he may be removed from office, at any regular meeting of the trustees, by the affirmative vote of three-fourths of the total number thereof: PROVIDED, That a written copy of the charges made against him has been served upon him personally at least two weeks before such meeting, that the vote of such trustees by ayes and noes is entered in the record of the minutes of such meeting, and that such removal receives the written approval of the supervisor which shall be attached to the minutes of such meeting and form a part of the record.

(2) The office of a trustee of a savings bank shall immediately become vacant whenever he

(a) Fails to comply with any of the provisions of RCW 32.16.020 relating to his official oath and declaration;

(b) Becomes disqualified for any of the reasons specified in RCW 32.16.010(2);

(c) Has failed to attend the regular meetings of the board of trustees, or to perform any of his duties as trustee, for a period of six successive months, unless excused by the board for such failure;

(d) Violates any of the provisions of RCW 32.16.070 imposing restrictions upon trustees and officers, except subsection (2)(c) thereof.

(3) A trustee who has forfeited or vacated his office shall not be eligible to reelection, except when the forfeiture or vacancy occurred solely by reason of his

(a) Failure to comply with the provisions of RCW 32.16.020, relating to his official oath and declaration; or

(b) Neglect of his official duties as prescribed in subsection (2)(c) of this section; or

(c) Disqualification through becoming a nonresident, or becoming a trustee, officer, clerk or other employee of another savings bank, or becoming a director of a bank, trust company, or national banking association under the circumstances specified in RCW 32.16.070(1)(b) and such disqualification has been removed. [1955 c 13 § 32.16.080. Prior: 1915 c 175 § 35; RRS § 3364.]

32.16.090 Removal of trustee, officer, or employee or prohibition from participation in conduct of affairs on

objection of supervisor—Grounds—Notice. Whenever the supervisor finds that: (1) Any trustee, officer, or employee of any mutual savings bank has committed or engaged in:

(a) A violation of any law, rule, or cease and desist order which has become final;

(b) Any unsafe or unsound practice in connection with the mutual savings bank; or

(c) Any act, omission, or practice which constitutes a breach of his fiduciary duty as trustee, officer, or employee; and

(2) The supervisor determines that:

(a) The mutual savings bank has suffered or may suffer substantial financial loss or other damage; or

(b) The interests of its depositors could be seriously prejudiced by reason of the violation, practice, or breach of fiduciary duty; and

(3) The supervisor determines that the violation, practice, or breach of fiduciary duty is one involving personal dishonesty, recklessness, or incompetence on the part of the trustee, officer, or employee;

Then the supervisor may serve upon the trustee, officer, or employee of any mutual savings bank a written notice of the supervisor's intention to remove the person from office or to prohibit the person from participation in the conduct of the affairs of the mutual savings bank. [1979 c 46 § 7; 1955 c 13 § 32.16.090. Prior: 1931 c 132 § 2; RRS § 3364a.]

Severability—1979 c 46: See note following RCW 32.04.250.

32.16.093 Notice of intention to remove or prohibit participation in conduct of affairs—Hearing—Order of removal and/or prohibition.

A notice of an intention to remove a trustee, officer, or employee from office or to prohibit his participation in the conduct of the affairs of a mutual savings bank shall contain a statement of the facts which constitute grounds therefor and shall fix a time and place at which a hearing will be held. The hearing shall be set not earlier than ten days nor later than thirty days after the date of service of the notice unless an earlier or later date is set by the supervisor at the request of the trustee, officer, or employee for good cause shown or at the request of the attorney general of the state.

Unless the trustee, officer, or employee appears at the hearing personally or by a duly authorized representative, the person shall be deemed to have consented to the issuance of an order of removal or prohibition or both. In the event of such consent or if upon the record made at the hearing the supervisor finds that any of the grounds specified in the notice have been established, the supervisor may issue such orders of removal from office or prohibition from participation in the conduct of the affairs of the mutual savings bank as the supervisor may consider appropriate.

Any order under this section shall become effective at the expiration of ten days after service upon the mutual savings bank and the trustee, officer, or employee concerned except that an order issued upon consent shall become effective at the time specified in the order.

An order shall remain effective except to the extent it is stayed, modified, terminated, or set aside by the supervisor or a reviewing court. [1979 c 46 § 8.]

Severability—1979 c 46: See note following RCW 32.04.250.

Administrative hearings, procedure, orders, and judicial review: RCW 32.04.290.

Jurisdiction of courts as to orders to remove trustee, officer, or employee: RCW 32.04.300.

Violations or unsafe practices, procedure, etc.: RCW 32.04.250 through 32.04.300.

32.16.095 Removal of trustees—lack of quorum—Temporary trustees. If at any time because of the removal of one or more trustees under this chapter there shall be on the board of trustees of a mutual savings bank less than a quorum of trustees, all powers and functions vested in, or exercisable by the board shall vest in, and be exercisable by the trustee or trustees remaining, until such time as there is a quorum on the board of trustees. If all of the trustees of a mutual savings bank are removed under this chapter, the supervisor shall appoint persons to serve temporarily as trustees until such time as their respective successors take office. [1979 c 46 § 9.]

Severability—1979 c 46: See note following RCW 32.04.250.

32.16.097 Penalty for violation of order issued under RCW 32.16.093. Any present or former trustee, officer, or employee of a mutual savings bank or any other person against whom there is outstanding an effective final order issued under RCW 32.16.093, which order has been served upon the person, and who, in violation of the order, (1) participates in any manner in the conduct of the affairs of the mutual savings bank involved; or (2) directly or indirectly solicits or procures, transfers or attempts to transfer, or votes or attempts to vote any proxies, consents, or authorizations with respect to any voting rights in the mutual savings bank; or (3) without the prior approval of the supervisor, votes for a trustee or serves or acts as a trustee, officer, employee, or agent of any mutual savings bank, shall be guilty of a gross misdemeanor, and, upon conviction, shall be punishable as prescribed under chapter 9A.20 RCW. [1979 c 46 § 10.]

Severability—1979 c 46: See note following RCW 32.04.250.

32.16.100 Examination by trustees' committee—Report. The trustees of every savings bank, by a committee of not less than three of their number, on or before the first days of January and July in each year, shall fully examine the records and affairs of such savings bank for the purpose of determining its financial condition. The trustees may employ such assistants as they deem necessary in making the examination. A report of each such examination shall be presented to the board of trustees at a regular meeting within thirty days after the completion of the same, and shall be filed in the records of the savings bank. [1955 c 13 § 32.16.100. Prior: 1941 c 15 § 5; 1915 c 175 § 38; Rem. Supp. 1941 § 3367.]

32.16.110 Officers. The board of trustees shall elect from their number, or otherwise, a president and two vice presidents and such other officers as they may deem fit. [1955 c 13 § 32.16.110. Prior: 1915 c 175 § 30; RRS § 3359.]

32.16.120 Fidelity bonds. The trustees of every savings bank shall have power to require from the officers, clerks, and agents thereof such security for their fidelity and the faithful performance of their duties as the trustees deem necessary. Such security may be accepted from any company authorized to furnish fidelity bonds and doing business under the laws of this state, and the premiums therefor may be paid as a necessary expense of the savings bank. [1955 c 13 § 32.16.120. Prior: 1915 c 175 § 37; RRS § 3366.]

32.16.130 Conversion of savings and loan association to mutual savings bank—Director may serve as trustee. In the event a savings and loan association is converted to a mutual savings bank, any person, who at the time of such conversion was a director of the savings and loan association, may serve as a trustee of the mutual savings bank until he reaches the age of seventy-five years or until one year following the date of conversion of such savings and loan association, whichever is later. The bylaws of any mutual savings bank may modify this provision by requiring earlier retirement of any trustee affected hereby. [1971 ex.s. c 222 § 2.]

Severability—1971 ex.s. c 222: See note following RCW 32.04.085.

32.16.140 Violations—Director liability. If the directors of any bank shall knowingly violate, or knowingly permit any of the officers, agents, or servants of the bank to violate any of the provisions of this title or any lawful regulation or directive of the supervisor of banking, and if the directors are aware that such facts and circumstances constitute such violations, then each director who participated in or assented to the violation is personally and individually liable for all damages which the state or any insurer of the deposits sustains due to the violation. [1989 c 180 § 9.]

Chapter 32.20 INVESTMENTS

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32.20.010 Definitions. The words "mutual savings bank" and "savings bank," whenever used in this chapter, shall mean a mutual savings bank organized and existing under the laws of the state of Washington.

The words "its funds," whenever used in this chapter, shall mean and include moneys deposited with a mutual savings bank, sums credited to the guaranty fund of a mutual savings bank, and the income derived from such deposits or fund, or both, and the principal balance of any outstanding capital notes, and capital debentures. [1977 ex.s. c 241 § 2; 1955 c 13 § 32.20.010. Prior: 1929 c 74 § 1; RRS § 3381-1.]

32.20.020 Investments limited by chapter. A mutual savings bank shall have the power to invest its funds in the manner hereinafter in this chapter specified and not otherwise. [1955 c 13 § 32.20.020. Prior: 1929 c 74 § 2; RRS § 3381-2.]

32.20.030 Bonds or obligations of United States and Canada. A mutual savings bank may invest its funds in the

bonds or obligations of the United States or the Dominion of Canada or those for which the faith of the United States or the Dominion of Canada is pledged to provide for the payment of the interest and principal, including bonds of the District of Columbia: PROVIDED, That in the case of bonds of the Dominion or those for which its faith is pledged the interest and principal is payable in the United States or with exchange to a city in the United States and in lawful money of the United States or its equivalent. [1955 c 13 § 32.20.030. Prior: 1937 c 95 § 1; 1929 c 74 § 3; 1925 ex.s. c 86 § 2; 1921 c 156 §§ 11, 11a; RRS § 3381-3.]

32.20.035 Investment trusts or companies. Except as may be limited by the supervisor by rule, a mutual savings bank may invest its funds in obligations of the United States, as authorized by RCW 32.20.030, either directly or in the form of securities of, or other interests in, an open-end or closed-end management type investment company or investment trust registered under the federal investment company act of 1940, as now or hereafter amended, if both of the following conditions are met:

(1) The portfolio of the investment company or investment trust is limited to obligations of the United States and to repurchase agreements fully collateralized by such obligations; and

(2) The investment company or investment trust takes delivery of the collateral for any repurchase agreement either directly or through an authorized custodian. [1989 c 97 § 2.]

32.20.040 Federally insured or secured loans, securities, etc. A mutual savings bank may invest its funds:

(1) In such loans and advances of credit and purchases of obligations representing loans and advances of credit as are eligible for insurance by the Federal Housing Administrator, and may obtain such insurance.

(2) In such loans secured by mortgage on real property as the Federal Housing Administrator insures or makes a commitment to insure, and may obtain such insurance.

(3) In such other loans or contracts or advances of credit as are insured or guaranteed or which are covered by a repurchase agreement in whole or in part by the United States or through any corporation, administrator, agency or instrumentality which is or hereafter may be created by the United States, and may obtain such insurance or guarantee.

(4) In capital stock, notes, bonds, debentures, or other such obligations of any national mortgage association.

(5) In such loans as are secured by contracts of the United States or any agency or department thereof assigned under the "Assignment of Claims Act of 1940," approved October 9, 1940, and acts amendatory thereof or supplementary thereto, and may participate with others in such loans.

(6) In notes or bonds secured by mortgages issued under sections 500 to 505, inclusive, of Title III of the Servicemen's Readjustment Act of 1944 (Public Law 346, 78th congress), and any amendments thereto, and the regulations, orders or rulings promulgated thereunder.

No law of this state prescribing the nature, amount, or form of security or requiring security or prescribing or limiting interest rates or prescribing or limiting the term, shall be deemed to apply to loans, contracts, advances of credit or purchases made pursuant to the foregoing subdivi-

sions (1), (2), (3), (4), (5), and (6). [1963 c 176 § 5; 1955 c 13 § 32.20.040. Prior: 1945 c 228 § 1; 1941 c 15 § 6; 1939 c 33 § 1; 1935 c 10 § 1; 1929 c 74 § 3a; Rem. Supp. 1945 § 3381-3a.]

32.20.045 Obligations of corporations created as federal agency or instrumentality. A mutual savings bank may invest its funds in capital stock, notes, bonds, debentures, or other such obligations of any corporation which is or hereafter may be created by the United States as a governmental agency or instrumentality: PROVIDED, That the total amount a mutual savings bank may invest pursuant to this section shall not exceed fifteen percent of the funds of such savings bank: PROVIDED FURTHER, That the amounts heretofore or hereafter invested by a mutual savings bank pursuant to any law of this state other than this section, even if such investment might also be authorized under this section, shall not be limited by the provisions of this section and amounts so invested pursuant to any such other law of this state shall not be included in computing the maximum amount which may be invested pursuant to this section. [1967 c 145 § 4; 1957 c 80 § 10.]

32.20.047 Stock of small business investment companies regulated by United States. A savings bank may purchase and hold for its own investment account stock in small business investment companies licensed and regulated by the United States, as authorized by the Small Business Act, Public Law 85-536, 72 Statutes at Large 384, in an amount not to exceed one percent of the guaranty fund of such mutual savings bank. [1959 c 185 § 2.]

32.20.050 Bonds of state of Washington and its agencies. A mutual savings bank may invest its funds in the bonds or interest bearing obligations of this state, or any agency thereof, issued pursuant to the authority of any law of this state, whether such bonds or interest bearing obligations are general or limited obligations of the state or such agency. [1955 c 13 § 32.20.050. Prior: 1953 c 238 § 4; 1929 c 74 § 9; 1921 c 156 § 11b; RRS § 3381-4.]

32.20.060 Bonds of other states. A mutual savings bank may invest its funds in the bonds or obligations of any other state of the United States upon which there is no default. [1955 c 13 § 32.20.060. Prior: 1937 c 95 § 2; 1929 c 74 § 5; 1921 c 156 § 11c; RRS § 3381-5.]

32.20.070 Bonds and warrants of counties, municipalities, etc., of Washington. A mutual savings bank may invest its funds in the valid warrants or bonds of any county, city, town, school district, port district, water district, or other municipal corporation in the state of Washington issued pursuant to law and for the payment of which the faith and credit of such county, municipality, or district is pledged and taxes are leviable upon all taxable property within its limits.

A mutual savings bank may invest its funds in the water revenue, sewer revenue, or electric revenue bonds of any city or public utility district of this state for the payment of which the entire revenue of the city's or district's water system, sewer system, or electric system, less maintenance

and operating costs, is irrevocably pledged. [1955 c 13 § 32.20.070. Prior: 1941 c 15 § 7; 1937 c 95 § 3; 1929 c 74 § 6; 1925 ex.s. c 86 § 3; 1921 c 156 § 11d; Rem. Supp. 1941 § 3381-6.]

32.20.080 Municipal bonds in adjoining state. A mutual savings bank may invest its funds in the valid bonds of any incorporated city having a population in excess of three thousand inhabitants as shown by the last decennial federal census or of any county or school district situated in one of the states of the United States which adjoins the state of Washington: PROVIDED, That the indebtedness of such city or school district, together with the indebtedness of any other district or other municipal corporation or subdivision (except a county) which is wholly or in part included within the boundaries or limits of the city or school district, less its water debt and sinking fund, does not exceed twelve percent, or the indebtedness of the county less its sinking fund does not exceed seven percent, of the valuation thereof for the purposes of taxation. [1955 c 13 § 32.20.080. Prior: 1937 c 95 § 4; 1929 c 74 § 7; 1925 ex.s. c 86 § 4; 1921 c 156 § 11e; RRS § 3381-7.]

32.20.090 Housing and industrial development bonds and municipal obligations in any state. A mutual savings bank may invest in housing or industrial development bonds or municipal obligations issued by a state, county, parish, borough, city, or district situated in the United States, or by any instrumentality thereof, provided such bonds or obligations at the time of purchase are prudent investments. [1985 c 56 § 11; 1955 c 13 § 32.20.090. Prior: 1937 c 95 § 5; 1929 c 74 § 8; 1921 c 156 § 11f; RRS § 3381-8.]

32.20.100 Revenue bonds of certain cities in any state. A mutual savings bank may invest its funds in the water revenue or electric revenue bonds of any incorporated city situated in the United States: PROVIDED, That the city has a population as shown by the last decennial federal census of at least forty-five thousand inhabitants, and the entire revenue of the city's water or electric system less maintenance and operating costs is irrevocably pledged to the payment of the interest and principal of the bonds. [1955 c 13 § 32.20.100. Prior: 1941 c 15 § 8; 1937 c 95 § 6; Rem. Supp. 1941 § 3381-8a.]

32.20.110 District bonds secured by taxing power. A mutual savings bank may invest its funds in the bonds of any port district, water district, sanitary district, sewer district, tunnel district, bridge district, flood control district, park district, or highway district in the United States which has a population as shown by the last decennial federal census of not less than one hundred fifty thousand inhabitants, and has taxable real property with an assessed valuation in excess of two hundred million dollars and has power to levy taxes on the taxable real property therein for the payment of the bonds without limitation of rate or amount. [1955 c 13 § 32.20.110. Prior: 1937 c 95 § 7; RRS § 3381-8b.]

32.20.120 Local improvement district bonds. A mutual savings bank may invest not to exceed fifteen percent of its funds in the bonds or warrants of any local improvement district of any city or town of this state (except bonds or warrants issued for an improvement consisting of grading only), unless the total indebtedness of the district after the completion of the improvement for which the bonds or warrants are issued, plus the amount of all other assessments of a local or special nature against the land assessed or liable to be assessed to pay the bonds, exceed fifty percent of the value of the benefited property, exclusive of improvements, at the time the bonds or warrants are purchased or taken by the bank, according to the actual valuation last placed upon the property for general taxation.

Before any such bonds or warrants are purchased or taken as security the condition of the district's affairs shall be ascertained and the property of the district examined by at least two members of the board of investment who shall report in writing their findings and recommendations; and no bonds or warrants shall be taken unless such report is favorable, nor unless the executive committee of the board of trustees after careful investigation is satisfied of the validity of the bonds or warrants and of the validity and sufficiency of the assessment or other means provided for payment thereof: **PROVIDED**, That, excepting bonds issued by local improvement districts in cities of the first or second class, for improvements ordered after June 7, 1927, no local improvement district bonds falling within the twenty-five percent in amount of any issue last callable for payment, shall be acquired or taken as security. [1955 c 13 § 32.20.120. Prior: 1953 c 238 § 5; 1929 c 74 § 9; 1921 c 156 § 11h; RRS § 3381-9.]

32.20.130 Bonds of irrigation, diking, drainage districts. A mutual savings bank may invest not to exceed five percent of its funds in the bonds of any irrigation, diking, drainage, diking improvement, or drainage improvement district of this state, unless the total indebtedness of the district after the completion of the improvement for which the bonds are issued, plus the amount of all other assessments of a local or special nature against the land assessed or liable to be assessed to pay the bonds, exceeds forty percent of the value of the benefited property, exclusive of improvements, at the time the bonds are purchased or taken by the bank, according to the actual valuation last placed upon the property for general taxation.

Before any such bonds are purchased or taken as security the condition of the district's affairs shall be ascertained and the property of the district examined by at least two members of the board of investment of the mutual savings bank, who shall report in writing their findings and recommendations; and no bonds shall be taken unless such report is favorable, nor unless the executive committee of the board of trustees after careful investigation is satisfied of the validity of the bonds and of the sufficiency of the assessment or other means provided for payment thereof: **PROVIDED**, That no mutual savings bank shall invest a sum greater than three percent of its funds, or, in any event, more than three hundred thousand dollars, in the bonds of any one district described in this section. [1955 c 13 § 32.20.130. Prior: 1929 c 74 § 10; 1921 c 156 § 11h; RRS § 3381-10.]

32.20.160 Railroad equipment obligations or equipment trust certificates. A mutual savings bank may invest not to exceed fifteen percent of its funds in railroad equipment obligations or equipment trust certificates which comply with the following requirements:

(1) They must be the whole or part of an issue originally made payable within not more than fifteen years in annual or semiannual installments substantially equal in amount, beginning not later than one year after the date of the issue;

(2) They must be secured by or be evidence of a prior or preferred lien upon or interest in, or of reservation of title to, the equipment in respect of which they have been issued or sold, or by an assignment of or prior interest in the rent or purchase notes given for the hiring or purchase of such equipment;

(3) The total amount of principal of such issue of equipment obligations or trust certificates shall not exceed eighty-five percent of the cost or purchase price of the equipment in respect of which they were issued. [1955 c 13 § 32.20.160. Prior: 1937 c 95 § 9; 1929 c 74 § 13; 1921 c 156 §§ 1 li, j, k; RRS § 3381-13.]

32.20.210 Obligations of International Bank for Reconstruction and Development. A mutual savings bank may invest not to exceed five percent of its funds in interest bearing obligations of the International Bank for Reconstruction and Development. [1955 c 13 § 32.20.210. Prior: 1949 c 119 § 3; Rem. Supp. 1949 § 3381-16b.]

32.20.215 Obligations issued or guaranteed by Inter-American Development Bank. A mutual savings bank may invest not to exceed five percent of its funds in obligations issued or guaranteed by the Inter-American Development Bank. [1963 c 176 § 14.]

32.20.217 Obligations of Asian Development Bank. A mutual savings bank may invest not to exceed five percent of its funds in obligations issued or guaranteed by the Asian Development Bank. [1971 ex.s. c 222 § 7.]

Severability—1971 ex.s. c 222: See note following RCW 32.04.085.

32.20.219 Obligations issued or guaranteed by African Development Bank or other multilateral development bank. A mutual savings bank may invest not to exceed five percent of its funds in obligations issued or guaranteed by the African Development Bank or in obligations issued or guaranteed by any multilateral development bank in which the United States government formally participates. [1985 c 301 § 1.]

32.20.220 Bankers' acceptances, bills of exchange, and commercial paper. A mutual savings bank may invest not to exceed twenty percent of its funds in the following:

(1) Bankers' acceptances, and bills of exchange made eligible by law for rediscount with federal reserve banks, provided the same are accepted by a bank or trust company which is a member of the federal reserve system and which has a capital and surplus of not less than two million dollars, or commercial paper which is a prudent investment.

(2) Bills of exchange drawn by the seller on the purchaser of goods and accepted by such purchaser, of the kind made eligible by law for rediscount with federal reserve banks, provided the same are indorsed by a bank or trust company which is a member of the federal reserve system and which has a capital and surplus of not less than two million dollars.

The aggregate amount of the liability of any bank or trust company to any mutual savings bank, whether as principal or indorser, for acceptances held by such savings bank and deposits made with it, shall not exceed twenty-five percent of the paid up capital and surplus of such bank or trust company, and not more than five percent of the funds of any mutual savings bank shall be invested in the acceptances of or deposited with a bank or trust company of which a trustee of such mutual savings bank is a director. [1985 c 56 § 12; 1955 c 13 § 32.20.220. Prior: 1929 c 74 § 17; RRS § 3381-17.]

32.20.230 Notes secured by investments. A mutual savings bank may invest its funds in promissory notes payable to the order of the savings bank, secured by the pledge or assignment of investments lawfully purchasable by a savings bank. No such loan shall exceed ninety percent of the cash market value of such investments so pledged. Should any of the investments so held in pledge depreciate in value after the making of such loan, the savings bank shall require an immediate payment of such loan, or of a part thereof, or additional security therefor, so that the amount loaned thereon shall at no time exceed ninety percent of the market value of the investments so pledged for such loan. [1969 c 55 § 5; 1963 c 176 § 6; 1955 c 13 § 32.20.230. Prior: 1945 c 228 § 2; 1929 c 74 § 18; Rem. Supp. 1945 § 3381-18.]

Interest and usury in general: Chapter 19.52 RCW.

32.20.240 Notes secured by pledge or assignment of account. A mutual savings bank may invest its funds in promissory notes made payable to the order of the savings bank, secured by the pledge or assignment of the account of the mutual savings bank as collateral security for the payment thereof. No such loan shall exceed the balance due the holder of such account. [1967 c 145 § 5; 1955 c 13 § 32.20.240. Prior: 1945 c 228 § 3; 1929 c 74 § 19; 1921 c 156 § 11m; Rem. Supp. 1945 § 3381-19.]

Interest and usury in general: Chapter 19.52 RCW.

32.20.253 Loans secured by real estate, mobile homes, movable buildings. A mutual savings bank may invest its funds in loans secured by real estate or on the security of mobile homes or other movable buildings or any interest or estate in any of the foregoing. Such loans may be on such terms and conditions and subject to such limitations and restrictions as the board of trustees shall from time to time establish. [1981 c 86 § 14.]

Severability—1981 c 86: See note following RCW 32.04.060.

32.20.265 Valuation of property to be mortgaged—Appraiser's opinion. When, under any provision of this title, a written report is required of members of the board of investment of a mutual savings bank certifying according to

their best judgment the value of any property to be mortgaged such value may be determined upon the signed opinion in writing of an appraiser appointed by the board of trustees of such bank. [1957 c 80 § 9.]

32.20.280 Investments in real estate. A mutual savings bank may invest its funds in real estate as follows:

(1) A tract of land whereon there is or may be erected a building or buildings suitable for the convenient transaction of the business of the savings bank, from portions of which not required for its own use revenue may be derived: PROVIDED, That the cost of the land and building or buildings for the transaction of the business of the savings bank shall in no case exceed fifty percent of the guaranty fund, undivided profits, reserves, and subordinated securities of the savings bank, except with the approval of the supervisor; and before the purchase of such property is made, or the erection of a building or buildings is commenced, the estimate of the cost thereof, and the cost of the completion of the building or buildings, shall be submitted to and approved by the supervisor. "The cost of the land and building or buildings" means the amounts paid or expended therefor less the reasonable depreciation thereof taken by the bank against such improvements during the time they were held by the bank.

(2) Such lands as shall be conveyed to the savings bank in satisfaction of debts previously contracted in the course of its business.

(3) Such lands as the savings bank shall purchase at sales under judgments, decrees, or mortgages held by it.

All real estate purchased by any such savings bank, or taken by it in satisfaction of debts due it, under this section, shall be conveyed to it directly by name, or in the name of a corporation all of the stock of which is owned by the bank, or in such other manner as the bank shall determine to be in the best interest of the bank, and the conveyance shall be immediately recorded in the office of the proper recording officer of the county in which such real estate is situated.

(4) Every parcel of real estate purchased or acquired by a savings bank under subsections (2) and (3) of this section, shall be sold by it within five years from the date on which it was purchased or acquired, or in case it was acquired subject to a right of redemption, within five years from the date on which the right of redemption expires, unless:

(a) There is a building thereon occupied by the savings bank and its offices,

(b) The supervisor, on application of the board of trustees of the savings bank, extends the time within which such sale shall be made, or

(c) The property is held by the bank as an investment under the provisions of RCW 32.20.285, as now or hereafter amended. [1981 c 86 § 4; 1973 1st ex.s. c 31 § 6; 1969 c 55 § 7; 1955 c 13 § 32.20.280. Prior: 1929 c 74 § 22; 1921 c 156 § 110; 1915 c 175 § 12; RRS § 3381-22.]

Severability—1981 c 86: See note following RCW 32.04.060.

Construction—1973 1st ex.s. c 31: See RCW 32.20.500.

32.20.285 Investments through purchase of real estate—Improvements. A mutual savings bank may invest its funds in such real estate, improved or unimproved, and its fixtures and equipment, as the savings bank shall purchase

either alone or with others or through ownership of interests in entities holding such real estate. The savings bank may improve property which it owns, and rent, lease, sell, and otherwise deal in such property, the same as any other owner thereof. The total amount a mutual savings bank may invest pursuant to this section shall not exceed twenty percent of its funds. No officer or trustee of the bank shall own or hold any interest in any property in which the bank owns an interest, and in the event the bank owns an interest in property hereunder with or as a part of another entity, no officer or trustee of the bank shall own more than two and one-half percent of the equity or stock of any entity involved, and all of the officers and trustees of the bank shall not own more than five percent of the equity or stock of any entity involved. [1981 c 86 § 5; 1969 c 55 § 15.]

Severability—1981 c 86: See note following RCW 32.04.060.

32.20.290 Depository of funds. No savings bank shall deposit any of its funds with any bank, trust company, or other moneyed corporation or concern which has not been approved by the supervisor as a depository for the savings bank's funds and designated a depository by vote of a majority of the trustees of the savings bank, exclusive of any trustee who is an officer, director, or trustee of or who owns more than one-half of one percent of the outstanding stock in the depository so designated. [1967 c 145 § 8; 1955 c 13 § 32.20.290. Prior: 1929 c 74 § 23; 1925 ex.s. c 86 § 9; 1915 c 175 § 14; RRS § 3381-23.]

32.20.300 Home loan bank as depository. See RCW 30.32.040.

32.20.310 Deposit of securities. A savings bank may deposit securities owned by it, for safekeeping, with any duly designated depository for the bank's funds. The written statement of the depository that it holds for safekeeping specified securities of a savings bank may be taken as evidence of the facts therein shown by any public officer or any officer of the bank or committee of its trustees whose duty it is to examine the affairs and assets of the bank. [1955 c 13 § 32.20.310. Prior: 1929 c 74 § 24; 1927 c 184 § 4; RRS § 3381-24.]

32.20.320 Investment of funds. The trustees of every savings bank shall as soon as practicable invest the moneys deposited with it in the securities prescribed in this title.

The purchase by a savings bank of a negotiable certificate of deposit or similar security issued by a bank need not be considered a deposit if the certificate or security is eligible for investment by a savings bank under any other provision of this title. [1969 c 55 § 8; 1955 c 13 § 32.20.320. Prior: 1929 c 74 § 25; 1925 ex.s. c 86 § 11; 1915 c 175 § 20; RRS § 3381-25.]

32.20.330 Preferred stock and obligations of corporations. A mutual savings bank may invest in preferred stock, or in discounted or other interest bearing obligations issued, guaranteed or assumed by corporations commonly accepted as industrial corporations or engaged in communications, transportation, furnishing utility or tele-

phone services, manufacturing, mining, merchandising, banking, or commercial financing, incorporated under the laws of the United States, or any state thereof, or the District of Columbia, or the Dominion of Canada, or any province thereof, subject to the following conditions:

(1) Not more than two percent of said bank's funds shall be invested in securities of any one such corporation, pursuant to this section.

(2) Such securities shall be prudent investments.

(3) Pursuant to this section, the total amount a savings bank may invest shall not exceed fifty percent of its funds, and not more than fifteen percent of the bank's funds may be invested in such securities of any industry. [1985 c 56 § 13; 1973 1st ex.s. c 31 § 7; 1971 ex.s. c 222 § 6; 1955 c 80 § 6.]

Construction—1973 1st ex.s. c 31: See RCW 32.20.500.

Severability—1971 ex.s. c 222: See note following RCW 32.04.085.

32.20.340 Stock or bonds of federal home loan bank. See RCW 30.32.020.

32.20.350 Stock of federal reserve bank or Federal Deposit Insurance Corporation. See RCW 30.32.010.

32.20.360 Investment in safe deposit corporation authorized. See RCW 30.04.122.

32.20.361 Capital stock of banking service corporations. See RCW 30.04.128.

32.20.370 Corporate bonds and other interest-bearing or discounted obligations. A mutual savings bank may invest its funds in bonds or other interest bearing or discounted obligations of corporations not otherwise eligible for investment by the savings bank which are prudent investments for such bank in the opinion of its board of trustees or of a committee thereof whose action is ratified by such board at its regular meeting next following such investment. The total amount a mutual savings bank may invest pursuant to this section shall not exceed ten percent of its funds. [1977 ex.s. c 104 § 5; 1967 c 145 § 9; 1959 c 41 § 6.]

32.20.380 Stocks, securities, of corporations not otherwise eligible for investment. A mutual savings bank may invest its funds in stocks or other securities of corporations not otherwise eligible for investment by the savings bank which are prudent investments for the bank in the opinion of its board of trustees or of a committee thereof whose action is ratified by the board at its regular meeting next following the investment. The total amount a mutual savings bank may invest pursuant to this section shall not exceed fifty percent of the total of its guaranty fund, undivided profits, and unallocated reserves, or five percent of its deposits, whichever is less. [1981 c 86 § 6; 1963 c 176 § 16.]

Severability—1981 c 86: See note following RCW 32.04.060.

32.20.390 Obligations of corporations or associations federally authorized to insure or market real estate

mortgages—Loans, etc., eligible for insurance. A mutual savings bank may invest its funds:

(1) In capital stock, notes, bonds, debentures, participating certificates, and other obligations of any corporation or association which is or hereafter may be created pursuant to any law of the United States for the purpose of insuring or marketing real estate mortgages: PROVIDED, That the amount a mutual savings bank may invest in the capital stock of any one such corporation shall not exceed five percent of the funds of the mutual savings bank and the total amount it may invest in capital stock pursuant to this subsection (1) shall not exceed ten percent of the funds of the mutual savings bank.

(2) In such loans, advances of credit, participating certificates, and purchases of obligations representing loans and advances of credit as are eligible for insurance by any corporation or association which is or hereafter may be created pursuant to any law of the United States for the purpose of insuring real estate mortgages. The bank may do all acts necessary or appropriate to obtain such insurance. No law of this state prescribing the nature, amount, or form of security, or prescribing or limiting the period for which loans or advances of credit may be made shall apply to loans, advances of credit, or purchases made pursuant to this subsection (2). [1963 c 176 § 17.]

32.20.400 Loans for home or property repairs, alterations, appliances, improvements, additions, furnishings, underground utilities, education or nonbusiness family purposes. A mutual savings bank may invest not to exceed twenty percent of its funds in loans for home or property repairs, alterations, appliances, improvements, or additions, home furnishings, for installation of underground utilities, for educational purposes, or for nonbusiness family purposes: PROVIDED, That the application therefor shall state that the proceeds are to be used for one of the above purposes. [1981 c 86 § 7; 1977 ex.s. c 104 § 6; 1969 c 55 § 9; 1967 c 145 § 10; 1963 c 176 § 18.]

Severability—1981 c 86: See note following RCW 32.04.060.

32.20.410 Limitation of total investment in certain obligations. The aggregate total amount a mutual savings bank may invest in the following shall not exceed the sum of eighty-five percent of its funds and one hundred percent of its borrowings as permitted under RCW 32.08.140, as now or hereafter amended and RCW 32.08.190, as now or hereafter amended:

- (1) Mortgages upon real estate and participations therein;
- (2) Contracts for the sale of realty;
- (3) Mortgages upon leasehold estates; and
- (4) Notes secured by pledges or assignments of first mortgages or real estate contracts.

The limitation of this section shall not apply to GNMA certificates, mortgage backed bonds, mortgage passthrough certificates or other similar securities purchased or held by the bank. [1981 c 86 § 8; 1977 ex.s. c 104 § 7; 1969 c 55 § 10; 1963 c 176 § 19.]

Severability—1981 c 86: See note following RCW 32.04.060.

32.20.415 Limitation on certain secured and unsecured loans. In addition to all other investments and loans authorized for mutual savings banks in this state, a mutual savings bank may invest not more than twenty percent of its funds in secured or unsecured loans on such terms and conditions as the bank may determine. [1981 c 86 § 15.]

Severability—1981 c 86: See note following RCW 32.04.060.

32.20.430 Loans to banks or trust companies. A mutual savings bank may invest its funds in loans to banks or trust companies which mature on the next business day following the day of making such loan. The loans may be evidenced by any writing or ledger entries deemed adequate by the mutual savings bank and may be secured or unsecured. The loans made hereunder are payable on the same basis as are regular deposits in such banks, and therefore the transactions may be characterized for accounting and statement purposes and carried on the books of the mutual savings bank as either a deposit with or a loan to the bank. [1971 ex.s. c 222 § 3.]

Severability—1971 ex.s. c 222: See note following RCW 32.04.085.

32.20.440 Purchase of United States securities from banks or trust companies. A mutual savings bank may invest its funds in the purchase of United States government securities from a bank or trust company, subject to the selling bank's or trust company's agreement to repurchase such securities on the business day next following their purchase by the mutual savings bank. The securities may be purchased at par, or at a premium or discount, as the mutual savings bank may agree, and may be characterized for accounting and statement purposes and carried on the books of the mutual savings bank as such securities to the extent of their market value, and as due from such banks or trust companies to the extent that the repurchase price agreed to be paid exceeds such market value. [1971 ex.s. c 222 § 4.]

Severability—1971 ex.s. c 222: See note following RCW 32.04.085.

32.20.445 Stock, other securities, and obligations of federally insured savings institutions. A savings bank may invest its funds in the stock and other securities and obligations of a savings institution if the deposits of the savings institution are insured by the federal deposit insurance corporation, the federal savings and loan insurance corporation, or any other federal instrumentalities established to carry on substantially the same functions as such corporations: PROVIDED, That the savings bank shall own not less than fifty-one percent of the outstanding stock having voting power. [1989 c 180 § 8.]

32.20.450 Low-cost housing—Legislative finding. The legislature finds there is a shortage of adequate housing in a suitable environment in many parts of this state for people of modest means, which shortage adversely affects the public in general and the mutual savings banks of this state and their depositors. The legislature further finds that the making of loans or investments to alleviate this problem which may provide a less than market rate of return and entail a higher degree of risk than might otherwise be

acceptable, will benefit this state, the banks, and their depositors. [1973 1st ex.s. c 31 § 1.]

Construction—1973 1st ex.s. c 31: See RCW 32.20.500.

32.20.460 Low-cost housing—Factory built housing—Mobile homes. In addition to the portions of its funds permitted to be invested in real estate loans under RCW 32.20.410, a mutual savings bank may invest not to exceed fifteen percent of its funds in loans and investments as follows:

(1) Loans for the rehabilitation, remodeling, or expansion of existing housing.

(2) Loans in connection with, or participation in:

(a) Housing programs of any agency of federal, state, or local government; and

(b) Housing programs of any nonprofit, union, community, public, or quasi-public corporation or entity.

Such housing must be made available to all without regard to race, creed, sex, color, or national origin.

(3) Loans for purchasing or constructing factory built housing, including but not limited to mobile homes. The bank shall determine the amount, security, and repayment basis which it considers prudent for the loans.

(4) In mobile home chattel paper which finances the acquisition of inventory by a mobile home dealer if the inventory is to be held for sale in the ordinary course of business by the mobile home dealer, the monetary obligation evidenced by such chattel paper is the obligation of the mobile home dealer and the amount thereof does not exceed the amount allowed to be loaned on such mobile homes under subsection (3) of this section. [1981 c 86 § 9; 1977 ex.s. c 104 § 9; 1973 1st ex.s. c 31 § 2.]

Severability—1981 c 86: See note following RCW 32.04.060.

Construction—1973 1st ex.s. c 31: See RCW 32.20.500.

32.20.470 Improvement of private land for public parks and recreation areas. Subject to the limits hereinafter set forth, a mutual savings bank may expend its funds for the improvement for public use of privately owned land as parks or recreation areas, including but not limited to "vest pocket" parks, provided that the owner of such land will:

(1) Permit public use thereof for a period of at least eighteen months or for such longer period and subject to such other requirements as the bank may impose; and

(2) At or before the end of public use, permit the removal of all such improvements which in the bank's judgment reasonably may be accomplished.

As used in this section, "public use" means use without regard to race, creed, sex, color, or national origin. The amount expended hereunder and under RCW 32.12.070(2)(d) in any calendar year shall not exceed one-half of one percent of the net earnings of bank for the preceding year. [1973 1st ex.s. c 31 § 3.]

Construction—1973 1st ex.s. c 31: See RCW 32.20.500.

32.20.480 Loans or investments to provide adequate housing and environmental improvements—Criteria—Restrictions. Loans or investments made under *this 1973 amendatory act may provide a less than market rate of return and entail a higher degree of risk than might otherwise be acceptable to the general market, so long as the board of

trustees of the bank determines the loan or investment may be beneficial to the community where made, without the need to show a direct corporate benefit, and so long as any private individual who benefits is not, and is not related to any person who is, an officer, employee, or trustee of the bank. It is hereby recognized that the mutual savings banks of the state of Washington and their depositors are affected adversely by the absence of adequate low-cost housing and environmental developments and improvements within the communities they serve and the state of Washington.

The amount a mutual savings bank may invest under *this 1973 amendatory act during any twelve month period at less than a market rate of return shall not exceed two percent of the total principal amount of all real estate loans made by the bank during the preceding twelve months. [1973 1st ex.s. c 31 § 4.]

***Reviser's note:** "This 1973 amendatory act" consists of the enactment of RCW 32.20.450, 32.20.460, 32.20.470, 32.20.480, 32.20.490, and 32.20.500 and the amendments to RCW 32.20.280 and 32.20.330 by 1973 1st ex.s. c 31.

Construction—1973 1st ex.s. c 31: See RCW 32.20.500.

32.20.500 Construction—1973 1st ex.s. c 31. The powers granted by *this 1973 amendatory act are in addition to and not in limitation of the powers conferred upon a mutual savings bank by other provisions of law. [1973 1st ex.s. c 31 § 8.]

***Reviser's note:** For "this 1973 amendatory act," see note following RCW 32.20.480.

Chapter 32.24

INSOLVENCY AND LIQUIDATION

Sections

- 32.24.010 Liquidation of solvent bank.
- 32.24.020 Procedure to liquidate and dissolve.
- 32.24.030 Transfer of assets and liabilities to another bank.
- 32.24.040 Unsafe practices—Notice to correct.
- 32.24.050 Liquidation of bank in unsound condition or insolvent.
- 32.24.060 Possession by supervisor—Bank may contest.
- 32.24.070 Receiver prohibited except in emergency.
- 32.24.080 Transfer of assets when insolvent—Penalty.
- 32.24.090 Federal deposit insurance corporation as receiver or liquidator—Appointment—Powers and duties.
- 32.24.100 Payment or acquisition of deposit liabilities by federal deposit insurance corporation—Not hindered by judicial review—Liability.

32.24.010 Liquidation of solvent bank. If the trustees of any solvent mutual savings bank deem it necessary or expedient to close the business of such bank, they may, by affirmative vote of not less than two-thirds of the whole number of trustees, at a meeting called for that purpose, of which one month's notice has been given, either personally or by mailing such notice to the post office address of each trustee, declare by resolution their determination to close such business and pay the moneys due depositors and creditors and to surrender the corporate franchise. Subject to the approval and under the direction of the supervisor, such savings bank may adopt any lawful plan for closing up its affairs, as nearly as may be in accordance with the original plan and objects. [1955 c 13 § 32.24.010. Prior: 1915 c 175 § 45; RRS § 3374.]

32.24.020 Procedure to liquidate and dissolve.

When the trustees, acting under the provisions of RCW 32.24.010, have paid the sums due respectively to all creditors and depositors, who, after such notice as the supervisor of banking shall prescribe, claim the money due and their deposits, the trustees shall make a transcript or statement from the books in the bank of the names of all depositors and creditors who have not claimed or have not received the balance of the credit due them, and of the sums due them, respectively, and shall file such transcript with the supervisor and pay over and transfer all such unclaimed and unpaid deposits, credits, and moneys to the supervisor. The trustees shall then report their proceedings, duly verified, to the superior court of the county wherein the bank is located, and upon such report and the petition of the trustees, and after notice to the attorney general and the supervisor, and such other notice as the court may deem necessary, the court shall adjudge the franchise surrendered and the existence of the corporation terminated. Certified copies of the judgment shall be filed in the offices of the secretary of state and the supervisor of banking and shall be recorded in the office of the secretary of state. [1981 c 302 § 29; 1955 c 13 § 32.24.020. Prior: 1931 c 132 § 4; 1915 c 175 § 46; RRS § 3375.]

Severability—1981 c 302: See note following RCW 19.76.100.

32.24.030 Transfer of assets and liabilities to another bank. An unconverted mutual savings bank may for the purpose of consolidation, acquisition, pooling of assets, merger, or voluntary liquidation arrange for its assets and liabilities to become assets and liabilities of another mutual savings bank, by the affirmative vote or with the written consent of two-thirds of the whole number of its trustees, but only with the written consent of the supervisor and upon such terms and conditions as he may prescribe.

Upon any such transfer being made, or upon the liquidation of any such mutual savings bank for any cause whatever, or upon its being no longer engaged in the business of a mutual savings bank, the supervisor shall terminate its certificate of authority, which shall not thereafter be revived or renewed. When the certificate of authority of any such corporation has been revoked, it shall forthwith collect and distribute its remaining assets, and when that is done, the supervisor shall certify the fact to the secretary of state, whereupon the corporation shall cease to exist and the secretary of state shall note the fact upon his records.

In case of the consolidation with or voluntary liquidation of a mutual savings bank by another mutual savings bank, as herein provided, any sums advanced by its incorporators, or others, to create or maintain its guaranty fund or its expense fund shall not be liabilities of such mutual savings bank unless the mutual savings bank, so assuming its liabilities shall specifically undertake to pay the same, or a stated portion thereof. [1985 c 56 § 14; 1955 c 13 § 32.24.030. Prior: 1931 c 132 § 5; RRS § 3375a.]

32.24.040 Unsafe practices—Notice to correct.

Whenever it appears to the supervisor that any mutual savings bank is conducting its business in an unsafe manner or that it refuses to submit its books, papers, or concerns to lawful inspection, or that any trustee or officer thereof

refuses to submit to examination on oath touching its concerns, or that it has failed to carry out any authorized order or direction of the supervisor, such supervisor may give notice to the mutual savings bank so offending or delinquent or whose trustee or officer is thus offending or delinquent to correct such offense or delinquency, and if the mutual savings bank fails to comply with the terms of such notice within thirty days from the date of its issuance, or within such further time as the supervisor may allow, then the supervisor may take possession of such mutual savings bank as in the case of insolvency. [1955 c 13 § 32.24.040. Prior: 1931 c 132 § 6; RRS § 3375b.]

32.24.050 Liquidation of bank in unsound condition or insolvent. Whenever it appears to the supervisor that any offense or delinquency referred to in RCW 32.24.040 renders a mutual savings bank in an unsound or unsafe condition to continue its business, or that it has suspended payment of its obligations, or is insolvent, such supervisor may take possession thereof without notice.

Upon taking possession of any mutual savings bank, the supervisor shall forthwith proceed to liquidate the business, affairs, and assets thereof and such liquidation shall be had in accordance with the provisions of law governing the liquidation of insolvent banks and trust companies. [1955 c 13 § 32.24.050. Prior: 1931 c 132 § 7; RRS § 3375c.]

32.24.060 Possession by supervisor—Bank may contest. Within ten days after the supervisor takes possession thereof, a mutual savings bank may serve notice upon such supervisor to appear before the superior court in the county wherein such corporation is located, at a time to be fixed by said court, which shall not be less than five nor more than fifteen days from the date of the service of such notice, to show cause why such corporation should not be restored to the possession of its assets. Upon the return day of such notice, or such further day as the matter may be continued to, the court shall summarily hear said cause and shall dismiss the same, if it finds that possession was taken by the supervisor in good faith and for cause, but if it finds that no cause existed for the taking possession of such corporation, it shall require the supervisor to restore the bank to the possession of its assets and enjoin him from further interference therewith without cause. [1955 c 13 § 32.24.060. Prior: 1931 c 132 § 8; RRS § 3375d.]

32.24.070 Receiver prohibited except in emergency.

No receiver shall be appointed by any court for any mutual savings bank, nor shall any assignment of any such bank for the benefit of creditors be valid, excepting only that a court otherwise having jurisdiction may in case of imminent necessity appoint a temporary receiver to take possession of and preserve the assets of the mutual savings bank. Immediately upon any such appointment, the clerk of the court shall notify the supervisor by telegram and mail of such appointment and the supervisor shall forthwith take possession of the mutual savings bank, as in case of insolvency, and the temporary receiver shall upon demand of the supervisor surrender up to him such possession and all assets which have come into his hands. The supervisor shall in due course pay such receiver out of the assets of the mutual

savings bank such amount as the court shall allow. [1955 c 13 § 32.24.070. Prior: 1931 c 132 § 9; RRS § 3375e.]

32.24.080 Transfer of assets when insolvent—Penalty. Every transfer of its property or assets by any mutual savings bank in this state, made (1) after it has become insolvent, (2) within ninety days before the date the supervisor takes possession of such savings bank under RCW 32.24.050 or the federal deposit insurance corporation is appointed as receiver or liquidator of such savings bank under RCW 32.24.090, and (3) with the view to the preference of one creditor over another or to prevent equal distribution of its property and assets among its creditors, shall be void. Every trustee, officer, or employee making any such transfer shall be guilty of a felony. [1985 c 56 § 15; 1955 c 13 § 32.24.080. Prior: 1931 c 132 § 10; RRS § 3379a.]

32.24.090 Federal deposit insurance corporation as receiver or liquidator—Appointment—Powers and duties. The federal deposit insurance corporation is hereby authorized and empowered to be and act without bond as receiver or liquidator of any mutual savings bank the deposits in which are to any extent insured by that corporation and which shall have been closed on account of inability to meet the demands of its depositors. In the event of such closing, the supervisor of banking may appoint the federal deposit insurance corporation as receiver or liquidator of such mutual savings bank. If the corporation accepts such appointment, it shall have and possess all the powers and privileges provided by the laws of this state with respect to a liquidator of a mutual savings bank, its depositors and other creditors, and be subject to all the duties of such liquidator, except insofar as such powers, privileges, or duties are in conflict with the provisions of the federal deposit insurance act, as now or hereafter amended. [1973 1st ex.s. c 54 § 3.]

32.24.100 Payment or acquisition of deposit liabilities by federal deposit insurance corporation—Not hindered by judicial review—Liability. The pendency of any proceedings for judicial review of the supervisor's actions in taking possession and control of a mutual savings bank and its assets for the purpose of liquidation shall not operate to defer, delay, impede, or prevent the payment or acquisition by the federal deposit insurance corporation of the deposit liabilities of the mutual savings bank which are insured by the corporation. During the pendency of any proceedings for judicial review, the supervisor of banking shall make available to the federal deposit insurance corporation such facilities in or of the mutual savings bank and such books, records, and other relevant data of the mutual savings bank as may be necessary or appropriate to enable the corporation to pay out or to acquire the insured deposit liabilities of the mutual savings bank. The federal deposit insurance corporation and its directors, officers, agents, and employees, the supervisor of banking, and his agents and employees shall be free from liability to the mutual savings bank, its directors, stockholders, and creditors for or on account of any action taken in connection herewith. [1973 1st ex.s. c 54 § 4.]

Chapter 32.28

SATELLITE FACILITIES (See chapter 30.43 RCW)

Chapter 32.30

CONVERSION OF MUTUAL SAVINGS BANK TO BUILDING AND LOAN OR SAVINGS AND LOAN ASSOCIATION (See chapter 33.46 RCW)

Chapter 32.32

CONVERSION OF MUTUAL SAVINGS BANK TO CAPITAL STOCK SAVINGS BANK

Sections

- 32.32.010 Chapter exclusive—Prohibition on conversion without approval—Waiver of requirements.
- 32.32.015 Forms.
- 32.32.020 Request of noncompliance—Requirements.
- 32.32.025 Definitions.
- 32.32.030 Prohibition on approval of certain applications for conversion.
- 32.32.035 Requirements of plan of conversion.
- 32.32.040 Issuance of capital stock—Price.
- 32.32.045 Stock purchase subscription rights—Eligible account holders.
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- 32.32.525 Prohibition on certain securities and purchases—Exception.
- 32.32.900 Severability—1981 c 85.

32.32.010 Chapter exclusive—Prohibition on conversion without approval—Waiver of requirements. This chapter shall exclusively govern the conversion of mutual savings banks to capital stock savings banks. No mutual savings bank may convert to the capital stock form of organization without the prior written approval of the supervisor pursuant to this chapter, except that the supervisor may waive requirements of this chapter in appropriate cases. [1981 c 85 § 1.]

32.32.015 Forms. The supervisor may prescribe under this chapter such forms as the supervisor deems appropriate for use by a mutual savings bank seeking to convert to a capital stock savings bank pursuant to this chapter. [1981 c 85 § 2.]

32.32.020 Request of noncompliance—Requirements. (1) If an applicant finds that compliance with any provision of this chapter would be in conflict with applicable federal law, the supervisor shall grant or deny a request of noncompliance with the provision. The request may be incorporated in the application for conversion; otherwise, the applicant shall file the request in accordance with the requirements of the supervisor.

(2) In making any such request, the applicant shall:

(a) Specify the provision or provisions of this chapter with respect to which the applicant desires waiver;

(b) Furnish an opinion of counsel demonstrating that applicable federal law is in conflict with the specified provision or provisions of this chapter; and

(c) Demonstrate that the requested waiver would not result in any effects that would be inequitable or detrimental to the applicant, its account holders, or other financial

institutions or would be contrary to the public interest. [1981 c 85 § 3.]

32.32.025 Definitions. As used in this chapter, the following definitions apply, unless the context otherwise requires:

(1) Except as provided in RCW 32.32.230, an "affiliate" of, or a person "affiliated" with, a specified person, is a person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the person specified.

(2) The term "amount", when used in regard to securities, means the principal amount if relating to evidences of indebtedness, the number of shares if relating to shares, and the number of units if relating to any other kind of security.

(3) An "applicant" is a mutual savings bank which has applied to convert pursuant to this chapter.

(4) The term "associate", when used to indicate a relationship with any person, means (a) any corporation or organization (other than the applicant or a majority-owned subsidiary of the applicant) of which the person is an officer or partner or is, directly or indirectly, the beneficial owner of ten percent or more of any class of equity securities, (b) any trust or other estate in which the person has a substantial beneficial interest or as to which the person serves as trustee or in a similar fiduciary capacity, and (c) any relative who would be a "class A beneficiary" under *RCW 83.08.005 if the person were a decedent.

(5) The term "broker" means any person engaged in the business of effecting transactions in securities for the account of others.

(6) The term "capital stock" includes permanent stock, guaranty stock, permanent reserve stock, any similar certificate evidencing nonwithdrawable capital, or preferred stock, of a savings bank converted under this chapter or of a subsidiary institution or holding company.

(7) The term "charter" includes articles of incorporation, articles of reincorporation, and certificates of incorporation, as amended, effecting (either with or without filing with any governmental agency) the organization or creation of an incorporated person.

(8) Except as provided in RCW 32.32.230, the term "control" (including the terms "controlling", "controlled by", and "under common control with") means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract, or otherwise.

(9) The term "dealer" means any person who engages either for all or part of his time, directly or indirectly, as agent, broker, or principal, in the business of offering, buying, selling, or otherwise dealing or trading in securities issued by another person.

(10) The term "director" means any director of a corporation, any trustee of a mutual savings bank, or any person performing similar functions with respect to any organization whether incorporated or unincorporated.

(11) The term "eligibility record date" means the record date for determining eligible account holders of a converting mutual savings bank.

(12) The term "eligible account holder" means any person holding a qualifying deposit as determined in accordance with RCW 32.32.180.

(13) The term "employee" does not include a director or officer.

(14) The term "equity security" means any stock or similar security; or any security convertible, with or without consideration, into such a security, or carrying any warrant or right to subscribe to or purchase such a security; or any such warrant or right.

(15) The term "market maker" means a dealer who, with respect to a particular security, (a) regularly publishes bona fide, competitive bid and offer quotations in a recognized interdealer quotation system; or (b) furnishes bona fide competitive bid and offer quotations on request; and (c) is ready, willing, and able to effect transaction in reasonable quantities at his quoted prices with other brokers or dealers.

(16) The term "material", when used to qualify a requirement for the furnishing of information as to any subject, limits the information required to those matters as to which an average prudent investor ought reasonably to be informed before purchasing an equity security of the applicant.

(17) The term "mutual savings bank" means a mutual savings bank organized and operating under Title 32 RCW.

(18) Except as provided in RCW 32.32.435, the term "offer", "offer to sell", or "offer of sale" shall include every attempt or offer to dispose of, or solicitation of an offer to buy, a security or interest in a security, for value. These terms shall not include preliminary negotiations or agreements between an applicant and any underwriter or among underwriters who are or are to be in privity of contract with an applicant.

(19) The term "officer", for purposes of the purchase of stock in a conversion under this chapter or the sale of this stock, means the chairman of the board, president, vice president, secretary, treasurer or principal financial officer, comptroller or principal accounting officer, and any other person performing similar functions with respect to any organization whether incorporated or unincorporated.

(20) Except as provided in RCW 32.32.435, the term "person" means an individual, a corporation, a partnership, an association, a joint-stock company, a trust, any unincorporated organization, or a government or political subdivision thereof.

(21) The term "proxy" includes every form of authorization by which a person is or may be deemed to be designated to act for a stockholder in the exercise of his voting rights in the affairs of an institution. Such an authorization may take the form of failure to dissent or object.

(22) The terms "purchase" and "buy" include every contract to purchase, buy, or otherwise acquire a security or interest in a security for value.

(23) The terms "sale" and "sell" include every contract to sell or otherwise dispose of a security or interest in a security for value; but these terms do not include an exchange of securities in connection with a merger or acquisition approved by the supervisor.

(24) The term "savings account" means deposits established in a mutual savings bank and includes certificates of deposit.

(25) Except as provided in RCW 32.32.435, the term "security" includes any note, stock, treasury stock, bond, debenture, transferable share, investment contract, voting-trust certificate, or in general, any instrument commonly known as a "security"; or any certificate of interest or participation in, temporary or interim certificate for, receipt for, or warrant or right to subscribe to or purchase any of the foregoing.

(26) The term "subscription offering" refers to the offering of shares of capital stock, through nontransferable subscription rights issued to: (a) Eligible account holders as required by RCW 32.32.045; (b) supplemental eligible account holders as required by RCW 32.32.055; (c) directors, officers, and employees, as permitted by RCW 32.32.140; and (d) eligible account holders and supplemental eligible account holders as permitted by RCW 32.32.145.

(27) A "subsidiary" of a specified person is an affiliate controlled by the person, directly or indirectly through one or more intermediaries.

(28) The term "supervisor" means the supervisor of banking.

(29) The term "supplemental eligibility record date" means the supplemental record date for determining supplemental eligible account holders of a converting savings bank required by RCW 32.32.055. The date shall be the last day of the calendar quarter preceding supervisor approval of the application for conversion.

(30) The term "supplemental eligible account holder" means any person holding a qualifying deposit, except officers, directors, and their associates, as of the supplemental eligibility record date.

(31) The term "underwriter" means any person who has purchased from an applicant with a view to, or offers or sells for an applicant in connection with, the distribution of any security, or participates or has a direct or indirect participation in the direct or indirect underwriting of any such undertaking; but the term does not include a person whose interest is limited to a commission from an underwriter or dealer not in excess of the usual and customary distributors' or sellers commission. The term "principal underwriter" means an underwriter in privity of contract with the applicant or other issuer of securities as to which that person is the underwriter.

Terms defined in other chapters of this title, when used in this chapter, shall have the meanings given in those definitions, to the extent those definitions are not inconsistent with the definitions contained in this chapter unless the context otherwise requires. [1985 c 56 § 16; 1981 c 85 § 4.]

*Reviser's note: RCW 83.08.005 was repealed by 1981 2nd ex.s. c 7 § 83.100.160, effective January 1, 1982.

32.32.030 Prohibition on approval of certain applications for conversion. No application for conversion may be approved by the supervisor if:

(1) The plan of conversion adopted by the applicant's board of directors is not in accordance with this chapter;

(2) The conversion would result in a reduction of the applicant's net worth below requirements established by the supervisor;

(3) The conversion may result in a taxable reorganization of the applicant under the United States Internal Revenue Code of 1954, as amended; or

(4) The converted savings bank does not meet the insurance requirements as established by the supervisor. [1981 c 85 § 5.]

32.32.035 Requirements of plan of conversion. The plan of conversion shall contain all of the provisions set forth in RCW 32.32.040 through 32.32.125. [1981 c 85 § 6.]

32.32.040 Issuance of capital stock—Price. A converted savings bank or a holding company organized pursuant to chapter 32.34 RCW shall issue and sell capital stock at a total price equal to the estimated pro forma market value of the stock issued in connection with the conversion, based on an independent valuation, as provided in RCW 32.32.305. In the conversion of a mutual savings bank or holding company, either of which is in the process of merging with, being acquired by, or consolidating with a stock savings bank, or a savings bank holding company owned by stockholders, or a subsidiary thereof, the following subsections apply:

(1) The price per share of the shares offered for subscription and issued in the conversion shall be not less than the price reported for stock which is listed on a national or regional stock exchange, or the bid price for stock which is traded on the NASDAQ system, as of the day before any public offering or other completion of the sale of stock in the conversion: PROVIDED, That for stock not so listed and not traded on the NASDAQ system, and any stock whose price has been affected, as of the day specified above, by a violation of RCW 32.32.225, the price per share shall be determined by the supervisor, upon the submission of such information as the supervisor may request.

(2) The independent valuation as provided in RCW 32.32.305 shall determine the aggregate value of shares for which subscription rights are granted pursuant to RCW 32.32.045, 32.32.050, and 32.32.055, rather than a price per share or number of shares as provided in RCW 32.32.290, 32.32.325, and 32.32.330. This independent valuation may be replaced by a demonstration, to the satisfaction of the supervisor, of the fairness of the price of the shares issued. [1985 c 56 § 17; 1981 c 85 § 7.]

32.32.045 Stock purchase subscription rights—Eligible account holders. Each eligible account holder shall receive, without payment, nontransferable subscription rights to purchase capital stock in an amount equal to the greatest of two hundred shares, one-tenth of one percent of the total offering of shares, or fifteen times the product (rounded down to the next whole number) obtained by multiplying the total number of shares of capital stock to be issued by a fraction of which the numerator is the amount of the qualifying deposit of the eligible account holder and the denominator is the total amount of qualifying deposits of all eligible account holders in the converting savings bank. If the allotment made in this section results in an oversubscription, shares shall be allocated among subscribing eligible account holders so as to permit each such account holder, to the extent possible, to purchase a number of shares sufficient to make his total allocation equal to one hundred shares. Any shares not so allocated shall be allocated among the

subscribing eligible account holders on such equitable basis, related to the amounts of their respective qualifying deposits, as may be provided in the plan of conversion. [1981 c 85 § 8.]

32.32.050 Stock purchase subscription rights received by officers, directors, and their associates—Subordination. Nontransferable subscription rights to purchase capital stock received by officers and directors and their associates of the converting savings bank based on their increased deposits in the converting savings bank in the one-year period preceding the eligibility record date shall be subordinated to all other subscriptions involving the exercise of nontransferable subscription rights to purchase shares pursuant to RCW 32.32.045. [1981 c 85 § 9.]

32.32.055 Supplemental share purchase subscription rights—Supplemental eligible account holder—Conditions. In plans involving an eligibility record date that is more than fifteen months prior to the date of the latest amendment to the application for conversion filed prior to the supervisor approval, a supplemental eligibility record date shall be determined whereby each supplemental eligible account holder of the converting savings bank shall receive, without payment, nontransferable subscription rights to purchase supplemental shares in an amount equal to the greatest of two hundred shares, one-tenth of one percent of the total offering of shares, or fifteen times the product (rounded down to the next whole number) obtained by multiplying the total number of shares of capital stock to be issued by a fraction of which the numerator is the amount of the qualifying deposit of the supplemental eligible account holder and the denominator is the total amount of the qualifying deposits of all supplemental eligible account holders in the converting savings bank on the supplemental eligibility record date.

(1) Subscription rights received pursuant to this section shall be subordinated to all rights received by eligible account holders to purchase shares pursuant to RCW 32.32.045 and 32.32.050.

(2) Any nontransferable subscription rights to purchase shares received by an eligible account holder in accordance with RCW 32.32.045 shall be applied in partial satisfaction of the subscription rights to be distributed pursuant to this section.

(3) In the event of an oversubscription for supplemental shares pursuant to this section, shares shall be allocated among the subscribing supplemental eligible account holders as follows:

(a) Shares shall be allocated among subscribing supplemental eligible account holders so as to permit each such supplemental account holder, to the extent possible, to purchase a number of shares sufficient to make the supplemental account holder's total allocation (including the number of shares, if any, allocated in accordance with RCW 32.32.045) equal to one hundred shares.

(b) Any shares not allocated in accordance with subsection (3)(a) of this section shall be allocated among the subscribing supplemental eligible account holders on such equitable basis, related to the amounts of their respective

qualifying deposits, as may be provided in the plan of conversion. [1981 c 85 § 10.]

32.32.060 Sale of shares not sold in subscription offering—Methods—Conditions. Any shares of the converting savings bank not sold in the subscription offering shall either be sold in a public offering through an underwriter or directly by the converting savings bank in a direct community marketing, subject to the applicant demonstrating to the supervisor the feasibility of the method of sale and to such conditions as may be provided in the plan of conversion. The conditions shall include, but not be limited to:

(1) A condition limiting purchases by each officer and director or their associates in this phase of the offering to one-tenth of one percent of the total offering of shares.

(2) A condition limiting purchases by any person and that person's associates in this phase of the offering to a number of shares or a percentage of the total offering so long as the limitation does not exceed two percent of the shares to be sold in the total offering.

(3) A condition that any direct community offering by the converting savings bank shall give a preference to natural persons residing in the counties in which the savings bank has an office. The methods by which preference shall be given shall be approved by the supervisor. [1981 c 85 § 11.]

32.32.065 Limitation on subscription and purchase of shares by person with associate or group—Amount. The number of shares which any person together with any associate or group of persons acting in concert may subscribe for or purchase in the conversion shall not exceed five percent of the total offering of shares. For purposes of this section, the members of the converting savings bank's board of directors shall not be deemed to be associates or a group acting in concert solely as a result of their board membership. [1981 c 85 § 12.]

32.32.070 Limitation on purchase of shares by officers, directors, and their associates—Amount. The number of shares which officers and directors of the converting savings bank and their associates may purchase in the conversion shall not exceed twenty-five percent of the total offering of shares. [1981 c 85 § 13.]

32.32.075 Prohibition on purchase of shares by officers, directors, and their associates—Exception. No officer or director, or their associates, may purchase without the prior written approval of the supervisor the capital stock of the converted savings bank except from a broker or a dealer registered with the Securities and Exchange Commission for a period of three years following the conversion. This provision shall not apply to negotiated transactions involving more than one percent of the outstanding capital stock of the converted savings bank.

As used in this section, the term "negotiated transactions" means transactions in which the securities are offered and the terms and arrangements relating to any sale of the securities are arrived at through direct communications between the seller or any person acting on the seller's behalf and the purchaser or the purchaser's investment representative. The term "investment representative" means a profes-

sional investment adviser acting as agent for the purchaser and independent of the seller and not acting on behalf of the seller in connection with the transaction. [1981 c 85 § 14.]

32.32.080 Uniform sales price of shares required—Application to specify arrangements on sale of shares not sold in subscription offering. The sales price of the shares of capital stock to be sold in the conversion shall be a uniform price determined in accordance with RCW 32.32.290, 32.32.305, and 32.32.325. The applicant shall specify in its conversion application the underwriting and/or other marketing arrangements to be made to assure the sale of all shares not sold in the subscription offering. [1981 c 85 § 15.]

32.32.085 Savings account holder to receive withdrawable savings account(s)—Amount. Each savings account holder of the converting savings bank shall receive, without payment, a withdrawable savings account or accounts in the converted savings bank equal in withdrawable amount to the withdrawal value of the account holder's savings account or accounts in the converting savings bank. [1981 c 85 § 16.]

32.32.090 Liquidation account—Establishment and maintenance required. A converting savings bank shall establish and maintain a liquidation account for the benefit of eligible account holders and supplemental eligible account holders in the event of a subsequent complete liquidation of the converted savings bank, in accordance with RCW 32.32.185 through 32.32.205. [1981 c 85 § 17.]

32.32.095 Establishment of eligibility record date required. The applicant shall establish an eligibility record date, which shall not be less than ninety days prior to the date of adoption of the plan by the converting savings bank's board of directors. [1981 c 85 § 18.]

32.32.100 Capital stock—Voting rights. The holders of the capital stock of the converted savings bank shall have exclusive voting rights. [1981 c 85 § 19.]

32.32.105 Amendment and termination of plan of conversion. The plan of conversion adopted by the applicant's board of directors may be amended by the board of directors with the concurrence of the supervisor at any time prior to final approval of the supervisor and may be terminated with the concurrence of the supervisor at any time prior to issuance of the authorization certificate by the supervisor. [1981 c 85 § 20.]

32.32.110 Restriction on sale of shares of stock by directors and officers. All shares of capital stock purchased by directors and officers on original issue in the conversion either directly from the savings bank (by subscription or otherwise) or from an underwriter of the shares shall be subject to the restriction that the shares shall not be sold for a period of not less than three years following the date of purchase, except in the event of death of the director or officer. [1981 c 85 § 21.]

32.32.115 Conditions on shares of stock subject to restriction on sale. In connection with shares of capital stock subject to restriction on sale for a period of time:

(1) Each certificate for the stock shall bear a legend giving appropriate notice of the restriction;

(2) Appropriate instructions shall be issued to the transfer agent for the capital stock with respect to applicable restrictions on transfer of any such restricted stock; and

(3) Any shares issued as a stock dividend, stock split, or otherwise with respect to any such restricted stock shall be subject to the same restrictions as may apply to the restricted stock. [1985 c 56 § 18; 1981 c 85 § 22.]

32.32.120 Registration of securities—Marketing of securities—Listing of shares on securities exchange or NASDAQ quotation system. A converted savings bank or holding company formed under chapter 32.34 RCW shall:

(1) Promptly following its conversion register the securities issued in connection therewith pursuant to the Securities and Exchange Act of 1934 and undertake not to deregister the securities for a period of three years thereafter;

(2) Use its best efforts to encourage and assist a market maker to establish and maintain a market for the securities issued in connection with the conversion; and

(3) Use its best efforts to list those shares issued in connection with the conversion on a national or regional securities exchange or on the NASDAQ quotation system. [1985 c 56 § 19; 1981 c 85 § 23.]

32.32.125 Reasonable expenses required. The expenses incurred in the conversion shall be reasonable. [1981 c 85 § 24.]

32.32.130 Plan of conversion—Prohibited provisions. The plan of conversion shall contain no provision which the supervisor determines to be inequitable or detrimental to the applicant, its savings account holders, or other savings banks or to be contrary to the public interest. [1981 c 85 § 25.]

32.32.135 Plan of conversion—Permissible provisions. The plan of conversion may contain any of the provisions set forth in RCW 32.32.140 through 32.32.170. [1981 c 85 § 26.]

32.32.140 Purchase of certain shares of stock by directors, officers, and employees permitted—Conditions. Directors, officers, and employees of the converting savings bank, as part of the subscription offering, may be entitled to purchase shares of capital stock, to the extent that shares are available after satisfying the subscriptions of eligible account holders and supplemental eligible account holders, subject to the following conditions:

(1) The total number of shares which may be purchased under this section shall not exceed twenty-five percent of the total number of shares to be issued in the case of a converting savings bank with total assets of less than fifty million dollars or fifteen percent in the case of a converting savings bank with total assets of five hundred million dollars or more; in the case of a converting savings bank with total assets of fifty million dollars or more but less than five

hundred million dollars, the percentage shall be no more than a correspondingly appropriate number of shares based on total asset size (for example, twenty percent in the case of a converting savings bank with total assets of approximately two hundred seventy five million dollars); and

(2) The shares shall be allocated among directors, officers, and employees on an equitable basis such as by giving weight to period of service, compensation, and position, subject to a reasonable limitation on the amount of shares which may be purchased by any person or associate thereof, or group of affiliated persons or group of persons otherwise acting in concert. [1981 c 85 § 27.]

32.32.145 Receipt of certain subscription rights by account holders permitted—Amount—Conditions. Any account holder receiving rights to purchase stock in the subscription offering may also receive, without payment, nontransferable subscription rights to purchase up to one percent of the total offering of shares of capital stock, to the extent that the shares are available after satisfying the subscription under RCW 32.32.045 and 32.32.055, subject to such conditions as may be provided in the plan of conversion. In the event of an oversubscription for the additional shares, the shares available shall be allocated among the subscribing eligible account holders and supplemental eligible account holders on such equitable basis, related to the amounts of their respective subscriptions, as may be provided in the plan of conversion. Where possible the subscriptions shall be allocated in such a manner that total purchases by eligible account holders and supplemental eligible account holders shall be rounded to the nearest one hundred shares. [1981 c 85 § 28.]

32.32.150 Permissible sales of insignificant residue of shares. Any insignificant residue of shares not sold in the subscription offering or in a public offering referred to in RCW 32.32.060 may be sold in such other manner as provided in the plan with the supervisor's approval. [1985 c 56 § 20; 1981 c 85 § 29.]

32.32.155 Limitation on number of shares subscribed in subscription offering permitted. The number of shares which any person, or group of persons affiliated with each other or otherwise acting in concert, may subscribe for in the subscription offering may be made subject to a limit of not less than one percent of the total offering of shares. [1981 c 85 § 30.]

32.32.160 Minimum purchase requirement in exercise of subscription rights permitted. Any person exercising subscription rights to purchase capital stock may be required to purchase a minimum of up to twenty-five shares to the extent the shares are available (but the aggregate price for any minimum share purchase shall not exceed five hundred dollars). [1981 c 85 § 31.]

32.32.165 Stock option plan permitted—Reserved shares. A stock option plan may be adopted by the board of directors at the meeting at which the plan of conversion is voted upon. The number of shares reserved for the stock

option plans should be limited to ten percent of the number of shares sold in the conversion. [1981 c 85 § 32.]

32.32.170 Issuance of securities in lieu of capital stock permitted—References to capital stock. The converted savings bank may issue and sell, in lieu of shares of its capital stock, units of securities consisting of capital stock or other equity securities, in which event any reference in this chapter to capital stock shall apply to the units of equity securities unless the context otherwise requires. [1981 c 85 § 33.]

32.32.175 Approval of other equitable provisions. The supervisor may approve such other equitable provisions as are necessary to avert imminent injury to the converting savings bank. [1981 c 85 § 34.]

32.32.180 Amount of qualifying deposit of eligible account holder or supplemental eligible account holder.

(1) Unless otherwise provided in the plan of conversion, the amount of the qualifying deposit of an eligible account holder or supplemental eligible account holder shall be the total of the deposit balances in the eligible account holder's or supplemental eligible account holder's savings accounts in the converting savings bank as of the close of business on the eligibility record date or supplemental eligibility record date. However, the plan of conversion may provide that any savings accounts with total deposit balances of less than fifty dollars (or any lesser amount) shall not constitute a qualifying deposit.

(2) As used in this section, the term "savings account" includes a predecessor or successor account of a given savings account which is held only in the same right and capacity and on the same terms and conditions as the given savings account. However, the plan of conversion may provide for lesser requirements for consideration as a predecessor or successor account. [1981 c 85 § 35.]

32.32.185 Liquidation account—Establishment required—Amount—Function. Each converted savings bank shall, at the time of conversion, establish a liquidation account in an amount equal to the amount of net worth of the converting savings bank as of the latest practicable date prior to conversion. For the purposes of this section, the savings bank shall use the net worth figure no later than that set forth in its latest statement of financial condition contained in the final offering circular. The function of the liquidation account is to establish a priority on liquidation and, except as provided in RCW 32.32.215, the existence of the liquidation account shall not operate to restrict the use or application of any of the net worth accounts of the converted savings bank. [1981 c 85 § 36.]

32.32.190 Liquidation account—Maintenance required—Subaccounts. The liquidation account shall be maintained by the converted savings bank for the benefit of eligible account holders and supplemental eligible account holders who maintain their savings accounts in the bank. Each such eligible account holder shall, with respect to each savings account, have a related inchoate interest in a portion

of the liquidation account balance ("subaccount"). [1981 c 85 § 37.]

32.32.195 Liquidation account—Distribution upon complete liquidation. In the event of a complete liquidation of the converted savings bank (and only in this event), each eligible account holder and supplemental eligible account holder shall be entitled to receive a liquidation distribution from the liquidation account, in the amount of the then current adjusted subaccount balances for savings accounts then held, before any liquidation distribution may be made with respect to capital stock. No merger, consolidation, purchase of bulk assets with assumption of savings accounts and other liabilities, or similar transaction, in which the converted savings bank is not the survivor, is considered to be a complete liquidation for this purpose. In these transactions, the liquidation account shall be assumed by the surviving institution. [1981 c 85 § 38.]

32.32.200 Liquidation account—Determination of subaccount balances. The initial subaccount balance for a savings account held by an eligible account holder and/or supplemental eligible account holder shall be determined by multiplying the opening balance in the liquidation account by a fraction of which the numerator is the amount of qualifying deposits in the savings account on the eligibility record date and/or the supplemental eligibility record date and the denominator is the total amount of qualifying deposits of all eligible account holders and supplemental eligible account holders in the converting savings bank on these dates. For savings accounts in existence at both dates, separate subaccounts shall be determined on the basis of the qualifying deposits in these savings accounts on these record dates. The initial subaccount balances shall not be increased, and it shall be subject to downward adjustment as provided in RCW 32.32.205. [1981 c 85 § 39.]

32.32.205 Reduction of subaccount balance. If the deposit balance in any savings account of an eligible account holder or supplemental eligible account holder at the close of business on any annual closing date subsequent to the respective record dates is less than the lesser of (1) the deposit balance in the savings account at the close of business on any other annual closing date subsequent to the eligibility record date or (2) the amount of qualifying deposit as of the eligibility record date or the supplemental eligibility record date, the subaccount balance for the savings account shall be adjusted by reducing the subaccount balance in an amount proportionate to the reduction in the deposit balance. In the event of such a downward adjustment, the subaccount balance shall not be subsequently increased, notwithstanding any increase in the deposit balance of the related savings account. If any such savings account is closed, the related subaccount balance shall be reduced to zero. [1981 c 85 § 40.]

32.32.210 Converted savings bank prohibited from repurchasing its stock without approval. No converted savings bank may repurchase any of its capital stock from any person unless the repurchase is approved by the supervi-

sor either in advance or at the time of repurchase. [1985 c 56 § 21; 1981 c 85 § 41.]

32.32.215 Limitation on cash dividends. Except as provided in RCW 32.32.222, no converted savings bank may declare or pay a cash dividend unless the declaration or payment of the dividend would be in accordance with the requirements of RCW 30.04.180 and would not have the effect of reducing the net worth of the converted savings bank below (1) the amount required for the liquidation account or (2) the amount required by the supervisor. [1985 c 56 § 22; 1981 c 85 § 42.]

32.32.220 Limitation on certain cash dividends within ten years of conversion. Except as provided in RCW 32.32.222, no converted savings bank may, without the prior approval of the supervisor, for a period of ten years after the date of its conversion, declare or pay a cash dividend on its capital stock in an amount in excess of one-half of the greater of:

- (1) The savings bank's net income for the current fiscal year; or
- (2) The average of the savings bank's net income for the current fiscal year and not more than two of the immediately preceding fiscal years.

For purposes of this chapter, "net income" shall be determined by generally accepted accounting principles. [1985 c 56 § 23; 1981 c 85 § 43.]

32.32.222 Dividends on preferred stock. A converted mutual savings bank may pay dividends on preferred stock at the rate or rates agreed in connection with the issuance of preferred stock if such issuance has been approved by the supervisor. [1985 c 56 § 24.]

32.32.225 Prohibitions on offer, sale, or purchase of securities. In the offer, sale, or purchase of securities issued incident to its conversion, no savings bank, or any director, officer, attorney, agent, or employee thereof, may (1) employ any device, scheme, or artifice to defraud, or (2) obtain money or property by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, or (3) engage in any act, transaction, practice, or course of business which operates or would operate as a fraud or deceit upon a purchaser or seller. [1981 c 85 § 44.]

32.32.228 Acquisition of control of a converted savings bank. (1) As used in this section, the following definitions apply:

(a) "Control" means directly or indirectly alone or in concert with others to own, control, or hold the power to vote twenty-five percent or more of the outstanding stock or voting power of the controlled entity;

(b) "Acquiring party" means the person acquiring control of a bank through the purchase of stock;

(c) "Person" means any individual, corporation, partnership, group acting in concert, association, business trust, or other organization.

(2) (a) It is unlawful for any person to acquire control of a converted savings bank until thirty days after filing with the supervisor a completed application. The application shall be under oath or affirmation, and shall contain substantially all of the following information plus any additional information that the supervisor may prescribe as necessary or appropriate in the particular instance for the protection of bank depositors, borrowers, or shareholders and the public interest:

(i) The identity and banking and business experience of each person by whom or on whose behalf acquisition is to be made;

(ii) The financial and managerial resources and future prospects of each person involved in the acquisition;

(iii) The terms and conditions of any proposed acquisition and the manner in which the acquisition is to be made;

(iv) The source and amount of the funds or other consideration used or to be used in making the acquisition, and a description of the transaction and the names of the parties if any part of these funds or other consideration has been or is to be borrowed or otherwise obtained for the purpose of making the acquisition;

(v) Any plan or proposal which any person making the acquisition may have to liquidate the bank, to sell its assets, to merge it with any other bank, or to make any other major change in its business or corporate structure or management;

(vi) The identification of any person employed, retained, or to be compensated by the acquiring party, or by any person on its behalf, who makes solicitations or recommendations to shareholders for the purpose of assisting in the acquisition and a brief description of the terms of the employment, retainer, or arrangement for compensation;

(vii) Copies of all invitations for tenders or advertisements making a tender offer to shareholders for the purchase of their stock to be used in connection with the proposed acquisition; and

(viii) Such additional information as shall be necessary to satisfy the supervisor, in the exercise of the supervisor's discretion, that each such person and associate meets the standards of character, responsibility, and general fitness established for incorporators of a savings bank under RCW 32.08.040.

(b) Notwithstanding any other provision of this section, a bank or bank holding company which has been in operation for at least three consecutive years or a converted mutual savings bank or the holding company of a mutual savings bank need only notify the supervisor and the savings bank to be acquired of an intent to acquire control and the date of the proposed acquisition of control at least thirty days before the date of the acquisition of control.

(c) When a person, other than an individual or corporation, is required to file an application under this section, the supervisor may require that the information required by (a) (i), (ii), (vi), and (viii) of this subsection be given with respect to each person, as defined in subsection (1)(c) of this section, who has an interest in or controls a person filing an application under this subsection.

(d) When a corporation is required to file an application under this section, the supervisor may require that information required by (a) (i), (ii), (vi), and (viii) of this subsection be given for the corporation, each officer and director of the corporation, and each person who is directly or indirectly the

beneficial owner of twenty-five percent or more of the outstanding voting securities of the corporation.

(e) If any tender offer, request, or invitation for tenders or other agreements to acquire control is proposed to be made by means of a registration statement under the securities act of 1933 (48 Stat. 74, 15 U.S.C. Sec. 77(a)), as amended, or in circumstances requiring the disclosure of similar information under the securities exchange act of 1934 (48 Stat. 881, 15 U.S.C. Sec. 78(a)), as amended, the registration statement or application may be filed with the supervisor in lieu of the requirements of this section.

(f) Any acquiring party shall also deliver a copy of any notice or application required by this section to the savings bank proposed to be acquired within two days after such notice or application is filed with the supervisor.

(g) Any acquisition of control in violation of this section shall be ineffective and void.

(h) Any person who wilfully or intentionally violates this section or any rule adopted under this section is guilty of a gross misdemeanor pursuant to chapter 9A.20 RCW. Each day's violation shall be considered a separate violation, and any person shall upon conviction be fined not more than one thousand dollars for each day the violation continues.

(3) The supervisor may disapprove the acquisition of a savings bank within thirty days after the filing of a complete application pursuant to subsections (1) and (2) of this section or an extended period not exceeding an additional fifteen days if:

(a) The poor financial condition of any acquiring party might jeopardize the financial stability of the savings bank or might prejudice the interest of depositors, borrowers, or shareholders;

(b) The plan or proposal of the acquiring party to liquidate the savings bank, to sell its assets, to merge it with any person, or to make any other major change in its business or corporate structure or management is not fair and reasonable to its depositors, borrowers, or stockholders or is not in public interest;

(c) The banking and business experience and integrity of any acquiring party who would control the operation of the savings bank indicates that approval would not be in the interest of the savings bank's depositors, borrowers, or shareholders;

(d) The information provided by the application is insufficient for the supervisor to make a determination or there has been insufficient time to verify the information provided and conduct an examination of the qualification of the acquiring party; or

(e) The acquisition would not be in the public interest.

An acquisition may be made prior to expiration of the disapproval period if the supervisor issues written notice of intent not to disapprove the action.

The supervisor shall set forth the basis for disapproval of any proposed acquisition in writing and shall provide a copy of such findings and order to the applicants and to the bank involved. Such findings and order shall not be disclosed to any other party and shall not be subject to public disclosure under chapter 42.17 RCW unless the findings and/or order are appealed pursuant to chapter 34.05 RCW.

Whenever such a change in control occurs, each party to the transaction shall report promptly to the supervisor any changes or replacement of its chief executive officer or of

any director occurring in the next twelve-month period, including in its report a statement of the past and current business and professional affiliations of the new chief executive officer or directors.

(4) (a) For a period of ten years following the acquisition of control by any person, neither such acquiring party nor any associate shall receive any loan or the use of any of the funds of, nor purchase, lease, or otherwise receive any property from, nor receive any consideration from the sale, lease, or any other conveyance of property to, any savings bank in which the acquiring party has control except as provided in (b) of this subsection.

(b) Upon application by any acquiring party or associate subject to (a) of this subsection, the supervisor may approve a transaction between a converted savings bank and such acquiring party, person, or associate, upon finding that the terms and conditions of the transaction are at least as advantageous to the savings bank as the savings bank would obtain in a comparable transaction with an unaffiliated person.

(5) Except with the consent of the supervisor, no converted savings bank shall, for the purpose of enabling any person to purchase any or all shares of its capital stock, pledge or otherwise transfer any of its assets as security for a loan to such person or to any associate, or pay any dividend to any such person or associate. Nothing in this section shall prohibit a dividend of stock among shareholders in proportion to their shareholdings. In the event any clause of this section is declared to be unconstitutional or otherwise invalid, all remaining dependent and independent clauses of this section shall remain in full force and effect. [1989 c 180 § 6; 1985 c 56 § 25.]

32.32.230 Nonapproval of conversion unless acquisition of control within three years by certain companies prohibited. (1) No conversion may be approved by the supervisor unless the plan of conversion provides that the converted savings bank shall enter into an agreement with the supervisor, in form satisfactory to the supervisor, which shall provide that for a period of three years following the conversion any company significantly engaged in an unrelated business activity, either directly or through an affiliate thereof, shall not be permitted, regardless of the form of the transaction, to acquire control of the converted savings bank. Any acquisition of a converted savings bank shall also comply with RCW 32.32.228.

(2) As used in this section:

(a) The term "affiliate" means any person or company which controls, is controlled by, or is under common control with, a specified company.

(b) A person or company shall be deemed to have "control" of:

(i) A savings bank if the person directly or indirectly or acting in concert with one or more other persons, or through one or more subsidiaries, owns, controls, or holds with power to vote, or holds proxies representing, more than twenty-five percent of the voting shares of the savings bank, or controls in any manner the election of a majority of the directors of the bank;

(ii) Any other company if the person directly or indirectly or acting in concert with one or more other persons,

or through one or more subsidiaries, owns, controls, or holds with power to vote, or holds proxies representing, more than twenty-five percent of the voting shares or rights of the other company, or controls in any manner the election or appointment of a majority of the directors or trustees of the other company, or is a general partner in or has contributed more than twenty-five percent of the capital of the other company;

(iii) A trust if the person is a trustee thereof; or

(iv) A savings bank or any other company if the supervisor determines, after reasonable notice and opportunity for hearing, that the person directly or indirectly exercises a controlling influence over the management or policies of the savings bank or other company.

(c) A company shall be deemed to be "significantly engaged" in an unrelated business activity if its unrelated business activities would represent, on either an actual or a pro forma basis, more than fifteen percent of its consolidated net worth at the close of this preceding fiscal year or of its consolidated net earnings for such fiscal year.

(d) The term "unrelated business activity" means any business activity not authorized for a savings bank or any subsidiary thereof. [1985 c 56 § 26; 1981 c 85 § 45.]

32.32.235 Plan of conversion—Charter restrictions permitted. To the extent permitted by applicable federal or state law, a plan of conversion may provide for a provision in the charter of the converted savings bank containing, in substance, the restriction set forth in RCW 32.32.230. There may also be included a restriction providing that the charter provision may be amended only by a vote of up to seventy-five percent of the votes eligible to be cast at a regular or special meeting of shareholders of the converted savings bank. If the converted savings bank elects to adopt the foregoing optional charter provision, the supervisor shall impose, as a condition to approval of the conversion, a requirement that the converted savings bank fully enforce the charter provision. [1981 c 85 § 46.]

32.32.240 Confidentiality of consideration to convert—Remedial measures for breach. A savings bank which is considering converting pursuant to this chapter and its directors, officers, and employees shall keep this consideration in the strictest confidence and shall only discuss the potential conversion as would be consistent with the need to prepare information for filing an application for conversion. Should this confidence be breached the supervisor may require remedial measures including:

(1) A public statement by the savings bank that its board of directors is currently considering converting pursuant to this chapter;

(2) Providing for an eligibility record date which shall be as of such a date prior to the adoption of the plan by the converting savings bank's board of directors as to assure the equitability of the conversion;

(3) Limitation of the subscription rights of any person violating or aiding the violation of this section to an amount deemed appropriate by the supervisor; and

(4) Any other actions the supervisor may deem appropriate and necessary to assure the fairness and equitability of the conversion. [1981 c 85 § 47.]

32.32.245 Public statement authorized. If it should become essential as a result of rumors prior to the adoption of a plan of conversion by the applicant's board of directors, a public statement limited to that purpose may be made by the applicant. [1981 c 85 § 48.]

32.32.250 Adoption of plan of conversion—Notice to and inspection by account holders—Statement and letter—Press release authorized. Promptly after the adoption of a plan of conversion by not less than two-thirds of its board of directors, the savings bank shall:

(1) Notify its account holders of the action by publishing a statement in a newspaper having general circulation in each community in which an office of the savings bank is located and/or by mailing a letter to each of its account holders; and

(2) Have copies of the adopted plan of conversion available for inspection by its account holders at each office of the savings bank.

The savings bank may also issue a press release with respect to the action. Copies of the proposed statement, letter, and press release are not required to be filed with the supervisor but may be submitted to the supervisor for comment. Copies of the definitive statement, letter, and press release shall be filed with the supervisor as part of the application for conversion. [1981 c 85 § 49.]

32.32.255 Statement, letter, and press release—Content permitted. The statement, letter, and press release of the applicant issued pursuant to RCW 32.32.250, unless otherwise authorized by the supervisor, shall contain only (but need not contain all of) the following:

(1) A statement that the board of directors has adopted a plan to convert the savings bank from a mutual savings bank to a capital stock savings bank;

(2) A statement that the plan of conversion is subject to approval by the supervisor of banking and by the appropriate federal regulatory authority or authorities (naming such an authority or authorities) before the plan can become effective and that account holders of the applicant will have an opportunity to file written comments including objections and materials supporting the objections with the supervisor;

(3) A statement that the plan of conversion is contingent upon obtaining favorable tax rulings from the Internal Revenue Service or an appropriate tax opinion;

(4) A statement that there is no assurance that the approval of the supervisor of banking or the approval of any appropriate federal authority or authorities will be obtained, and also no assurance that the favorable tax rulings or tax opinion will be received;

(5) The proposed record date for determining the eligible account holders entitled to receive nontransferable subscription rights to purchase capital stock of the applicant;

(6) A brief statement describing the circumstances that would require supplemental eligible account holders to receive nontransferable subscription rights to purchase capital stock of the applicant;

(7) A brief description of the plan of conversion;

(8) The par value and approximate number of shares of capital stock to be issued and sold under the plan of conversion;

(9) A brief statement as to the extent to which directors, officers, and employees will participate in the conversion;

(10) A statement that savings account holders will continue to hold accounts in the converted savings bank identical as to dollar amount, rate of return, and general terms and that their accounts will continue to be insured by the Federal Deposit Insurance Corporation;

(11) A statement that borrowers' loans will be unaffected by conversion and that the amount, rate, maturity, security, and other conditions will remain contractually fixed as they existed prior to conversion;

(12) A statement that the normal business of the savings bank in accepting savings and making loans will continue without interruption; that the converted savings bank will continue after conversion to conduct its present services to savings account holders and borrowers under current policies to be carried on in existing offices and by the present management and staff;

(13) A statement that the plan of conversion may be substantively amended or terminated by the board of directors with the concurrence of the supervisor of banking; and

(14) A statement that questions of account holders may be answered by telephoning or writing to the savings bank. [1981 c 85 § 50.]

32.32.260 Statement, letter, and press release—Contents prohibited—Inquiries. The statement, letter, and press release of the applicant issued pursuant to RCW 32.32.250 shall not include financial statements or describe the benefits of conversion or the value of the capital stock of the savings bank upon conversion. In replying to inquiries, the savings bank should limit its answers to the matters listed in RCW 32.32.255. [1981 c 85 § 51.]

32.32.265 Notices of filing of application—Requests for subscription offering circular. Upon determination that an application for conversion is properly executed and is not materially incomplete, the supervisor shall advise the applicant, in writing, to publish notices of the filing of the application. Promptly after receipt of the advice, the applicant shall furnish a written notice of the filing to each eligible account holder and also publish a notice of the filing in a newspaper printed in the English language and having general circulation in each community in which an office of the applicant is located, as follows:

**NOTICE OF FILING OF AN APPLICATION
FOR APPROVAL TO CONVERT TO A
STOCK SAVINGS BANK**

Notice is hereby given that, pursuant to chapter 32.32 of the Revised Code of Washington

.....
(fill in name of applicant)

has filed an application with the Supervisor of Banking for approval to convert to the stock form of organization. Copies of the application have been delivered to (address).

Written comments, including objections to the plan of conversion and materials supporting the objec-

tions, from any account holder of the applicant or aggrieved person, will be considered by the supervisor if filed within twenty business days after the date of this notice. Failure to make written comments in objection may preclude the pursuit of any administrative or judicial remedies. Three copies of the comments should be sent to the aforementioned. The proposed plan of conversion and any comments thereon will be available for inspection by any account holder of the applicant at (address). A copy of the plan may also be inspected at each office of the applicant.

If a significant number of the applicant's account holders speak a language other than English and a newspaper in that language is published in the area served by the applicant, an appropriate translation of the notice shall also be published in that newspaper. A notice sent by mail may be accompanied by the statement that the converting institution will not mail a subscription offering circular to an eligible account holder or a supplemental eligible account holder unless the eligible account holder or the supplemental eligible account holder, prior to the commencement of the subscription offering, requests the subscription offering circular by returning a postcard. The issuer of stock in the conversion shall pay the postage of this postcard and shall inform the eligible account holder or supplemental eligible holder that the postage is paid. [1985 c 56 § 27; 1981 c 85 § 52.]

32.32.270 Filing of notice and affidavit of publication required. Promptly after publication of the notices prescribed in RCW 32.32.265, the applicant shall file with the supervisor the notice and affidavit of publication from each newspaper publisher in the manner the supervisor shall require. [1981 c 85 § 53.]

32.32.275 Applications available for public inspection—Confidential information. Should the applicant desire to submit any information it deems to be of a confidential nature regarding any item or a part of any exhibit included in any application under this chapter, the information pertaining to the item or exhibit shall be separately bound and labeled "confidential", and a statement shall be submitted therewith briefly setting forth the grounds on which the information should be treated as confidential. Only general reference thereto need be made in that portion of the application which the applicant deems not to be confidential. Applications under this chapter shall be made available for inspection by the public, except for portions which are bound and labeled "confidential" and which the supervisor determines to withhold from public availability under RCW 42.17.250 through 42.17.340. The applicant shall be advised of any decision by the supervisor to make public information designated as "confidential" by the applicant. Even though sections of the application are considered "confidential" as far as public inspection thereof is concerned, to the extent the supervisor deems necessary the supervisor may comment on the confidential submissions in any public statement in connection with the supervisor's decision on the application without prior notice to the applicant. [1981 c 85 § 54.]

32.32.280 Offers and sales of securities—Prohibitions. No offer to sell securities of an applicant pursuant to a plan of conversion may be made prior to approval by the supervisor of the application for conversion. No sale of these securities in the subscription offering may be made except by means of the final offering circular for the subscription offering. No sale of unsubscribed securities may be made except by means of the final offering circular for the public offering or direct community marketing. The offering of shares in the direct community marketing may commence during the subscription offering upon the declaration of effectiveness by the supervisor of the offering circular proposed for the community offering. This section shall not apply to preliminary negotiations or agreements between an applicant and any underwriter or among underwriters who are to be in privity of contract with the applicant. [1981 c 85 § 55.]

32.32.285 Distribution of offering circulars authorized. Any preliminary offering circular for the subscription offering, the public offering, or the direct community marketing which has been filed with the supervisor may be distributed to eligible account holders or supplemental eligible account holders and to others in connection with the offering after the supervisor has advised the applicant in writing that the application is properly executed and is not materially incomplete under RCW 32.32.265. No final offering circular may be distributed until the offering circular has been declared effective by the supervisor. [1981 c 85 § 56.]

32.32.290 Preliminary offering circular for subscription offering—Estimated subscription price range required. With respect to the capital stock of the applicant to be sold under the plan of conversion, any preliminary offering circular for the subscription offering shall set forth the estimated subscription price range. The maximum of the price range should normally be no more than fifteen percent above the average of the minimum and maximum of the price range and the minimum should normally be no more than fifteen percent below this average. The maximum price used in the price range should normally be no more than fifty dollars per share and the minimum no less than five dollars per share. The minimum par value of each share of the capital stock of a converted savings bank shall be one dollar. [1981 c 85 § 57.]

32.32.295 Review of price information by supervisor. The supervisor shall review the price information required under RCW 32.32.290 in determining whether to give approval to an application for conversion. No representations may be made in any manner that the price information has been approved by the supervisor or that the shares of capital stock sold pursuant to the plan of conversion have been approved or disapproved by the supervisor or that the supervisor has passed upon the accuracy or adequacy of any offering circular covering the shares. [1981 c 85 § 58.]

32.32.300 Underwriting commissions. Underwriting commissions shall not exceed an amount or percentage per share acceptable to the supervisor. No underwriting

commission may be allowed or paid with respect to shares of capital stock sold in the subscription offering; however, an underwriter may be reimbursed for accountable expenses in connection with the subscription offering where the public offering is so small that reasonable underwriting commissions thereon would not be sufficient to cover total accountable expenses. The term "underwriting commissions" includes underwriting discounts. [1981 c 85 § 59.]

32.32.305 Consideration of pricing information by supervisor—Guidelines. In considering the pricing information required under RCW 32.32.290, the supervisor shall apply the following guidelines:

(1) The materials shall be prepared by persons independent of the applicant, experienced and expert in the area of corporate appraisal, and acceptable to the supervisor;

(2) The materials shall contain data which are sufficient to support the conclusions reached therein;

(3) The materials shall contain a complete and detailed description of the appraisal methodology employed; and

(4) To the extent that the appraisal is based on a capitalization of the pro forma income of the converted savings bank, the materials shall indicate the basis for determination of the income to be derived from the proceeds of the sale of stock and demonstrate the appropriateness of the earnings multiple used, including assumptions made as to future earnings growth. To the extent that the appraisal is based on comparison of the capital stock of the applicant with outstanding capital stock of existing stock savings banks or stock savings and loan associations, the materials shall demonstrate the appropriate comparability of the form and substance of the outstanding capital stock and the appropriate comparability of the existing stock savings banks and stock savings and loan associations in terms of such factors as size, market area, competitive conditions, profit history, and expected future earnings. [1981 c 85 § 60.]

32.32.310 Submission of information by applicant. In addition to the information required in RCW 32.32.305, the applicant shall submit information demonstrating to the satisfaction of the supervisor the independence and expertise of any person preparing materials under RCW 32.32.305. However, a person will not be considered as lacking independence for the reason that the person will participate in effecting a sale of capital stock under the plan of conversion or will receive a fee from the applicant for services rendered in connection with the appraisal. [1981 c 85 § 61.]

32.32.315 Subscription offering—Distribution of order forms for the purchase of shares. Promptly after the supervisor has declared the offering circular for the subscription offering effective, the applicant shall distribute order forms for the purchase of shares of capital stock in the subscription offering to all eligible account holders, supplemental eligible account holders (if applicable), and other persons who may subscribe for the shares under the plan of conversion. [1981 c 85 § 62.]

32.32.320 Order forms—Final offering circular and detailed instructions. Each order form distributed pursuant to RCW 32.32.315 shall be accompanied or preceded by the

final offering circular for the subscription offering and a set of detailed instructions explaining how to properly complete the order forms. [1981 c 85 § 63.]

32.32.325 Subscription price. The maximum subscription price stated on each order form distributed pursuant to RCW 32.32.315 shall be the amount to be paid when the order form is returned. The maximum subscription price and the actual subscription price shall be within the subscription price range stated in the supervisor's approval and the offering circular. If either the maximum subscription price or the actual subscription price is not within this subscription price range, the applicant shall obtain an amendment to the supervisor's approval. If appropriate, the supervisor shall condition the giving of amended approval by requiring a resolicitation of order forms. If the actual public offering price is less than the maximum subscription price stated on the order form, the actual subscription price shall be correspondingly reduced and the difference shall be refunded to those who have paid the maximum subscription price. [1981 c 85 § 64.]

32.32.330 Order form—Contents. Each order form distributed pursuant to RCW 32.32.315 shall be prepared so as to indicate to the person receiving it, in as simple, clear, and intelligible a manner as possible, the actions which are required or available to the person with respect to the form and the capital stock offered for purchase thereby. Specifically, each order form shall:

(1) Indicate the maximum number of shares that may be purchased pursuant to the subscription offering;

(2) Indicate the period of time within which the subscription rights must be exercised, which period of time shall not be less than twenty days following the date of the mailing of the order form;

(3) State the maximum subscription price per share of capital stock;

(4) Indicate any requirements as to the minimum number of shares of capital stock which may be purchased;

(5) Provide a specifically designated blank space or spaces for indicating the number of shares of capital stock which the eligible account holder or other person wishes to purchase;

(6) Indicate that payment may be made by cash if delivered in person or by check or by withdrawal from an account holder's savings account. If payment is to be made by withdrawal, a box to check should be provided;

(7) Provide specifically designated blank spaces for dating and signing the order form;

(8) Contain an acknowledgment by the account holder or other person signing the order form that the person has received the final offering circular for the subscription offering prior to signing; and

(9) Indicate the consequences of failing to properly complete and return the order form, including a statement that the subscription rights are nontransferable and will become void at the end of the subscription period. The order form may, and the set of instructions shall, indicate the place or places to which the order forms are to be returned and when the applicant will consider order forms received,

such as by date and time of actual receipt in the applicant's offices or by date and time of postmark. [1981 c 85 § 65.]

32.32.335 Order form—Additional provision authorized—Payment by withdrawal. The order form distributed pursuant to RCW 32.32.315 may provide that it may not be modified without the applicant's consent after its receipt by the applicant. If payment is to be made by withdrawal from a savings account the applicant may, but need not, cause the withdrawal to be made upon receipt of the order form. If the withdrawal is made at any time prior to the closing date of the public offering, the applicant shall pay interest to the account holder on the account withdrawn as if the amount had remained in the account from which it was withdrawn until the closing date. [1981 c 85 § 66.]

32.32.340 Time period for completion of sale of all shares of capital stock. The sale of all shares of capital stock of the converting savings bank to be made under the plan of conversion, including any sale in a public offering or direct community marketing, shall be completed as promptly as possible and within forty-five calendar days after the last day of the subscription period, unless extended by the supervisor. [1981 c 85 § 67.]

32.32.345 Copies of application for approval to be filed. An applicant that desires to convert in accordance with this chapter shall file copies of an application for approval in the form and number prescribed by the supervisor. [1981 c 85 § 68.]

32.32.350 Nonacceptance and return of applications. Any application for approval that is improperly executed, or that does not contain copies of a plan of conversion, amendments to the charter of the applicant in the form of new articles of incorporation, and preliminary offering circulars for the subscription offering and for the public offering or direct community marketing shall not be accepted for filing and shall be returned to the applicant. Any application for approval containing a materially incomplete plan of conversion or offering circular may be returned by the supervisor to the applicant. [1981 c 85 § 69.]

32.32.355 Continuity of corporate existence. Upon the filing of the articles of incorporation of a converted savings bank with the secretary of state in accordance with RCW 32.32.485, the corporate existence of the mutual savings bank converting to a stock savings bank pursuant to this chapter shall not terminate but the converted savings bank shall be deemed to be a continuation of the entity of the mutual savings bank so converted having the same rights and obligations as it had prior to the conversion. [1981 c 85 § 70.]

32.32.360 Form of application. The form of the application shall comply with the requirements of the supervisor. [1981 c 85 § 71.]

32.32.365 Representations upon filing of application. Except as provided in RCW 32.32.370, the filing of

any application or amendment thereto under this chapter shall constitute a representation of the applicant by its duly authorized representative, the applicant's principal executive officer, the applicant's principal financial officer, and the applicant's principal accounting officer, and each member of the applicant's board of directors (whether or not the director has signed the application or any amendment thereto) severally that (1) he or she has read the application or amendment, (2) in the opinion of each such person he or she has made such examination and investigation as is necessary to enable him or her to express an informed opinion that the application or amendment complies to the best of his or her knowledge and belief with the applicable requirements of this chapter, and (3) each such person holds this informed opinion. [1981 c 85 § 72.]

32.32.370 Representations upon filing of application—Exception. The representations specified in RCW 32.32.365 shall not be deemed to have been made by any director of the applicant who did not sign the application or any amendment thereto, if, and only to the extent that, the director files with the supervisor within ten business days after the filing of the application or amendment a statement describing those portions of the filing as to which he or she does not so represent. [1981 c 85 § 73.]

32.32.375 Application to furnish information. Every application shall furnish information in accordance with this chapter and with the requirements and forms prescribed by the supervisor. [1981 c 85 § 74.]

32.32.380 Application—Additional information required. In addition to the information expressly required to be included in any application under this chapter, there shall be added such further material information, if any, as may be necessary to make the required statements, in the light of the circumstances under which they are made, not misleading. [1981 c 85 § 75.]

32.32.385 Omission of certain information permitted—Conditions. Information required need be given only insofar as it is known or reasonably available to the applicant. If any required information is unknown and not reasonably available to the applicant, either because the obtaining thereof would involve unreasonable effort or expense or because it rests peculiarly within the knowledge of another person not affiliated with the applicant, the information may be omitted, subject to the following conditions:

(1) The applicant shall give such information on the subject as it possesses or can acquire without unreasonable effort or expense, together with the sources thereof.

(2) The applicant shall include a statement either showing that unreasonable effort or expense would be involved or indicating the absence of any affiliation with the person within whose knowledge the information rests and stating the result of a request made to the person for the information. [1981 c 85 § 76.]

32.32.390 Offering circular—Certain manner of presentation of required information prohibited. The

information required in an offering circular shall not be set forth in such fashion as to obscure any of the required information or any information necessary to keep the required information from being incomplete or misleading. [1981 c 85 § 77.]

32.32.395 Form and contents of filings. The form and contents of any filing made under this chapter need conform only to the applicable requirements and forms prescribed by the supervisor then in effect, and contain the information, including financial statements, required at the time the filing is made, notwithstanding subsequent changes, except as otherwise provided in any such amendment or in RCW 32.32.400. [1981 c 85 § 78.]

32.32.400 Conformance required to order prohibiting the use of any filing. Whenever the supervisor prohibits by order or otherwise the use of any filing under this chapter, the form and contents of any filing used thereafter shall conform to the requirements of the order. [1981 c 85 § 79.]

32.32.405 Application—Certain named persons—Filing of written consent required. (1) If any accountant, attorney, investment banker, appraiser, or other persons whose professions give authority to a statement made in any application under this chapter is named as having prepared, reviewed, passed upon, or certified any part thereof, or any report or valuation for use in connection therewith, the written consent of the person shall be filed with the application. If any portion of a report of an expert is quoted or summarized as such in any filing under this chapter, the written consent of the expert shall expressly state that the expert consents to this quotation or summarization.

(2) All written consents filed pursuant to this section shall be dated and signed manually. A list of the consents shall be filed with the application. Where the consent of the expert is contained in the expert's report, a reference shall be made in the list to the report containing the consent. [1981 c 85 § 80.]

32.32.410 Offering circular—Certain named persons—Filing of written consent required. If any person who has not signed an application is named in the offering circular as about to become a director, the written consent of this person shall be filed with the supervisor in the form the supervisor prescribes. [1981 c 85 § 81.]

32.32.415 Date of receipt—Date of filing. The date on which any documents are actually received by the office of the supervisor of banking shall be the date of filing thereof. [1981 c 85 § 82.]

32.32.420 Availability for conferences in advance of filing of application—Refusal of prefiling review. (1) The staff of the supervisor shall be available for conferences with prospective applicants or their representatives in advance of filing an application to convert. These conferences may be held for the purpose of discussing generally the problems

confronting an applicant in effecting conversion or to resolve specific problems of an unusual nature.

(2) Prefiling review of an application may be refused by the staff of the supervisor if the review would delay the examination and processing of material which has already been filed or would favor certain applicants at the expense of others. In any conference under this section, the staff of the supervisor shall not undertake to prepare material for filing but shall limit itself to indicating the kind of information required, leaving the actual drafting to the applicant and its representatives. [1981 c 85 § 83.]

32.32.425 Appeal from refusal to approve application. From the supervisor's refusal to approve an application for conversion, the applicant may, within thirty days from the date of the mailing by the supervisor of notice of refusal to approve, appeal to a board of appeal composed of the governor or the governor's designee, the attorney general, and the supervisor of banking by filing in the office of the supervisor a notice that it appeals to this board from the supervisor's refusal. The procedure upon the appeal shall be such as the board may prescribe, and its determination shall be certified, filed, and recorded in the same manner as the supervisor's, and shall be final. [1981 c 85 § 84.]

32.32.430 Postconversion reports. The applicant shall file such postconversion reports concerning its conversion as the supervisor may require. [1981 c 85 § 85.]

32.32.435 Definitions. For purposes of RCW 32.32.440 through 32.32.475, the following definitions shall apply:

(1) The term "offer" includes every offer to buy or acquire, solicitation of an offer to sell, tender offer for, or request or invitation for tenders of, a security or interest in a security for value.

(2) The term "person" means an individual, a group acting in concert, a corporation, a partnership, an association, a joint stock company, a trust, and any unincorporated organization or similar company.

(3) Without limitation on the generality of its meaning, the term "security" includes nontransferable subscription rights issued to a plan of conversion. [1981 c 85 § 86.]

32.32.440 Certain agreement to transfer and transfers of ownership in rights or securities prohibited. Prior to completion of a conversion, no person may transfer or enter into any agreement or understanding to transfer the legal or beneficial ownership of conversion subscription rights, or the underlying securities, to the account of another. [1981 c 85 § 87.]

32.32.445 Certain offers and announcements on securities prohibited. Prior to completion of a conversion, no person may make any offer, or announcement of an offer or intent to make an offer, for any security of a converting savings bank issued or to be issued in connection with the conversion. [1981 c 85 § 88.]

32.32.450 Certain offers and acquisitions prohibited. No person for a period of three years following the date of the conversion may directly or indirectly offer to acquire or acquire the beneficial ownership of more than ten percent of any class of an equity security of any savings bank converted in accordance with this chapter without the prior written approval of the supervisor of banking. [1981 c 85 § 89.]

32.32.455 Nonapplicability of RCW 32.32.440 and 32.32.445. RCW 32.32.440 and 32.32.445 shall not apply to a transfer, agreement or understanding to transfer, offer, or announcement of an offer or intent to make an offer which (1) pertains only to securities to be purchased pursuant to RCW 32.32.060, 32.32.150, or 32.32.175; and (2) has prior written approval of the supervisor. [1981 c 85 § 90.]

32.32.460 Nonapplicability of RCW 32.32.445 and 32.32.450. RCW 32.32.445 and 32.32.450 shall not apply to any offer with a view toward public resale made exclusively to the savings bank or underwriters or selling group acting on its behalf. [1981 c 85 § 91.]

32.32.465 Nonapplicability of RCW 32.32.450. Unless made applicable by the supervisor by prior advice in writing, the prohibition contained in RCW 32.32.450 shall not apply to any offer or announcement of an offer which if consummated would result in acquisition by a person, together with all other acquisitions by the person of the same class of securities during the preceding twelve-month period, of not more than one percent of the same class of securities. [1981 c 85 § 92.]

32.32.470 Approval of certain applications prohibited. The supervisor shall not approve an application involving an offer for, an announcement thereof, or an acquisition of any security of a converted savings bank submitted under RCW 32.32.450 if the supervisor finds that the offer frustrates the purposes of this chapter, is manipulative or deceptive, subverts the fairness of the conversion, is likely to result in injury to the savings bank, is not consistent with savings banking under Title 32 RCW, or is otherwise violative of law or regulation. [1981 c 85 § 93.]

32.32.475 Penalty for violations. For wilful violation or assistance of such a violation of any provision of RCW 32.32.440 through 32.32.470, any person who (1) has any connection with the management of a converting or converted savings bank, including any director, officer, employee, attorney, or agent, or (2) controls more than ten percent of the outstanding shares of any class of equity security or voting rights thereto of a converting or converted savings bank shall be subject to a civil penalty of not more than five hundred dollars (which penalty shall be cumulative to any other remedies) for each day that the violation continues, which penalty the supervisor may recover by suit or otherwise for the supervisor's own use. The supervisor in his discretion may, at any time before collection of the penalty (whether before or after the bringing of any action or other legal proceedings, the obtaining of any judgment or other recovery, or the issuance or levy of any execution or other

legal process thereof), compromise or remit in whole or in part the penalty. [1981 c 85 § 94.]

32.32.480 Name of converted savings bank. The name of a mutual savings bank converted to a stock savings bank under this chapter shall contain the words "savings bank." [1981 c 85 § 95.]

32.32.485 Amendments to charter required in application—Articles of incorporation—Filing of certificate required—Contents—Issuance and filing of authorization certificate. (1) An application for conversion under this chapter shall include amendments to the charter of the converting savings bank. The charter of the converted savings bank, as amended, shall be known after the conversion as the articles of incorporation of the converted savings bank. The articles of incorporation may limit or permit the preemptive rights of a shareholder to acquire unissued shares of the converted savings bank and may thereafter by amendment limit, deny, or grant to shareholders of any class of stock the preemptive right to acquire additional shares of the converted savings bank whether then or thereafter authorized. The articles of incorporation shall contain such other provisions not inconsistent with this chapter as the board of directors of the converting savings bank shall determine and as shall be approved by the supervisor.

(2) When all of the stock of a converting savings bank has been subscribed for in accordance with the plan and any amendments thereto, the board of trustees shall thereupon issue the stock and shall cause to be filed with the supervisor of banking, in quadruplicate, a certificate subscribed and acknowledged by the persons who are to be directors of the converted savings bank, stating:

(a) That all of the stock of the converted mutual savings bank has been issued;

(b) That the attached articles of incorporation have been executed by all of the persons who are to be directors of the converted mutual savings bank;

(c) The place where the bank is to be located and its business transacted, naming the city or town and county, which city or town shall be the same as that where the principal place of business of the mutual savings bank has theretofore been located;

(d) The name, occupation, residence, and post office address of each signer of the certificate;

(e) The amount of the assets of the mutual savings bank, the amount of its liabilities, and the amount of its guaranty fund and nondivided profits as of the first day of the current calendar month; and

(f) A declaration that each signer will accept the responsibilities and faithfully discharge the duties of a director of the converted savings bank and is free from all the disqualifications specified in the laws applicable to converted mutual savings banks.

(3) Upon the filing of the certificate in quadruplicate, the supervisor of banking shall, within thirty days thereafter, if satisfied that the corporation has complied with all the provisions of this chapter, issue in quadruplicate an authorization certificate stating that the corporation has complied with all the requirements of law, and that it has authority to transact at the place designated in its articles of incorporation

the business of a converted mutual savings bank. One of the supervisor's quadruplicate certificates of authorization shall be attached to each of the quadruplicate articles of incorporation, and one set of these shall be filed and retained by the supervisor of banking, one set shall be filed in the office of the county auditor of the county in which the bank is located, one set shall be filed in the office of the secretary of state, and one set shall be transmitted to the bank for its files. Upon the receipt from the corporation of the same fees as are required for filing and recording other incorporation certificates or articles the county auditor and secretary of state shall record the same; whereupon the conversion of the mutual savings bank shall be deemed complete, and the signers of the articles of incorporation and their successors shall be a corporation having the powers and being subject to the duties and obligations prescribed by the laws of this state applicable to converted mutual savings banks, and the time of existence of the corporation shall be perpetual, unless terminated pursuant to law. [1981 c 85 § 96.]

32.32.490 Amendments to articles of incorporation.

Amendments to the articles of incorporation of the converted savings bank shall be made only with the approvals of the supervisor, of two-thirds of the directors of the savings bank, and of the holders of a majority of each class of the outstanding shares of capital stock or such greater percentage of these shares as may be specified in the articles of the converted savings bank. [1985 c 56 § 28; 1981 c 85 § 97.]

32.32.495 Directors—Election—Meetings—Quorum—Oath—Vacancies.

(1) Every converted savings bank shall be managed by not less than five directors, except that a bank having a capital of fifty thousand dollars or less may have only three directors. Directors shall be elected by the stockholders and hold office for one year and until their successors are elected and have qualified. In the first instance the directors shall be those named in the articles of incorporation and afterwards, those elected at the annual meeting of the stockholders to be held at least once each year on a day to be specified by the converted savings bank's bylaws but not later than May 15th of each year. If for any cause an election is not held at that time, it may be held at an adjourned meeting or at a subsequent meeting called for that purpose in the manner prescribed by the corporation's bylaws. Each director shall be a resident of a state of the United States. The directors shall meet at least nine times each year and whenever required by the supervisor. A majority of the board of directors shall constitute a quorum for the transaction of business. At all stockholders' meetings, each share shall be entitled to one vote, unless the articles of incorporation provide otherwise. Any stockholder may vote in person or by written proxy.

(2) If the board of directors consists of nine or more members, in lieu of electing the entire number of directors annually, the converted savings bank's articles of incorporation or bylaws may provide that the directors be divided into either two or three classes, each class to be as nearly equal in number as possible, the term of office of directors of the first class to expire at the first annual meeting of shareholders after their election, that of the second class to expire at the second annual meeting after their election, and that of the

third class, if any, to expire at the third annual meeting after their election. At each annual meeting after such classification, the number of directors equal to the number of the class whose term expires at the time of such meeting shall be elected to hold office until the second succeeding annual meeting, if there are two classes, or until the third succeeding annual meeting, if there are three classes. A classification of directors shall not be effective prior to the first annual meeting of shareholders.

(3) Immediately upon election, each director shall take, subscribe, swear to, and file with the supervisor an oath that he will, so far as the duty devolves upon him, diligently and honestly administer the affairs of the corporation and will not knowingly violate or willingly permit to be violated any provision of law applicable to the corporation.

(4) A vacancy occurring in the board of directors may be filled by the affirmative vote of a majority of the remaining directors. A director elected to fill a vacancy shall be elected for the unexpired term of the director's predecessor in office. A directorship to be filled by reason of an increase in the number of directors may be filled by the board of directors for a term of office continuing only until the next election of directors by the shareholders. [1985 c 56 § 29; 1983 c 44 § 3; 1981 c 85 § 98.]

32.32.497 Conversions incident to acquisition by savings bank holding company or merger or consolidation with savings bank holding company subsidiary—Application of RCW 32.32.110 and 32.32.115.

(1) In a conversion of an unconverted mutual savings bank that is in the process of acquisition by a savings bank holding company or in the process of merger or consolidation with a subsidiary of a savings bank holding company, the restrictions imposed by RCW 32.32.110 on resale of stock apply to shares of the holding company purchased on original issue by any director or officer of the converting savings bank that is in the process of acquisition, merger, or consolidation, and the restrictions imposed by this chapter apply to the ownership of capital stock in the holding company with the same force and effect as they would apply to the ownership of capital stock of the unconverted mutual savings bank if shares of this savings bank were offered to depositors or the public pursuant to this chapter.

(2) The tender of shares by directors and officers of a converted savings bank in exchange for shares of another converted savings bank, or for shares of a holding company, do not constitute a sale for purposes of RCW 32.32.110. However, the restrictions of RCW 32.32.110 and 32.32.115 apply to the resale of the shares they receive in such an exchange with the same force and effect as to the shares of the converted savings bank they purchased on original issue for a period of three years following the date of such purchase on original issue. [1985 c 56 § 30.]

32.32.500 Merger, consolidation, conversion, etc.—Approval.

A mutual savings bank or bank converted under this chapter may merge with, consolidate with, convert into, acquire the assets of, or sell its assets to any other financial institution chartered under Titles 30, 32, or 33 RCW or under the National Bank Act, as amended, or the National Housing Act, as amended, or to a holding company thereof,

subject to (1) the approval of the supervisor of banking if the surviving institution is one chartered under Title 30 or 32 RCW, or (2) approval of the supervisor of savings and loans if the surviving institution is one chartered under Title 33 RCW, or (3) if the surviving institution is to be a national bank, the comptroller of currency under 12 U.S.C. Sec. 35, 12 U.S.C. Sec. 215, 12 U.S.C. Sec. 215a, and 12 U.S.C. Sec. 1828c, or (4) if the surviving institution is to be a federal savings and loan association, the Federal Home Loan Bank Board under 12 U.S.C. Sec. 1464 (d)(11), or (5) if the surviving institution is to be a bank holding company, the Federal Reserve Board under 12 U.S.C. Sec. 1842 (a) and (d).

In the case of a liquidation, acquisition, merger, consolidation, or conversion of a converted savings bank, chapter 32.34 RCW shall apply. [1985 c 56 § 31; 1981 c 85 § 99.]

32.32.505 Intent—References. (1) It is the intention of the legislature to grant, by this chapter, authority to permit conversions by mutual savings banks to capital stock form, and the rights, powers, restrictions, limitations, and requirements of Title 32 RCW shall apply to a converted mutual savings bank except that, in the event of conflict between the provisions of this chapter and other provisions of Title 32 RCW, the other provisions shall be construed in favor of the accomplishment of the purposes of this chapter.

(2) References in the Revised Code of Washington as of the most recent effective date of any amendment, to mutual savings banks shall refer also to stock savings banks converted from mutual form under this chapter. References in the Revised Code of Washington to the board of trustees of a mutual savings bank shall refer also to the board of directors of a stock savings bank converted from mutual form under this chapter. The provisions of Title 30 RCW shall not apply to a converted mutual savings bank except insofar as the provisions would apply to a mutual savings bank. [1985 c 56 § 32; 1981 c 85 § 100.]

32.32.510 Interest on deposits—Determination. A savings bank converted under this chapter may pay interest on deposits at such rates as its board of directors shall from time to time determine. [1981 c 85 § 101.]

32.32.515 Guaranty fund. The guaranty fund of a mutual savings bank converted under this chapter shall become surplus of the converted savings bank, but shall not be available after conversion for purposes other than those purposes for which a guaranty fund may be used by a mutual savings bank under Title 32 RCW. No contribution need be made to the guaranty fund by the converted savings bank after conversion. [1981 c 85 § 102.]

32.32.520 "Funds" defined. The "funds" of a converted savings bank, as the term is used in Title 32 RCW, shall mean deposits, sums credited to the liquidation account, capital stock, the principal balance of any outstanding capital notes, capital debentures, undivided profits and income derived from the foregoing. [1981 c 85 § 103.]

32.32.525 Prohibition on certain securities and purchases—Exception. After July 26, 1981, no converted [Title 32 RCW—page 44]

savings bank may make any loan or discount on the security of its own capital stock, nor be the purchaser or holder of any such shares, unless the security or purchase is necessary to prevent loss upon a debt previously contracted in good faith, in which case the stocks so purchased or acquired shall be sold at public or private sale, or otherwise disposed of, within six months from the time of its purchase or acquisition. The prohibitions of this section do not apply to a purchase of shares approved by the supervisor pursuant to RCW 32.32.210. [1983 c 44 § 4; 1981 c 85 § 104.]

32.32.900 Severability—1981 c 85. 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 85 § 107.]

Chapter 32.34

MERGER, CONSOLIDATION, CONVERSION, ETC.

(Formerly: Conversion between domestic and federal savings bank)

Sections

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|-----------|--|
| 32.34.010 | Conversion of domestic savings bank to federal mutual or stock savings bank—Rights, powers, etc., of federal savings bank. |
| 32.34.020 | Conversion of federal savings bank to domestic savings bank. |
| 32.34.030 | Savings banks converted to stock form—Voluntary liquidation, transfer of assets, merger, consolidation, etc.—Approval of directors and shareholders. |
| 32.34.040 | Savings bank holding companies—Savings bank subsidiaries. |
| 32.34.050 | Business trusts for the benefit of depositors. |
| 32.34.060 | Voluntary liquidation, acquisition, merger, and consolidation—Right of dissenting shareholder to receive value of shares—Determination. |

32.34.010 Conversion of domestic savings bank to federal mutual or stock savings bank—Rights, powers, etc., of federal savings bank. (1) A domestic savings bank formed under this title may convert itself into a federal mutual or stock savings bank. The conversion shall be effected:

(a) In the case of a mutual savings bank, by the vote of two-thirds of the trustees at a regular or special meeting of the trustees called for such purpose;

(b) In the case of a stock savings bank, by the vote of a majority of the stockholders present, in person or by proxy, at a regular or special meeting of the stockholders called for such purpose.

(2) Notice of the meeting, stating the purpose thereof, shall be given the supervisor at least thirty days prior to the meeting. If the conversion is authorized by the trustees or stockholders at the meeting, the trustees or stockholders are authorized and shall effect such action, and the officers of the savings bank shall execute all proper conveyances, documents, and other papers necessary or proper thereunto. If conversion is authorized, a copy of the minutes of the meeting shall be filed forthwith with the supervisor.

(3) Upon consummation of the conversion, the successor federal savings bank shall succeed to all right, title, and interest of the mutual or stock bank in and to its assets and

to its liabilities to the creditors of the savings bank. Upon the conversion, after the execution and delivery of all instruments of transfer, conveyance, and assignment, the domestic savings bank shall be deemed dissolved.

(4) Every federal savings bank, the home office of which is located in this state, and the savings accounts therein, have all the rights, powers, and privileges and are entitled to the same immunities and exemptions as pertain to savings banks organized under the laws of this state. [1983 c 45 § 1.]

32.34.020 Conversion of federal savings bank to domestic savings bank. (1) A federal savings bank, the home office of which is located in this state, may convert itself into a domestic savings bank under this title upon approval by the supervisor of banking. For any such conversion, the federal savings bank shall proceed as provided in this chapter for the conversion of a domestic savings bank into a federal savings bank. The conversion shall be effected by the vote of a majority of the members or stockholders present, in person or by proxy, at a regular or special meeting of the members or stockholders called for such purpose.

(2) Upon consummation of the conversion, the successor domestic savings bank shall succeed to all right, title, and interest of the federal savings bank in and to its assets, and to its liabilities to the creditors of such federal savings bank. [1983 c 45 § 2.]

32.34.030 Savings banks converted to stock form—Voluntary liquidation, transfer of assets, merger, consolidation, etc.—Approval of directors and shareholders. (1) The voluntary liquidation of a mutual savings bank converted to the stock form requires the affirmative vote or written consent of two-thirds of the directors of the converted savings bank, requires the affirmative vote of two-thirds of the outstanding stock of the savings bank, shall proceed as prescribed in chapter 32.24 RCW, and shall be complete upon the payment of any surplus remaining, after satisfaction of all debts and liabilities of the savings bank, to shareholders in accordance with their legal rights to such surplus.

(2) A savings bank which has converted to the stock form may sell all its assets and transfer all its liabilities upon the affirmative vote or with the written consent of two-thirds of its directors, and upon the affirmative vote of the holders of two-thirds of the outstanding voting shares in each class entitled to vote.

(3) Any merger or consolidation involving a mutual savings bank converted to stock form requires approval by two-thirds of the directors and by the holders of a majority of the outstanding voting shares in each class except that a merger or consolidation approved by two-thirds of the outstanding voting shares in each class requires approval by only a majority of the directors of the converted savings bank, and except as provided in subsection (4) of this section.

(4) A savings bank that has converted to the stock form may engage in a consolidation and pooling of assets upon the affirmative vote of two-thirds of its directors, if (a) the total assets of the converted savings bank, immediately prior to the day of the consolidation and pooling of assets, exceed

two-thirds of the assets of the institution that would result from the consolidation and pooling of assets, (b) the converted savings bank will survive the consolidation and pooling of assets, without its shareholders surrendering their shares of stock in the converted savings bank, and (c) the other institution being merged or consolidated is a savings bank or savings and loan association.

(5) Any converted savings bank may provide in its articles of incorporation for a higher percentage of affirmative shareholder votes to approve any liquidation, sale of assets, merger, or consolidation. [1985 c 56 § 33.]

32.34.040 Savings bank holding companies—Savings bank subsidiaries. (1) No savings bank having capital stock may establish a holding company to own all its stock without the approval of the supervisor. Upon tender of their shares of the converted savings bank, the shareholders of the savings bank shall receive all the shares of the holding company which are outstanding at the time of this tender.

(2) Any company owning more than twenty-five percent of the outstanding voting stock of a savings bank doing business under this Title 32 RCW shall, in addition to the restrictions of RCW 32.32.228, be subject to regulation as a savings bank holding company. Any savings bank holding company which is not subject to regulation by the federal reserve board or the federal home loan bank board, and all holding company subsidiaries engaging in businesses which are not subject to regulation or licensing by the federal home loan bank board, the supervisor of savings and loan associations, the commissioner of insurance, or the administrator authorized to regulate loan companies doing business under Title 31 RCW, will be subject to such regulation of accounting practices and of the qualifications of directors and officers, and such inspection and visitation by the supervisor of banking as the supervisor shall deem appropriate, subject to the limitations imposed on regulation, inspection, and visitation of a savings bank under this title. In addition, any savings bank holding company and all holding company subsidiaries will be subject to visitation by the supervisor of banking as such shall deem appropriate, subject to the limitations imposed on visitation of a savings bank under this Title 32 RCW and under the supremacy clause of the Constitution of the United States. The savings bank subsidiary of this holding corporation may engage in subsequent mergers, consolidations, acquisitions, and conversions, only to the extent authorized by RCW 32.32.500, and only upon complying with the applicable requirements in RCW 32.34.030 and this chapter.

(3) In the event a savings bank forms a subsidiary to carry out any of the powers of savings banks under this title, any institution with which this subsidiary merges shall continue to be subject to regulation, inspection, and visitation by the supervisor of savings and loans if the subsidiary is authorized to do business by Title 33 RCW. [1985 c 56 § 34.]

32.34.050 Business trusts for the benefit of depositors. A savings bank not having capital stock may establish a business trust for the benefit of its depositors, with the approval of the supervisor and subject to such rules and

regulations as the supervisor may adopt. The supervisor may permit this business trust to become a mutual holding company owning all shares of an interim stock savings bank, the sole purpose of which shall be to merge into the mutual savings bank that formed the business trust. The depositors in an unconverted savings bank which has merged with the subsidiary of such a mutual holding company, in the event of a later conversion of this mutual holding company to the stock form, shall retain all their rights to their deposits in the savings bank, and shall also receive, without payment, nontransferrable rights to subscribe for the stock of the holding company, and rights to a liquidation account maintained by the holding company in proportion to their deposits in the savings bank, to the same extent that they would receive these rights in a stock conversion of the savings bank as prescribed in chapter 32.32 RCW. [1985 c 56 § 35.]

32.34.060 Voluntary liquidation, acquisition, merger, and consolidation—Right of dissenting shareholder to receive value of shares—Determination. (1) Any holder of shares of a savings bank shall be entitled to receive the value of these shares, as specified in subsection (2) of this section, if (a) the savings bank is voluntarily liquidating, being acquired, merging, or consolidating, (b) the shareholder voted, in person or by proxy, against the liquidation, acquisition, merger, or consolidation, at a meeting of shareholders called for the purpose of voting on such transaction, and (c) the shareholder delivers a written demand for payment, with the stock certificates, to the savings bank within thirty days after such meeting of shareholders. The value of shares shall be paid in cash, within ten days after receipt of the written demand and stock certificates, except that if three appraisers are appointed as specified in subsection (2) of this section, the payment shall be due forty-five days after receipt of such demand and stock certificates.

(2) The value of such shares shall be the price published for shares listed on a national securities exchange, and shall be the bid price published for shares traded over the counter, at the close of business on the business day before the shareholders' meeting at which the shareholder dissented, except that if such shares are not so listed or traded, or if the value so determined differs by twenty percent or more from the average of such prices for the shares during the thirty days prior to this business day, or if a violation of RCW 32.32.225 has affected such determination, then the value of the shares shall be determined, within forty days after delivery of the stock certificates, by three appraisers appointed as provided in RCW 30.49.090. [1985 c 56 § 36.]

Chapter 32.40

COMMUNITY CREDIT NEEDS

Sections

32.40.010	Examinations—Investigation and assessment of performance record in meeting community credit needs.
32.40.020	Approval and disapproval of applications—Consideration of performance record in meeting community credit needs.
32.40.030	Adoption of rules.
32.40.900	Severability—1985 c 329.
32.40.901	Effective date—1985 c 329.

32.40.010 Examinations—Investigation and assessment of performance record in meeting community credit needs. (1) In conducting an examination of a savings bank chartered under Title 32 RCW, the supervisor of banking, deputy supervisor, or examiner shall investigate and assess the record of performance of the savings bank in meeting the credit needs of the savings bank's entire community, including low and moderate-income neighborhoods. The supervisor shall accept, in lieu of an investigation or part of an investigation required by this section, any report or document that the savings bank is required to prepare or file with one or more federal agencies by the act of Congress entitled the "Community Reinvestment Act of 1977" and the regulations promulgated in accordance with that act, to the extent such reports or documents assist the supervisor in making an assessment based upon the factors outlined in subsection (2) of this section.

(2) In making an investigation required under subsection (1) of this section, the supervisor shall consider, independent of any federal determination, the following factors in assessing the savings bank's record of performance:

(a) Activities conducted by the institution to ascertain credit needs of its community, including the extent of the institution's efforts to communicate with members of its community regarding the credit services being provided by the institution;

(b) The extent of the institution's marketing and special credit related programs to make members of the community aware of the credit services offered by the institution;

(c) The extent of participation by the institution's board of directors or board of trustees in formulating the institution's policies and reviewing its performance with respect to the purposes of the Community Reinvestment Act of 1977;

(d) Any practices intended to discourage applications for types of credit set forth in the institution's community reinvestment act statement(s);

(e) The geographic distribution of the institution's credit extensions, credit applications, and credit denials;

(f) Evidence of prohibited discriminatory or other illegal credit practices;

(g) The institution's record of opening and closing offices and providing services at offices;

(h) The institution's participation, including investments, in local community development projects;

(i) The institution's origination of residential mortgage loans, housing rehabilitation loans, home improvement loans and small business or small farm loans within its community, or the purchase of such loans originated in its community;

(j) The institution's participation in governmentally insured, guaranteed, or subsidized loan programs for housing, small businesses, or small farms;

(k) The institution's ability to meet various community credit needs based on its financial condition, size, legal impediments, local economic condition, and other factors;

(1) Other factors that, in the judgment of the supervisor, reasonably bear upon the extent to which an institution is helping to meet the credit needs of its entire community.

(3) The supervisor shall include as part of the examination report, a summary of the results of the assessment required under subsection (1) of this section and shall assign

annually to each savings bank a numerical community reinvestment rating based on a one through five scoring system. Such numerical scores shall represent performance assessments as follows:

- | | |
|-------------------------------|---|
| (a) Excellent performance: | 1 |
| (b) Good performance: | 2 |
| (c) Satisfactory performance: | 3 |
| (d) Inadequate performance: | 4 |
| (e) Poor performance: | 5 |

[1985 c 329 § 8.]

Legislative intent—1985 c 329: See note following RCW 30.60.010.

32.40.020 Approval and disapproval of applications—Consideration of performance record in meeting community credit needs. Whenever the supervisor of banking must approve or disapprove of an application for a new branch or satellite facility; for a purchase of assets, a merger, an acquisition or a conversion not required for solvency reasons; or for authority to engage in a business activity, the supervisor shall consider, among other factors, the record of performance of the applicant in helping to meet the credit needs of the applicant's entire community, including low and moderate-income neighborhoods. Assessment of an applicant's record of performance may be the basis for denying an application. [1985 c 329 § 9.]

Legislative intent—1985 c 329: See note following RCW 30.60.010.

32.40.030 Adoption of rules. The supervisor of banking shall adopt all rules necessary to implement RCW 32.40.010 and 32.40.020 by January 1, 1986. [1985 c 329 § 10.]

Legislative intent—1985 c 329: See note following RCW 30.60.010.

32.40.900 Severability—1985 c 329. See RCW 30.60.900.

32.40.901 Effective date—1985 c 329. See RCW 30.60.901.

Chapter 32.98 CONSTRUCTION

Sections

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|-----------|--|
| 32.98.010 | Continuation of existing law. |
| 32.98.020 | Title, chapter, section headings not part of law. |
| 32.98.030 | Invalidity of part of title not to affect remainder. |
| 32.98.031 | Severability—1963 c 176. |
| 32.98.050 | Repeals and saving. |
| 32.98.060 | Emergency—1955 c 13. |

32.98.010 Continuation of existing law. The provisions of this title insofar as they are substantially the same as statutory provisions repealed by this chapter and relating to the same subject matter, shall be construed as restatements and continuations, and not as new enactments. [1955 c 13 § 32.98.010.]

32.98.020 Title, chapter, section headings not part of law. Title headings, chapter headings, and section or

subsection headings, as used in this title do not constitute any part of the law. [1955 c 13 § 32.98.020.]

32.98.030 Invalidity of part of title not to affect remainder. If any provision of this title, or its application to any person or circumstance is held invalid, the remainder of the title, or the application of the provision to other persons or circumstances is not affected. [1955 c 13 § 32.98.030.]

32.98.031 Severability—1963 c 176. If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected. [1963 c 176 § 20.]

32.98.050 Repeals and saving. See 1955 c 13 § 32.98.050.

32.98.060 Emergency—1955 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 immediately. [1955 c 13 § 32.98.060.]

Title 33

SAVINGS AND LOAN ASSOCIATIONS

Chapters

- 33.04** General provisions.
- 33.08** Organization—Articles—Bylaws.
- 33.12** Powers and restrictions.
- 33.16** Directors, officers and employees.
- 33.20** Members—Savings.
- 33.24** Loans and investments.
- 33.28** Fees and taxes.
- 33.32** Foreign associations.
- 33.36** Prohibited acts—Penalties.
- 33.40** Insolvency, liquidation, merger.
- 33.43** Conversion to and from federal association.
- 33.44** Conversion to mutual savings bank.
- 33.46** Conversion of savings bank or commercial bank to association.
- 33.48** Stock associations.
- 33.54** Satellite facilities.

Age of majority: Chapter 26.28 RCW.

Assignment for benefit of creditors: Chapter 7.08 RCW.

Bonds and notes of federal agencies as investment and collateral: Chapter 39.60 RCW.

Corporate seals, effect of absence from instrument: RCW 64.04.105.

Corporation fees, in general: Chapter 23B.01 RCW.

Corporations: Titles 23B, 24 RCW.

Credit life insurance and credit accident and health insurance: Chapter 48.34 RCW.

Department of general administration, division of savings and loan associations: RCW 43.19.010.

Fairness in lending act: RCW 30.04.500 through 30.04.515.

False representations: Chapter 9.38 RCW.

Home loan bank

as depository: RCW 30.32.040.

may borrow from: RCW 30.32.030.

Husband and wife, rights, liabilities: Chapter 26.16 RCW.

Indemnification of officers, directors, employees, etc., by corporation, insurance: RCW 23B.08.320, 23B.08.500 through 23B.08.580, 23B.08.600, and 23B.17.030.

Interest and usury in general: Chapter 19.52 RCW.

Investment

in federal home loan bank stock or bonds authorized: RCW 30.32.020.
of county funds not required for immediate expenditures, service fee: RCW 36.29.020.

of funds of school districts not needed for immediate necessities—Service fee: RCW 28A.320.320.

Joint tenants, simultaneous death: RCW 11.05.030.

Master license system exemption: RCW 19.02.800.

Mortgages: Title 61 RCW.

Powers of appointment: Chapter 11.95 RCW.

Real property and conveyances: Title 64 RCW.

Retail installment sales of goods and services: Chapter 63.14 RCW.

Safe deposit

companies: Chapter 22.28 RCW.

repository lease agreements ineffective to create joint ownership or transfer property at death: RCW 11.02.090.

Supervisor of banking: Chapter 43.19 RCW.

Uniform unclaimed property act: Chapter 63.29 RCW.

Washington Principal and Income Act: Chapter 11.104 RCW.

Chapter 33.04

GENERAL PROVISIONS

Sections

- 33.04.002 Legislative declaration, intent—Purpose.
- 33.04.005 Definitions.
- 33.04.010 Director to act for and in lieu of supervisor, when.
- 33.04.011 "Mortgage" includes deed of trust and real estate contract.
- 33.04.020 Supervisor—Powers and duties.
- 33.04.025 Rules and regulations.
- 33.04.030 Compelling attendance of witnesses.
- 33.04.042 Cease and desist order—Notice of charges—Grounds—Hearing on—Issuance of order, when—Contents—Effective, when.
- 33.04.044 Temporary cease and desist order—Issued, when—Effective, when—Duration.
- 33.04.046 Temporary cease and desist order—Injunction against order on application of association—Jurisdiction.
- 33.04.048 Temporary cease and desist order—Injunction to enforce—Jurisdiction.
- 33.04.052 Cease and desist order—Administrative hearing—Procedure—Modification, termination, or setting aside of order—Review of order, procedure—Manner of service of notice or order.
- 33.04.054 Cease and desist order—Enforcement—Jurisdiction.
- 33.04.060 Appellate review.
- 33.04.070 Appointment and qualifications of supervisor.
- 33.04.090 Saturday closing authorized.
- 33.04.110 Examination reports and information—Confidential and privileged—Exceptions, limitations and procedure—Penalty.

33.04.002 Legislative declaration, intent—Purpose.

The legislature finds that the statutory law relating to savings and loan associations has not been generally updated or modernized since 1945; and, as a result, many changes to Title 33 RCW should now be made with respect to the powers and duties of the supervisor; to the provisions relating to the organization, management and conversion of savings and loan associations; and to the powers and restrictions placed upon savings and loan associations to make investments. While it is the intent of the legislature to grant permissive investment powers to state-chartered savings and loan associations, it does not intend these associations to abandon the residential financing market in Washington. It, therefore, finds that the powers granted in *this act are for the purpose of updating and modernizing the law relating to savings and loan associations, thereby creating a more secure and responsive financial environment in which the residential home buyer will continue to obtain financing. [1982 c 3 § 1.]

***Reviser's note:** "This act" consists of (1) the enactment of RCW 33.04.002, 33.04.005, 33.04.042, 33.04.044, 33.04.046, 33.04.048, 33.04.052, 33.04.054, 33.08.055, 33.20.125, 33.24.007, 33.24.015, 33.24.115, 33.24.345, 33.24.375, 33.44.125, 33.44.130, 33.46.130, and

33.48.320; (2) the 1982 c 3 amendments to RCW 33.04.010, 33.04.020, 33.04.025, 33.04.110, 33.08.020, 33.08.030, 33.08.040, 33.08.050, 33.08.060, 33.08.080, 33.08.090, 33.08.110, 33.12.010, 33.12.012, 33.12.014, 33.12.060, 33.12.140, 33.12.150, 33.16.020, 33.16.030, 33.16.040, 33.16.050, 33.16.060, 33.16.080, 33.16.090, 33.16.120, 33.16.150, 33.20.010, 33.20.040, 33.20.060, 33.20.150, 33.20.180, 33.20.190, 33.24.005, 33.24.010, 33.24.100, 33.24.160, 33.24.295, 33.24.350, 33.24.360, 33.24.370, 33.28.020, 33.28.040, 33.32.020, 33.32.030, 33.32.070, 33.36.030, 33.36.040, 33.36.050, 33.36.060, 33.40.020, 33.40.040, 33.40.050, 33.40.070, 33.40.075, 33.40.110, 33.40.120, 33.40.130, 33.43.010, 33.44.020, 33.44.080, 33.44.090, 33.46.010, 33.46.020, 33.46.030, 33.46.040, 33.46.050, 33.46.060, 33.46.070, 33.46.080, 33.46.100, 33.46.110, 33.48.025, 33.48.030, 33.48.040, 33.48.080, 33.48.090, 33.48.100, 33.48.110, 33.48.120, 33.48.140, 33.48.170, 33.48.180, 33.48.200, 33.48.210, 33.48.220, 33.48.230, 33.48.240, 33.48.250, 33.48.260, 33.48.270, 33.48.280, 33.48.290, and 43.19.100; and (3) the repeal of RCW 33.04.040, 33.04.050, 33.08.120, 33.12.030, 33.12.040, 33.12.050, 33.12.070, 33.12.080, 33.12.090, 33.12.110, 33.12.120, 33.12.130, 33.12.160, 33.16.070, 33.16.100, 33.16.110, 33.16.140, 33.16.160, 33.20.020, 33.20.090, 33.20.100, 33.20.110, 33.20.120, 33.24.095, 33.24.110, 33.24.120, 33.24.130, 33.24.135, 33.24.140, 33.24.145, 33.24.150, 33.24.170, 33.24.180, 33.24.230, 33.24.240, 33.24.250, 33.24.260, 33.24.280, 33.24.290, 33.28.030, 33.32.010, 33.32.040, 33.40.090, 33.40.100, 33.44.010, 33.48.010, 33.48.020, 33.48.050, 33.48.060, and 33.48.070.

Severability—1982 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." [1982 c 3 § 118.]

33.04.005 Definitions. Unless the context requires otherwise, the definitions in this section apply throughout this title.

(1) "Branch" means an established manned place of business or a manned mobile facility or other manned facility of an association, other than the principal office, at which deposits may be taken.

(2) "Depositor" means a person who deposits money in an association.

(3) "Domestic association" means a savings and loan association which is incorporated under the laws of this state.

(4) "Federal association" means a savings and loan association which is incorporated under federal law.

(5) "Foreign association" means a savings and loan association organized under the laws of another state.

(6)(a) "Member," in a mutual association, means a depositor or any other person who is a member of a class of persons granted membership rights by the articles of incorporation or bylaws.

(b) "Member," in a stock association, means a stockholder or any other person who is a member of a class of persons granted membership rights by the articles of incorporation or bylaws.

(7) "Mutual association" means an association formed without authority to issue stock.

(8) "Savings and loan association," "savings association" or "association," unless otherwise restricted, means a domestic or foreign association and includes a stock or a mutual association.

(9) "Stock association" means an association formed with the authority to issue stock. [1982 c 3 § 2.]

Severability—1982 c 3: See note following RCW 33.04.002.

33.04.010 Director to act for and in lieu of supervisor, when. Whenever, in this title or any prior acts relating to savings and loan associations, the term "Supervisor" or

"Supervisor of Savings and Loans" appears, it is understood that the director of the department of general administration may act for and in lieu of the supervisor of savings and loans, if there is no supervisor of savings and loan associations duly qualified to act. [1982 c 3 § 3; 1945 c 235 § 119-A; Rem. Supp. 1945 § 3717-238. Prior: 1935 c 171 § 5; 1933 c 183 § 2; 1890 p 56 § 22.]

Severability—1982 c 3: See note following RCW 33.04.002.

Short title—1945 c 235: "This act shall be known as the 'Savings and Loan Association Act of 1945.'" [1945 c 235 § 1. Prior: 1933 c 183 § 1.]

Severability—1945 c 235: "If any section, provision, or part 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 of any section, provision, or part thereof not adjudged to be invalid or unconstitutional." [1945 c 235 § 119. Prior: 1935 c 171 § 5; 1933 c 183 § 112.]

The two foregoing annotations apply to chapters 33.04 through 33.43 and 33.48 RCW.

33.04.011 "Mortgage" includes deed of trust and real estate contract. See RCW 33.24.005.

33.04.020 Supervisor—Powers and duties. The supervisor:

(1) Shall be charged with the administration and enforcement of this title and shall have and exercise all powers necessary or convenient thereunto;

(2) Shall issue to each association doing business hereunder, when it shall have paid its annual license fee and be duly qualified otherwise, a certificate of authority authorizing it to transact business;

(3) Shall require of each association an annual statement and such other reports and statements as the supervisor deems desirable, on forms to be furnished by the supervisor;

(4) Shall require each association to conduct its business in compliance with the provisions of this title;

(5) Shall visit and examine into the affairs of every association, at least once in each biennium; may appraise and revalue its investments and securities; and shall have full access to all the books, records, papers, securities, correspondence, bank accounts, and other papers of such association for such purposes. The supervisor may accept in lieu of an examination the report of the examining division of the federal home loan bank board, or the report of the savings and loan department of another state, which has made and submitted a report of the condition of the affairs of the association, and if approved, the report shall have the same force and effect as though the examination were made by the supervisor or one of his appointees;

(6) May accept or exchange any information or reports with the examining division of the federal home loan bank board or other like agency which may insure the accounts in an association or to which an association may belong or with the savings and loan department of another state which has authority to examine any association doing business in this state;

(7) May visit and examine into the affairs of any nonpublicly-held corporation in which the association has a material investment and any publicly-held corporation the capital stock of which is controlled by the association; may appraise and revalue its investments and securities; and shall have full access to all the books, records, papers, securities,

correspondence, bank accounts, and other papers of such corporation for such purposes;

(8) May, in the supervisor's discretion, administer oaths to and to examine any person under oath concerning the affairs of any association or nonpublicly-held corporation in which the association has a material investment and any publicly-held corporation the capital stock of which is controlled by an association and, in connection therewith, to issue subpoenas and require the attendance and testimony of any person or persons at any place within this state, and to require witnesses to produce any books, papers, documents, or other things under their control material to such examination; and

(9) Shall have power to commence and prosecute actions and proceedings to enforce the provisions of this title, to enjoin violations thereof, and to collect sums due to the state of Washington from any association. [1982 c 3 § 4; 1979 c 113 § 1; 1973 c 130 § 22; 1945 c 235 § 95; Rem. Supp. 1945 § 3717-214. Prior: 1933 c 183 §§ 79, 94, 95; 1919 c 169 § 12; 1913 c 110 § 19; 1890 p 56 § 19.]

Severability—1982 c 3: See note following RCW 33.04.002.

Severability—1979 c 113: "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 113 § 17.]

Severability—1973 c 130: See note following RCW 33.24.350.

33.04.025 Rules and regulations. The supervisor shall adopt uniform rules and regulations in accordance with the administrative procedure act, chapter 34.05 RCW, to govern examinations and reports of associations and the form in which they shall report their assets, liabilities, and reserves, charge off bad debts and otherwise keep their records and accounts, and otherwise to govern the administration of this title. He shall mail a copy of the rules and regulations to each savings and loan association at its principal place of business. The person doing the mailing shall make and file his affidavit thereof in the office of the supervisor. [1982 c 3 § 5; 1973 c 130 § 20.]

Severability—1982 c 3: See note following RCW 33.04.002.

Severability—1973 c 130: See note following RCW 33.24.350.

33.04.030 Compelling attendance of witnesses. In event any person shall refuse to appear in compliance with any subpoena issued by the supervisor or shall refuse to testify thereunder, the superior court of the state of Washington for the county in which such witness was required by said subpoena to appear, upon application of the supervisor, shall have jurisdiction to compel such witness to attend and testify and to punish for contempt any witness not complying with the order of the court. [1945 c 235 § 96; Rem. Supp. 1945 § 3717-215. Prior: 1933 c 183 §§ 94, 95; 1919 c 169 § 12; 1913 c 110 § 19.]

33.04.042 Cease and desist order—Notice of charges—Grounds—Hearing on—Issuance of order, when—Contents—Effective, when. (1) The supervisor may issue and serve upon an association a notice of charges if in the opinion of the supervisor the association:

(a) Is engaging or has engaged in an unsafe or unsound practice in conducting the business of the association;

(b) Is violating or has violated a material provision of any law, rule, or any condition imposed in writing by the supervisor in connection with the granting of any application or other request by the association or any written agreement made with the supervisor; or

(c) Is about to do the acts prohibited in (a) or (b) of this subsection if the opinion that the threat exists is based upon reasonable cause.

(2) The notice shall contain a statement of the facts constituting the alleged violation or violations or the practice or practices and shall fix a time and place at which a hearing will be held to determine whether an order to cease and desist should issue against the association. The hearing shall be set not earlier than ten days nor later than thirty days after service of the notice unless a later date is set by the supervisor at the request of the association.

Unless the association appears at the hearing by a duly authorized representative, it shall be deemed to have consented to the issuance of the cease and desist order. In the event of this consent or if upon the record made at the hearing the supervisor finds that any violation or practice specified in the notice of charges has been established, the supervisor may issue and serve upon the association an order to cease and desist from the violation or practice. The order may require the association and its directors, officers, employees, and agents to cease and desist from the violation or practice and may require the association to take affirmative action to correct the conditions resulting from the violation or practice.

(3) A cease and desist order shall become effective at the expiration of ten days after the service of the order upon the association concerned except that a cease and desist order issued upon consent shall become effective at the time specified in the order and shall remain effective as provided therein unless it is stayed, modified, terminated, or set aside by action of the supervisor or a reviewing court. [1982 c 3 § 7.]

Severability—1982 c 3: See note following RCW 33.04.002.

33.04.044 Temporary cease and desist order—Issued, when—Effective, when—Duration. Whenever the supervisor determines that the acts specified in RCW 33.04.042 or their continuation is likely to cause insolvency or substantial dissipation of assets or earnings of the association or to otherwise seriously prejudice the interests of its depositors, the supervisor may also issue a temporary order requiring the association to cease and desist from the violation or practice. The order shall become effective upon service on the association and shall remain effective unless set aside, limited, or suspended by a court in proceedings under RCW 33.04.046 pending the completion of the administrative proceedings under the notice and until such time as the supervisor shall dismiss the charges specified in the notice or until the effective date of a cease and desist order issued against the association under RCW 33.04.042. [1982 c 3 § 8.]

Severability—1982 c 3: See note following RCW 33.04.002.

33.04.046 Temporary cease and desist order—Injunction against order on application of association—Jurisdiction. Within ten days after an association has been served with a temporary cease and desist order, the associa-

tion may apply to the superior court in the county of its principal place of business for an injunction setting aside, limiting, or suspending the order pending the completion of the administrative proceedings pursuant to the notice served under RCW 33.04.044.

The superior court shall have jurisdiction to issue the injunction. [1982 c 3 § 9.]

Severability—1982 c 3: See note following RCW 33.04.002.

33.04.048 Temporary cease and desist order—Injunction to enforce—Jurisdiction. In the case of a violation or threatened violation of a temporary cease and desist order issued under RCW 33.04.044, the supervisor may apply to the superior court of the county of the principal place of business of the association for an injunction to enforce the order, and the court shall issue an injunction if it determines that there has been a violation or threatened violation. [1982 c 3 § 10.]

Severability—1982 c 3: See note following RCW 33.04.002.

33.04.052 Cease and desist order—Administrative hearing—Procedure—Modification, termination, or setting aside of order—Review of order, procedure—Manner of service of notice or order. (1) Any administrative hearing provided in RCW 33.04.042 may be held at such place as is designated by the supervisor and shall be conducted in accordance with chapter 34.05 RCW. The hearing shall be private unless the supervisor determines that a public hearing is necessary to protect the public interest after fully considering the views of the party afforded the hearing.

Within sixty days after the hearing, the supervisor shall render a decision which shall include findings of fact upon which the decision is based and the supervisor shall issue and serve upon each party to the proceeding an order or orders consistent with RCW 33.04.042.

Unless a petition for review is timely filed in the superior court of the county of the principal place of business of the affected association under subsection (2) of this section and until the record in the proceeding has been filed as therein provided, the supervisor may at any time modify, terminate, or set aside any order upon such notice and in such manner as the supervisor deems proper. Upon filing the record, the supervisor may modify, terminate, or set aside any order only with permission of the court.

The judicial review provided in this section for an order shall be exclusive.

(2) Any party to the proceeding or any person required by an order issued under RCW 33.04.042, 33.04.044 or 33.04.048 to refrain from any of the violations or practices stated therein may obtain a review of any order served under subsection (1) of this section other than one issued upon consent by filing in the superior court of the county of the principal place of business of the affected association within ten days after the date of service of the order a written petition praying that the order of the supervisor be modified, terminated, or set aside. A copy of the petition shall be immediately served upon the supervisor and the supervisor shall then file in the court the record of the proceeding. The court shall have jurisdiction upon the filing of the petition, which jurisdiction shall become exclusive upon the filing of

the record to affirm, modify, terminate, or set aside in whole or in part the order of the supervisor except that the supervisor may modify, terminate, or set aside an order with the permission of the court. The judgment and decree of the court shall be final, except that it is subject to appellate review under the rules of court.

(3) The commencement of proceedings for judicial review under subsection (2) of this section shall not operate as a stay of any order issued by the supervisor unless specifically ordered by the court.

(4) Service of any notice or order required to be served under RCW 33.04.042 or 33.04.044 shall be accomplished in the same manner as required for the service of process in civil actions in superior courts of this state. [1982 c 3 § 11.]

Severability—1982 c 3: See note following RCW 33.04.002.

33.04.054 Cease and desist order—Enforcement—Jurisdiction. The supervisor may apply to the superior court of the county of the principal place of business of the association affected for the enforcement of any effective and outstanding order issued under RCW 33.04.042, 33.04.044, or 33.04.048, and the court shall have jurisdiction to order compliance therewith.

No court shall have jurisdiction to affect by injunction or otherwise the issuance or enforcement of any order or to review, modify, suspend, terminate, or set aside any order except as provided in RCW 33.04.046 and 33.04.052. [1982 c 3 § 12.]

Severability—1982 c 3: See note following RCW 33.04.002.

33.04.060 Appellate review. An association may petition the superior court of the state of Washington for Thurston county for the review of any decision, ruling, requirement or other action or determination of the supervisor, by filing its complaint, duly verified, with the clerk of the court and serving a copy thereof upon the supervisor. Upon the filing of the complaint, the clerk of the court shall docket the same as a cause pending therein.

The supervisor may answer the complaint and the petitioner reply thereto, and the cause shall be heard before the court as in other civil actions. Both the petitioner and the supervisor may seek appellate review of the decision of the court to the supreme court or the court of appeals of the state of Washington. [1988 c 202 § 32; 1971 c 81 § 84; 1945 c 235 § 115; Rem. Supp. 1945 § 3717-234. Prior: 1933 c 183 § 95.]

Severability—1988 c 202: See note following RCW 2.24.050.

33.04.070 Appointment and qualifications of supervisor. See RCW 43.19.100.

33.04.090 Saturday closing authorized. See RCW 30.04.330.

33.04.110 Examination reports and information—Confidential and privileged—Exceptions, limitations and procedure—Penalty. (1) Except as otherwise provided in this section, all examination reports and all information obtained by the supervisor and the supervisor's staff in conducting examinations of associations are confidential and

privileged information and 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 supervisor may furnish in whole or in part examination reports prepared by the supervisor's office to federal agencies empowered to examine state associations, to savings and loan supervisory agencies of other states which have authority to examine associations doing business in this state, to the attorney general in his role as legal advisor to the supervisor, to the examined association as provided in subsection (4) of this section, and to officials empowered to investigate criminal charges. If the supervisor furnishes any examination report to officials empowered to investigate criminal charges, the supervisor may only furnish that part of the report which is necessary and pertinent to the investigation, and the supervisor may do this only after notifying the affected savings and loan association and any customer of the savings and loan association who is named in that part of the report of the order to furnish the part of the examination report unless the officials requesting the report first obtain a waiver of the notice requirement from a court of competent jurisdiction for good cause. The supervisor may also furnish in whole or in part examination reports concerning any association in danger of insolvency to the directors or officers of a potential acquiring party when, in the supervisor's opinion, it is necessary to do so in order to protect the interests of members, depositors, or borrowers of the examined association.

(3) All examination reports furnished under subsection (2) of this section shall remain the property of the division of savings and loan associations and, except as provided in subsection (4) of this section, no person, agency, or authority to whom reports are furnished or any officer, director, or employee thereof shall disclose or make public any of the reports or any information contained therein except in published statistical material that does not disclose the affairs of any individual or corporation: PROVIDED, That nothing herein shall prevent the use in a criminal prosecution of reports furnished under subsection (2) of this section.

(4) The examination report made by the division of savings and loan associations is designed for use in the supervision of the association, and the supervisor may furnish a copy of the report to the savings and loan association examined. The report shall remain the property of the supervisor and will be furnished to the association solely for its confidential use. Neither the association nor any of its directors, officers, or employees may disclose or make public in any manner the report or any portion thereof without permission of the board of directors of the examined association. The permission shall be entered in the minutes of the board.

(5) Examination reports and information obtained by the supervisor and the supervisor's staff in conducting examinations shall not be subject to public disclosure under chapter 42.17 RCW.

(6) In any civil action in which the reports are sought to be discovered or used as evidence, any party may, upon notice to the supervisor, petition the court for an in camera review of the report. The court may permit discovery and introduction of only those portions of the report which are relevant and otherwise unobtainable by the requesting party.

This subsection shall not apply to an action brought or defended by the supervisor.

(7) This section shall not apply to investigation reports prepared by the supervisor and the supervisor's staff concerning an application for a new association or an application for a branch of an association. The supervisor may adopt rules making confidential portions of such reports if in the supervisor's opinion the public disclosure of the portions of the report would impair the ability to obtain the information which the supervisor considers necessary to fully evaluate the application.

(8) Every person who intentionally violates any provision of this section is guilty of a gross misdemeanor. [1982 c 3 § 6; 1977 ex.s. c 245 § 3.]

Severability—1982 c 3: See note following RCW 33.04.002.

Severability—1977 ex.s. c 245: See note following RCW 30.04.075.

Chapter 33.08

ORGANIZATION—ARTICLES—BYLAWS

Sections

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33.08.110	Branch association—Authorized—Procedure—Limitations—Discontinuance of branch, procedure.

33.08.010 Compliance required—Use of words in name or advertising—Penalty—Saving. No person, firm, company, association, fiduciary, co-partnership, or corporation, either foreign or domestic, shall organize as, carry on or conduct the business of an association except in conformity with the terms and provisions of this title or unless incorporated as a savings and loan association under the laws of the United States or use in name or advertising any of the following:

Any collocation employing either or both of the words "building" or "loan" with one or more of the words "saving", "savings", "thrift", or words of similar import except in conformity with this title;

Any collocation employing one or more of the words "saving", "savings", "thrift" or words of similar import, with one or more of the words "association", "institution", "society", "company", "corporation", or words of similar import, or abbreviations thereof except in conformity with this title or unless authorized to do business under the laws of this state or of the United States relating to savings and loan associations, banks, or mutual savings banks; nor shall the word "federal" be used as a part of such name unless the user is incorporated as a savings and loan association under the laws of the United States.

Neither shall the words "saving", or "savings", be used in any name or advertising or to represent in any manner to indicate that his or its business is of the character or kind of business carried on or transacted by an association or which is calculated to lead any person to believe that his or its business is that of an association unless authorized to do business under the laws of this state or of the United States relating to savings and loan associations, banks, or mutual savings banks.

Every person who, and every director and officer of every corporation which, to the knowledge of such director or officer, violates any provision of this section, shall be guilty of a gross misdemeanor. Such conduct shall also be deemed a nuisance and subject to abatement in the manner prescribed by law at the instance of the state supervisor of savings and loan associations or any other public body or officer authorized to do so.

The provisions of this section shall have no application to use of any word or collocation of words or to any representation or advertising which had been adopted and lawfully used by any person, firm, company, association, fiduciary, co-partnership or corporation lawfully engaged in business at the *effective date of this act. [1959 c 280 § 1; 1945 c 235 § 2; Rem. Supp. 1945 § 3717-121. Prior: 1933 c 183 §§ 84, 100; 1919 c 169 § 1; 1913 c 110 §§ 2, 25; 1890 p 56 §§ 2, 22, 37.]

*Reviser's note: The "effective date of this act" [1959 c 280] is March 24, 1959.

33.08.020 Who may form association. Any individuals desiring to transact a business of an association may, by complying with this chapter, become a body corporate for that purpose. [1982 c 3 § 13; 1945 c 235 § 3; Rem. Supp. 1945 § 3717-122. Prior: 1933 c 183 § 3; 1925 ex.s. c 144 § 1; 1913 c 110 § 1; 1903 c 116 § 1; 1890 p 56 § 1.]

Severability—1982 c 3: See note following RCW 33.04.002.

33.08.030 Domestic association as stock or mutual association—Articles of incorporation. A domestic association shall be incorporated either as a stock or a mutual association. The articles of incorporation shall specifically state:

- (1) The name of the association, which shall include the words:
 - (a) "Savings association";
 - (b) "Savings and loan association"; or
 - (c) "Savings bank";
- (2) The city or town and county in which it is to have its principal place of business;
- (3) The name, occupation, and place of residence of all incorporators, the majority of whom shall be Washington residents;
- (4) Its purposes;
- (5) Its duration, which may be for a stated number of years or perpetual;
- (6) The amount of paid-in savings with which the association will commence business;
- (7) The names, occupations, and addresses of the first directors;
- (8) Whether the association is organized as a stock or mutual association and who has membership rights and the

relative rights of different classes of members of the association.

The articles of incorporation may contain any other provisions consistent with the laws of this state and the provisions of this title pertaining to the association's business or the conduct of its affairs. [1983 c 42 § 1; 1982 c 3 § 14; 1949 c 20 § 1; 1945 c 235 § 4; Rem. Supp. 1949 § 3717-123. Prior: 1933 c 183 § 4; 1925 ex.s. c 144 § 1; 1919 c 169 § 5; 1913 c 110 §§ 1, 6; 1903 c 116 § 1; 1890 p 56 § 1.]

Severability—1982 c 3: See note following RCW 33.04.002.

33.08.040 Bylaws. The incorporators shall prepare bylaws for the government of the association, which shall include:

- (1) The offices of the association and the respective duties assigned to them;
- (2) Policies and procedures for the conduct of the business of the association;
- (3) Any other matters deemed necessary or expedient.

Such bylaws must conform in all respects to the provisions of this title and the laws of this state. [1982 c 3 § 15; 1945 c 235 § 5; Rem. Supp. 1945 § 3717-124. Prior: 1933 c 183 § 5; 1919 c 169 § 1; 1913 c 110 § 2; 1890 p 56 § 3.]

Severability—1982 c 3: See note following RCW 33.04.002.

33.08.050 Articles and bylaws to supervisor. The incorporators shall deliver to the supervisor triplicate originals of the articles of incorporation and duplicate copies of its proposed bylaws. [1982 c 3 § 16; 1981 c 302 § 30; 1945 c 235 § 6; Rem. Supp. 1945 § 3717-125. Prior: 1933 c 183 § 6; 1890 p 56 § 3.]

Severability—1982 c 3: See note following RCW 33.04.002.

Severability—1981 c 302: See note following RCW 19.76.100.

33.08.055 Certificate of incorporation—Application, contents—Filing fee. When the incorporators of a domestic association deliver the articles of incorporation and bylaws to the supervisor, the incorporators shall submit an application for a certificate of incorporation, signed and verified by the incorporators, together with the filing fee. The application shall set forth:

- (1) The names and addresses of the incorporators and proposed directors and officers of the association;
- (2) A statement of the character, financial responsibility, experience, and fitness of the directors and officers to engage in the association business;
- (3) Statements of estimated receipts, expenditures, earnings, and financial condition of the association for the first two years or such longer period as the supervisor may require;
- (4) A showing that the association will have a reasonable chance to succeed in the market area in which it proposes to operate;
- (5) A showing that the public convenience and advantage will be promoted by the formation of the proposed association; and
- (6) Any other matters the supervisor may require. [1982 c 3 § 17.]

Severability—1982 c 3: See note following RCW 33.04.002.

33.08.060 Investigation—Fee. Upon receipt of the articles of incorporation and bylaws, the supervisor shall proceed to determine, from all sources of information and by such investigation as he may deem necessary, whether:

(1) The proposed articles and bylaws comply with all requirements of law;

(2) The incorporators and directors possess the qualifications required by this title;

(3) The incorporators have available for the operation of the business at the specified location sufficient cash assets;

(4) The general fitness of the persons named in the articles of incorporation are such as to command confidence and warrant belief that the business of the proposed association will be honestly and efficiently conducted in accordance with the intent and purposes of this title;

(5) The public convenience and advantage will be promoted by allowing such association to be incorporated and engage in business in the market area indicated; and

(6) The population and industry of the market area afford reasonable promise of adequate support for the proposed association.

For the purpose of this investigation and determination, the incorporators, when delivering the articles and bylaws to the supervisor, shall pay to the supervisor an investigation fee, the amount of which shall be established by rule of the supervisor. [1982 c 3 § 18; 1969 c 107 § 1; 1963 c 246 § 1; 1945 c 235 § 7; Rem. Supp. 1945 § 3717-126. Prior: 1933 c 183 § 6; 1925 ex.s. c 144 § 2; 1919 c 169 § 2; 1913 c 110 § 3; 1890 p 56 § 3.]

Severability—1982 c 3: See note following RCW 33.04.002.

33.08.070 Approval or refusal—Appellate review.

The supervisor, not later than six months after receipt of the proposed articles and bylaws shall endorse upon each copy thereof the word "approved" or "refused" and the date thereof. In case of refusal, he shall forthwith return one copy of the articles and bylaws to the incorporators, and the refusal shall be final unless the incorporators, or a majority of them, within thirty days after the refusal, appeal to the superior court of Thurston county. The appeal may be accomplished by the incorporators preparing a notice of appeal, serving a copy of it upon the supervisor, and filing the notice with the clerk of the court, whereupon the clerk, under the direction of the judge, shall give notice to the appellants and to the supervisor of a date for the hearing of the appeal. The appeal shall be tried de novo by the court. At the hearing a record shall be kept of the evidence adduced, and the decision of the court shall be final unless appellate review is sought as in other cases. [1988 c 202 § 33; 1971 c 81 § 85; 1953 c 71 § 1; 1945 c 235 § 8; Rem. Supp. 1945 § 3717-127. Prior: 1933 c 183 § 7; 1925 ex.s. c 144 § 2; 1919 c 169 § 2; 1913 c 110 § 3; 1890 p 56 § 3.]

Severability—1988 c 202: See note following RCW 2.24.050.

33.08.080 Articles and bylaws filed—Certificate of incorporation issued—Revocation of right to engage in business, when. If the supervisor approves the incorporation of the proposed association, the supervisor shall forthwith return two copies of the articles of incorporation and one copy of the bylaws to the incorporators, retaining the others as a part of the files of the supervisor's office. The

incorporators, thereupon, shall file one set of the articles with the secretary of state and retain the other set of the articles of incorporation and the bylaws as a part of its minute records, paying to the secretary of state such fees and charges as are required by law. Upon receiving an original set of the approved articles of incorporation, duly endorsed by the supervisor as herein provided, together with the required fees, the secretary of state shall issue the secretary of state's certificate of incorporation and deliver the same to the incorporators, whereupon the corporate existence of the association shall begin. Unless an association whose articles of incorporation and bylaws have been approved by the supervisor shall engage in business within two years from the date of such approval, its right to engage in business shall be deemed revoked and of no effect. In the supervisor's discretion, the two-year period in which the association must commence business may be extended for a reasonable period of time, which shall not exceed one additional year. [1982 c 3 § 19; 1981 c 302 § 31; 1945 c 235 § 9; Rem. Supp. 1945 § 3717-128. Prior: 1933 c 183 § 8; 1925 ex.s. c 144 § 2; 1919 c 169 § 2; 1913 c 110 § 3; 1890 p 56 § 1.]

Severability—1982 c 3: See note following RCW 33.04.002.

Severability—1981 c 302: See note following RCW 19.76.100.

33.08.090 Amendment of articles. The members, at any meeting called for the purpose, may amend the articles of incorporation of the association by a majority vote of the members present, in person or in proxy. The amended articles shall be filed with the supervisor and be subject to the same procedure of approval, refusal, appeal, and filing with the secretary of state as provided for the original articles of incorporation. Proposed amendments of the articles of incorporation shall be submitted to the supervisor at least thirty days prior to the meeting of the members.

If the amendments include a change in the association's corporate name, the association shall give notice by mail to each association doing business within this state at its principal place of business of the filing of the amended articles. Persons interested in protesting an amendment changing the association's corporate name may contact the supervisor in person or by writing prior to a date which shall be given in the notice. [1982 c 3 § 20; 1981 c 302 § 32; 1979 c 113 § 2; 1945 c 235 § 10; Rem. Supp. 1945 § 3717-129. Prior: 1933 c 183 §§ 9, 10; 1925 ex.s. c 144 § 1; 1913 c 110 § 1; 1903 c 116 § 1; 1890 p 56 §§ 16, 17.]

Severability—1982 c 3: See note following RCW 33.04.002.

Severability—1981 c 302: See note following RCW 19.76.100.

Severability—1979 c 113: See note following RCW 33.04.020.

33.08.100 Amendment of bylaws. The bylaws adopted by the incorporators and approved by the supervisor shall be the bylaws of the association. The members, at any meeting called for the purpose, may amend the bylaws of the association on a majority vote of the members present, in person or by proxy, or the directors at any regular or special meeting called under the provisions of RCW 33.16.090 may amend the bylaws of the association on a two-thirds majority vote of the directors. Proposed amendments of the bylaws shall be submitted to the supervisor in duplicate at least thirty days prior to the meeting at which the amendments

will be considered. The supervisor shall endorse thereon the word "approved" or "disapproved" and return one copy to the association within the thirty day period prior to the meeting. Amendments of the bylaws which have been approved by the supervisor shall become effective after being adopted by the board or the members. The supervisor shall be advised of the effective date. [1967 c 49 § 1; 1945 c 235 § 11; Rem. Supp. 1945 § 3717-130. Prior: 1933 c 183 §§ 9, 10; 1890 p 56 § 3.]

33.08.110 Branch association—Authorized—Procedure—Limitations—Discontinuance of branch, procedure. An association with the written approval of the supervisor, may establish and operate branches in any place within the state.

An association desiring to establish a branch shall file a written application therefor with the supervisor, who shall approve or disapprove the application within four months after receipt.

The supervisor's approval shall be conditioned on a finding that the resources in the market area of the proposed location offer a reasonable promise of adequate support for the proposed branch and that the proposed branch is not being formed for other than the legitimate purposes under this title. A branch shall not be established or permitted if the contingent fund, loss reserves and guaranty stock are less than the aggregate paid-in capital which would be required by law as a prerequisite to the establishment and operation of an equal number of branches in like locations by a commercial bank. If the application for a branch is not approved, the association shall have the right to appeal in the same manner and within the same time as provided by RCW 33.08.070 as now or hereafter amended. The association when delivering the application to the supervisor shall transmit to the supervisor a check in an amount established by rule to cover the expense of the investigation. An association shall not move any office more than two miles from its existing location without prior approval of the supervisor.

The board of directors of an association, after notice to the supervisor, may discontinue the operation of a branch. The association shall keep the supervisor informed in the matter and shall notify the supervisor of the date operation of the branch is discontinued. [1982 c 3 § 21; 1974 ex.s. c 98 § 1; 1969 c 107 § 2; 1959 c 280 § 7.]

Severability—1982 c 3: See note following RCW 33.04.002.

Chapter 33.12

POWERS AND RESTRICTIONS

Sections

- 33.12.010 Powers in general.
- 33.12.012 Powers conferred upon federal savings and loan association as of February 25, 1982.
- 33.12.014 Powers conferred upon federal savings and loan association—Reserve or other requirements—Authority of supervisor to adopt by rule—Conditions.
- 33.12.015 Safe deposit companies.
- 33.12.020 Demand accounts prohibited.
- 33.12.060 Dealings with directors, officers, agents, employees, etc., prohibited—Exceptions.
- 33.12.140 Expense and contingent funds.

- 33.12.150 Contingent fund as reserve—Members' rights to fund limited.
- 33.12.170 May borrow from home loan bank.
- 33.12.180 Trustee of retirement plan established under federal act entitled "Self-Employed Individuals Tax Retirement Act of 1962".

33.12.010 Powers in general. An association shall have the same capacity to act as possessed by natural persons. An association has authority to perform such acts as are necessary or proper to accomplish its purposes.

In addition to any other power an association may have, an association has authority:

- (1) To have and alter a corporate seal;
- (2) To continue as an association for the time limited in its articles of incorporation or, if no such time limit is specified, then perpetually;
- (3) To sue or be sued in its corporate name;
- (4) To acquire, hold, sell, dispose of, pledge, mortgage, or encumber property, as its interests and purposes may require;
- (5) To conduct business in this state and elsewhere as may be permitted by law and, to this end, to comply with any law, regulation, or other requirements incident thereto;
- (6) To acquire capital in the form of deposits, shares, or other accounts for fixed, minimum or indefinite periods of time as are authorized by its bylaws, and may issue such passbooks, statements, time certificates of deposit, or other evidence of accounts;
- (7) To pay interest;
- (8) To charge reasonable service fees for services provided as part of its business;
- (9) To borrow money and to pledge, mortgage, or hypothecate its properties and securities in connection therewith;
- (10) To collect or protest promissory notes or bills of exchange owned or held as collateral by the association;
- (11) To let vaults, safes, boxes, or other receptacles for the safekeeping or storage of personal property, subject to the laws and regulations applicable to and with the powers possessed by safe deposit companies; and to act as escrow holder;
- (12) To act as fiscal agent for the United States of America; to purchase, own, vote, or sell stock in, or act as fiscal agent for any federal home loan bank, the federal housing administration, home owners' loan corporation, or other state or federal agency, organized under the authority of the United States or of the state of Washington and authorized to loan to or act as fiscal agent for associations or to insure savings accounts or mortgages; and in the exercise of these powers, to comply with any requirements of law or rules or orders promulgated by such federal or state agency and to execute any contracts and pay any charges in connection therewith;
- (13) To procure insurance of its mortgages and of its accounts from any state or federal corporation or agency authorized to write such insurance and, in the exercise of these powers, to comply with any requirements of law or rules or orders promulgated and to execute any contracts and pay any premiums required in connection therewith;
- (14) To loan money and to sell any of its notes or other evidences of indebtedness, together with the collateral securing the same;

(15) To make, adopt, and amend bylaws for the management of its property and the conduct of its business;

(16) To deposit moneys and securities in any other association or any bank or savings bank or other like depository;

(17) To dissolve and wind up its business;

(18) To collect or compromise debts due to it and, in so doing, to apply to the indebtedness the accounts of the debtors, and to receive, as collateral or otherwise, other securities, property or property rights of any kind or nature;

(19) To become a member of, deal with, or make reasonable payments or contribution to any organization to the extent that such organization assists in furthering or facilitating the association's purposes, powers or community responsibilities, and to comply with any reasonable conditions of eligibility;

(20) To sell money orders, travelers checks and similar instruments as agent for any organization empowered to sell such instruments through agents within this state and to receive money for transmission through a federal home loan bank;

(21) To service loans and investments for others;

(22) To sell and to purchase mortgages or other loans, including participating interests therein;

(23) To use abbreviations, words or symbols in connection with any document of any nature and on checks, proxies, notices and other instruments which abbreviations, words, or symbols shall have the same force and legal effect as though the respective words and phrases for which they stand were set forth in full for the purposes of all statutes of the state and all other purposes;

(24) To conduct a trust business under rules adopted by the supervisor pursuant to chapter 34.05 RCW; and

(25) To exercise, by and through its board of directors and duly authorized officers and agents, all such incidental powers as may be necessary to carry on the business of the association.

The powers granted in this section shall not be construed as limiting or enlarging any grant of authority made elsewhere by this title. [1982 c 3 § 22; 1969 c 107 § 3; 1963 c 246 § 2; 1945 c 235 § 29; Rem. Supp. 1945 § 3717-148. Prior: 1939 c 98 §§ 6, 7; 1935 c 171 § 1; 1933 c 183 §§ 47, 48, 55, 59.]

Severability—1982 c 3: See note following RCW 33.04.002.

33.12.012 Powers conferred upon federal savings and loan association as of February 25, 1982. Notwithstanding any other provision of law, in addition to all powers, express or implied, that an association has under this title, an association may exercise any of the powers conferred as of February 25, 1982, upon a federal savings and loan association doing business in this state. [1982 c 3 § 23; 1981 c 87 § 1.]

Severability—1982 c 3: See note following RCW 33.04.002.

33.12.014 Powers conferred upon federal savings and loan association—Reserve or other requirements—Authority of supervisor to adopt by rule—Conditions. Notwithstanding any other provision of law, in addition to all powers, express or implied, that an association has under this title, the supervisor may make reasonable rules authorizing

an association to exercise any of the powers conferred at the time of the adoption of the rules upon a federal savings and loan association doing business in this state, or may modify or reduce reserve or other requirements if an association is insured by the federal savings and loan insurance corporation, if the supervisor finds that the exercise of the power:

(1) Serves the convenience and advantage of depositors and borrowers; and

(2) Maintains the fairness of competition and parity between state-chartered savings and loan associations and federally-chartered savings and loan associations. [1982 c 3 § 24; 1981 c 87 § 2.]

Severability—1982 c 3: See note following RCW 33.04.002.

33.12.015 Safe deposit companies. See chapter 22.28 RCW.

33.12.020 Demand accounts prohibited. An association shall not carry any demand accounts. [1980 c 54 § 2; 1945 c 235 § 30; Rem. Supp. 1945 § 3717-149. Prior: 1939 c 98 § 7; 1933 c 183 § 48; 1913 c 110 § 12.]

Contingent effective date—1980 c 54: See note following RCW 33.20.190.

33.12.060 Dealings with directors, officers, agents, employees, etc., prohibited—Exceptions. (1) An association shall make no loan to or sell to or purchase any real property or securities from:

(a) Any director, officer, agent, or employee of an association;

(b) Any former director or incorporator of the association within one year of the termination of the relationship without the prior written approval of the supervisor;

(c) Any party involved, either directly or indirectly, in a stock tender offer for acquisition of the association, as determined by the supervisor, without the prior written approval of the supervisor; or

(d) Any public officer or public employee whose duties have to do with the supervision, regulation, or insurance of the association or its savings accounts.

(2) The provisions of subsection (1) of this section shall not apply to:

(a) Loans secured by the pledge or assignment of the savings account of the borrowing member;

(b) Loans made to directors, officers, agents, or employees of the association upon their property which is occupied principally by such director, officer, agent, or employee as a home, the amount of such loan to be based upon the appraised value of said property as established by two independent appraisers who are not officers, agents, directors, employees, or appraisers of the association;

(c) Loans made to directors, officers, or employees of the association upon their mobile dwelling, which is occupied principally by such director, officer, or employee as a home, the amount of such loan to be based upon the appraised value of the dwelling as established by two independent appraisers who are not directors, officers, employees, or appraisers of the association;

(d) Loans made to directors, officers, or employees of the association for home or property repairs, alterations, improvements, or additions, or home furnishings or appliances.

es, for a residence which is occupied principally by such director, officer, or employee as a home;

(e) Loans made to directors, officers, or employees of the association for the payment of expenses of vocational training or college or university education; nor to

(f) Any other loans made to directors, officers, or employees of the association: PROVIDED, That the total value of the loans made or obligations acquired under authority of this section for any one director, officer, or employee shall not exceed such amount as prescribed by the supervisor under regulations adopted under the administrative procedure act, chapter 34.05 RCW. No loan may be made, credit extended, or obligation acquired unless the board of directors of the association has approved a resolution authorizing the same by a majority vote at a meeting of the board held within sixty days prior to the making or acquisition of the loan or obligation, and the vote and resolution shall be entered in the corporate minutes.

(3) A loan to or a purchase or sale to or from a partnership or corporation fifteen percent of which is owned by any one director, officer, agent, or employee of the association or twenty-five percent of which is owned by any combination of directors, officers, agents, or employees of the association shall be deemed a loan to or a purchase or sale to or from such director, officer, agent, or employee within the meaning of this section except when the transaction occurred without the knowledge or against the protest of such director, officer, agent, or employee of the association. [1985 c 239 § 1; 1982 c 3 § 25; 1979 c 113 § 3; 1953 c 71 § 2; 1947 c 257 § 3; 1945 c 235 § 35; Rem. Supp. 1947 § 3717-154. Prior: 1939 c 98 § 10; 1933 c 183 §§ 51, 53.]

Severability—1982 c 3: See note following RCW 33.04.002.

Severability—1979 c 113: See note following RCW 33.04.020.

33.12.140 Expense and contingent funds. Before any association is authorized to receive deposits or transact any business, its incorporators shall create an expense fund, in such amount as the supervisor may determine, from which the expense of organizing the association and its operating expenses may be paid until such time as its earnings are sufficient to pay its operating expenses, and the incorporators shall enter into an undertaking with the supervisor to make such further contributions to the expense fund as may be necessary to pay its operating expenses until such time as it can pay them from its earnings.

Before any mutual association is authorized to receive deposits or transact any business, its incorporators shall create a contingent fund for the protection of its members against investment losses, in an amount to be determined by the supervisor.

The contingent fund shall consist of payments in cash made by the incorporators as provided in this section and of all sums credited thereto from the earnings of the association as hereinafter required.

Prior to the liquidation of any mutual association the contingent fund shall not be encroached upon in any manner except for losses and for the repayment of contributions made by the incorporators.

No repayment of the contribution of incorporators to the contingent fund shall be made until the net balance credited to the contingent fund from earnings of the association, after

such repayment, equals five percent of the amount due members.

The incorporators may receive interest upon the amount of their contributions to the contingent fund at the same rate as is paid, from time to time, to savings members.

The amounts contributed to the contingent fund by the incorporators shall not constitute a liability of the association except as hereinafter provided, and any loss sustained by the association in excess of that portion of the contingent fund created from earnings may be charged against such contributions pro rata. [1982 c 3 § 26; 1945 c 235 § 13; Rem. Supp. 1945 § 3717-132. Prior: 1933 c 183 § 77; 1925 ex.s. c 144 § 7; 1919 c 169 § 8; 1913 c 110 §§ 13, 14; 1903 c 106 §§ 3, 5; 1890 p 56 §§ 6, 15, 31.]

Severability—1982 c 3: See note following RCW 33.04.002.

33.12.150 Contingent fund as reserve—Members' rights to fund limited. The contingent fund shall constitute a reserve for the absorption of losses of a mutual association.

Members do not have, individually or collectively, any right or claim to the contingent fund except upon dissolution of the association. [1982 c 3 § 27; 1981 c 84 § 3; 1963 c 246 § 4; 1961 c 222 § 2; 1945 c 235 § 51; Rem. Supp. 1945 § 3717-170. Prior: 1933 c 183 §§ 63, 67; 1925 ex.s. c 144 § 7; 1919 c 169 § 8; 1913 c 110 §§ 13, 14; 1903 c 116 § 5; 1890 p 56 § 31.]

Severability—1982 c 3: See note following RCW 33.04.002.

33.12.170 May borrow from home loan bank. See RCW 30.32.030.

Home loan bank as depositary: RCW 30.32.040.

Investment in federal home loan bank stock or bonds authorized: RCW 30.32.020.

33.12.180 Trustee of retirement plan established under federal act entitled "Self-Employed Individuals Tax Retirement Act of 1962". A savings and loan association shall have the power to act as trustee under:

A retirement plan established pursuant to the provisions of the act of congress entitled "Self-Employed Individuals Tax Retirement Act of 1962" (76 Stat. 809, 26 U.S.C. Sec. 37), as now constituted or hereafter amended. If a retirement plan, which in the judgment of the savings and loan association, constituted a qualified plan under the provisions of that act at the time accepted by the savings and loan association, is subsequently determined not to be a qualified plan or subsequently ceases to be a qualified plan in whole or in part, the savings and loan association may, nevertheless, continue to act as trustee of any deposits theretofore made under the plan and to dispose of the same in accordance with the directions of the trustor and the beneficiaries thereof. [1973 1st ex.s. c 93 § 1.]

Chapter 33.16

DIRECTORS, OFFICERS AND EMPLOYEES

Sections

- 33.16.010 Directors—Number—Vacancies.
- 33.16.020 Directors—Qualifications—Eligibility.
- 33.16.030 Directors—Prohibited acts.
- 33.16.040 Removal of director, officer or employee on objection of supervisor—Procedure.
- 33.16.050 Removal of director for cause—When—Procedure.
- 33.16.060 Fiduciary relationship of directors and officers.
- 33.16.080 Officers—Election—Service.
- 33.16.090 Board meetings—Notice—Quorum.
- 33.16.120 Statement of assets and liabilities—Reports.
- 33.16.130 Bonds of officers and employees.
- 33.16.150 Pensions, retirement plans and other benefits.
- 33.16.170 Federal home loan bank as depository.

Indemnification of directors, officers, employees, etc., by corporation, insurance: RCW 23B.08.320, 23B.08.500 through 23B.08.580, 23B.08.600, and 23B.17.030.

33.16.010 Directors—Number—Vacancies. The business and affairs of every association shall be managed and controlled by a board of not less than seven nor more than fifteen directors, a majority of which shall not be officers or employees of the association. The persons designated in the articles of incorporation shall be the first directors.

Vacancies in the board of directors shall be filled by vote of the members at the annual meetings or at a special meeting called for the purpose. The board of directors may fill vacancies occurring on the board, such appointees to serve until the next annual meeting of the members. [1947 c 257 § 1; 1945 c 235 § 14; Rem. Supp. 1947 § 3717-133. Prior: 1933 c 183 § 11; 1925 ex.s. c 144 § 3; 1919 c 169 § 3; 1913 c 110 § 4; 1890 p 56 § 32.]

33.16.020 Directors—Qualifications—Eligibility. The board of directors shall be elected at the annual meeting, unless the bylaws of the association otherwise provide.

A person shall not be a director of an association if the person has been adjudicated bankrupt or has taken the benefit of any assignment for the benefit of creditors or has suffered a judgment recovered against him for a sum of money to remain unsatisfied of record or unsuperseded on appeal for a period of more than three months.

To be eligible to hold the position of director of an association, a person must have savings or stock or a combination thereof in the sum or the aggregate sum of at least one thousand dollars. Such minimum amount shall not be reduced either by withdrawal or by pledge for a loan or in any other manner, so long as he remains a director of the association. [1982 c 3 § 28; 1963 c 246 § 5; 1945 c 235 § 15; Rem. Supp. 1945 § 3717-134. Prior: 1933 c 183 §§ 12, 14; 1925 ex.s. c 144 § 3; 1919 c 169 § 3; 1913 c 110 § 4.]

Severability—1982 c 3: See note following RCW 33.04.002.

33.16.030 Directors—Prohibited acts. A director of a savings and loan association shall not:

(1) Have any interest, direct or indirect, in the gains or profits of the association, except to receive dividends, or interest upon his contribution to the contingent fund or upon his deposit accounts. However, nothing in this subsection shall prevent an officer from receiving his authorized

compensation nor from participating in a benefit program under RCW 33.16.150, nor prevent a director from receiving an authorized director's fee;

Receive and retain, directly or indirectly, for his own use any commission on any loan, or purchase of real property or securities, made by the association;

(2) Become an endorser, surety, or guarantor, or in any manner an obligor, for any loan made by the association;

(3) For himself or as agent, partner, stockholder, or officer of another, directly or indirectly, borrow from the association, except as hereinafter provided. [1982 c 3 § 29; 1945 c 235 § 16; Rem. Supp. 1945 § 3717-135. Prior: 1933 c 183 §§ 21, 62.]

Severability—1982 c 3: See note following RCW 33.04.002.

33.16.040 Removal of director, officer or employee on objection of supervisor—Procedure. If the supervisor shall notify the board of directors of any association in writing, that he has information that any director, officer, or employee of such association is dishonest, reckless, or incompetent or is failing to perform any duty of his office, the board shall meet and consider such matter forthwith and the supervisor shall have notice of the time and place of such meeting. If the board shall find the supervisor's objection to be well founded, such director, officer, or employee shall be removed immediately. If the board does not remove the director, officer, or employee against whom the objections have been filed, or if the board fails to meet, consider or act upon the objections within twenty days after receiving the same, the supervisor may forthwith or within twenty days thereafter, remove such individual by complying with the administrative procedure act, chapter 34.05 RCW. If the supervisor feels that the public interest or safety of the association requires the immediate removal of such individual, the supervisor may petition the superior court for a temporary injunction suspending the performance of the individual as a director pending the administrative procedure hearing. [1982 c 3 § 30; 1973 c 130 § 21; 1945 c 235 § 17; Rem. Supp. 1945 § 3717-136. Prior: 1933 c 183 § 18.]

Severability—1982 c 3: See note following RCW 33.04.002.

Severability—1973 c 130: See note following RCW 33.24.350.

Appointment of provisional officers and directors: RCW 33.40.150.

33.16.050 Removal of director for cause—When—Procedure. If a director becomes ineligible or if the director's conduct or habits are such as to reflect discredit upon the association or if other good cause exists, the director may be removed from office by an affirmative vote of two-thirds of the members of the board of directors at any regular meeting of the board or at any special meeting called for that purpose. No such vote upon removal of a director shall be taken until the director has been advised of the reasons therefor and has had opportunity to submit to the board of directors a statement relative thereto, either oral or written. If the director affected is present at the meeting, he shall leave the place where the meeting is being held after his statement has been submitted and prior to the vote upon the matter of his removal. [1982 c 3 § 31; 1945 c 235 § 19; Rem. Supp. 1945 § 3717-138. Prior: 1933 c 183 § 17; 1925 ex.s. c 144 § 3; 1919 c 169 § 3; 1913 c 110 § 4.]

Severability—1982 c 3: See note following RCW 33.04.002.

33.16.060 Fiduciary relationship of directors and officers. Directors and officers of an association shall be deemed to stand in a fiduciary relation to the association and shall discharge the duties of their respective positions in good faith and with that diligence, care, and skill which ordinary, prudent persons would exercise under similar circumstances in like position. [1982 c 3 § 32; 1945 c 235 § 20; Rem. Supp. 1945 § 3717-139. Prior: 1933 c 183 § 15; 1925 ex.s. c 144 § 3; 1919 c 169 § 3; 1913 c 110 § 4.]

Severability—1982 c 3: See note following RCW 33.04.002.

33.16.080 Officers—Election—Service. The board of directors of the association shall elect the officers named in the bylaws of the association, which officers shall serve at the pleasure of the board. [1982 c 3 § 33; 1945 c 235 § 22; Rem. Supp. 1945 § 3717-141. Prior: 1939 c 98 § 2; 1933 c 183 §§ 19, 20.]

Severability—1982 c 3: See note following RCW 33.04.002.

33.16.090 Board meetings—Notice—Quorum. The board of directors of each association shall hold a regular meeting at least once each month, at a time to be designated by it. Special meetings of the board of directors may be held upon notice to each director sufficient to permit his attendance.

At any meeting of the board of directors, a majority of the members shall constitute a quorum for the transaction of business.

The president of the association or chairman of the board or any three members of the board may call a meeting of the board by giving notice to all of the directors. [1982 c 3 § 34; 1945 c 235 § 23; Rem. Supp. 1945 § 3717-142. Prior: 1933 c 183 § 19.]

Severability—1982 c 3: See note following RCW 33.04.002.

33.16.120 Statement of assets and liabilities—Reports. The board of directors shall cause to be prepared, from the books of the association, a statement of assets and of liabilities, at the end of the association's fiscal year.

The board shall also cause to be prepared, certified, and filed with the supervisor, upon blanks to be furnished by the supervisor, such reports and statements as the supervisor, from time to time, may require. [1982 c 3 § 35; 1973 c 130 § 23; 1945 c 235 § 27; Rem. Supp. 1945 § 3717-146. Prior: 1933 c 183 § 79; 1919 c 169 §§ 11, 12; 1913 c 110 §§ 18, 19; 1890 p 56 §§ 18, 36.]

Severability—1982 c 3: See note following RCW 33.04.002.

Severability—1973 c 130: See note following RCW 33.24.350.

33.16.130 Bonds of officers and employees. The board of directors of every association shall procure a bond or bonds, covering all of its active officers, agents, and employees, whether or not they draw salary or compensation, with duly qualified corporate surety authorized to do business in the state of Washington, conditioned that the surety will indemnify and save harmless the association against any and all loss or losses arising through the larceny, theft, embezzlement, or other fraudulent or dishonest act or acts of any such officer, agent, or employee. Such bond coverage may provide for a deductible amount from any loss

which otherwise would be recoverable from the corporate surety. A deductible amount may be applied separately to one or more bonding agreements. The bond shall not provide for more than one deductible amount from all losses caused by the same person or caused by the same persons acting in collusion or combination in cases in which such losses result from dishonesty of employees (as defined in the bond).

Such bond or bonds shall be in such amount, as to each of said officers or employees, as the directors shall deem advisable, and said bond or bonds shall be subject to the approval of the supervisor and shall be filed with him. The board shall review such bond, or bonds, at its regular meeting in January of each year, and by resolution determine such bond coverage for the ensuing year. [1979 c 113 § 4; 1945 c 235 § 28; Rem. Supp. 1945 § 3717-147. Prior: 1939 c 98 § 2; 1933 c 183 § 20; 1925 ex.s. c 144 § 3; 1919 c 169 § 3; 1913 c 110 § 4; 1890 p 56 § 21.]

Severability—1979 c 113: See note following RCW 33.04.020.

33.16.150 Pensions, retirement plans and other benefits. An association may provide for pensions, retirement plans and other benefits for its officers and employees, and may contribute to the cost thereof in accordance with the plan adopted by its board of directors. Any officer or employee of the association who is also a director or any director who has been an officer or employee is eligible for and may receive such pension, retirement plan, or other benefit to the extent that the officer or employee regularly participates or the director while an officer or employee regularly participated in the operation of the association. [1982 c 3 § 36; 1945 c 235 § 38; Rem. Supp. 1945 § 3717-157.]

Severability—1982 c 3: See note following RCW 33.04.002.

33.16.170 Federal home loan bank as depository. See RCW 30.32.040.

Chapter 33.20 MEMBERS—SAVINGS

Sections

- 33.20.005 Deposits by individuals governed by chapter 30.22 RCW.
- 33.20.010 Mutual association member's interest in assets—Meetings—Voting—Proxies.
- 33.20.040 Minors as members.
- 33.20.060 State, political subdivisions, fiduciaries as depositors.
- 33.20.125 Record of member deposits—As in lieu of passbook, statement, or certificate of deposit.
- 33.20.130 Dormant accounts.
- 33.20.150 Deposits with interest to be repaid on request—Postponement of withdrawals—Procedure.
- 33.20.170 Withdrawals may be limited—Conditions.
- 33.20.180 Classification of depositors—Regulation of earnings according to class.
- 33.20.190 Withdrawal by association draft or negotiable or transferable order or authorization—Interest eligibility.

33.20.005 Deposits by individuals governed by chapter 30.22 RCW. Deposits made by individuals in an association are governed by chapter 30.22 RCW. [1981 c 192 § 29.]

Effective date—1981 c 192: See RCW 30.22.900.

33.20.010 Mutual association member's interest in assets—Meetings—Voting—Proxies. Each member having deposits in a mutual association shall have a proportionate proprietary interest in its assets or net earnings subordinate to the claims of its other creditors. At any meeting of the members of a mutual association, each member shall be entitled to at least one vote. A mutual association, by its bylaws, may provide that each member shall be entitled to one vote for each one hundred dollars of the member's deposit account. At any meeting of the members, voting may be in person or by proxy. Proxies shall be in writing and signed by the member and, when filed with the secretary, shall continue in force until revoked or superseded by subsequent proxies. Written notice of the time and place of the holding of special meetings (other than the regular annual meeting) shall be mailed to each member at his last known address not more than thirty days, nor less than ten days prior to the meeting. The regular annual meeting of the mutual association shall be announced by publication of a notice thereof in a newspaper published in the city or town, or, if the association is not in a city or town, in the county in which the association is located at least ten days prior to the date of such meeting, or by ten days' written notice to the members mailed to the last known address of each member. [1982 c 3 § 37; 1969 c 107 § 4; 1949 c 20 § 2; 1945 c 235 § 12; Rem. Supp. 1949 § 3717-131. Prior: 1933 c 183 §§ 13, 39; 1919 c 169 § 4; 1913 c 110 § 5; 1903 c 116 § 6; 1890 p 56 § 39.]

Severability—1982 c 3: See note following RCW 33.04.002.

33.20.040 Minors as members. Subject to chapter 30.22 RCW, minors may become depositors or members of an association and all contracts entered into between a minor and an association, with respect to his membership or his deposits therein, shall be valid and enforceable, and a minor may not disaffirm, because of his minority, any such membership or agreement in connection therewith. [1982 c 3 § 38; 1981 c 192 § 30; 1945 c 235 § 41; Rem. Supp. 1945 § 3717-160. Prior: 1933 c 183 §§ 24, 40; 1919 c 169 § 5; 1913 c 110 § 6.]

Severability—1982 c 3: See note following RCW 33.04.002.

Effective date—1981 c 192: See RCW 30.22.900.

33.20.060 State, political subdivisions, fiduciaries as depositors. The state of Washington and the political subdivisions thereof, and trustees, administrators, executors, guardians, and other fiduciaries, either individual or corporate, in their fiduciary capacity, may be depositors in associations. [1982 c 3 § 39; 1945 c 235 § 44; Rem. Supp. 1945 § 3717-163.]

Severability—1982 c 3: See note following RCW 33.04.002.

33.20.125 Record of member deposits—As in lieu of passbook, statement, or certificate of deposit. An association shall maintain a record of all deposits received from its members. The issuance of a passbook, statement, or certificate may be omitted for any account if a record thereof is maintained in lieu of a passbook, statement, or certificate of deposit, on which shall be entered deposits, withdrawals, and interest credited. [1982 c 3 § 40.]

Severability—1982 c 3: See note following RCW 33.04.002.

33.20.130 Dormant accounts. When any savings member shall have neither paid in nor withdrawn any funds from his savings account in the association for seven consecutive years, and his whereabouts is unknown to the association and he shall not respond to a letter from the association inquiring as to his whereabouts, sent by registered mail to his last known address, the association may transfer his account to a "Dormant Accounts" fund. Any savings account in the "Dormant Accounts" fund shall not participate in the earnings of the association except by permissive action of the directors of the association. The member, or his or its executor, administrator, successors or assigns, may claim the amount so transferred from his account to the dormant accounts fund at any time after such transfer. Should the association be placed in liquidation while any savings account shall remain credited in the dormant accounts fund and before any valid claim shall have been made thereto, as hereinabove provided, such savings account so credited, upon order of the supervisor and without any other escheat proceedings, shall escheat to the state of Washington. [1945 c 235 § 53; Rem. Supp. 1945 § 3717-172. Prior: 1933 c 183 § 38.]

Escheats: Chapter 11.08 RCW.

Uniform unclaimed property act: Chapter 63.29 RCW.

33.20.150 Deposits with interest to be repaid on request—Postponement of withdrawals—Procedure. The deposits paid into an association, together with any interest credited thereon, shall be repaid to the depositors thereof respectively, or to their legal representatives, upon request.

If, in the judgment of the board, circumstances warrant deferment of the payment of withdrawals from savings accounts to a later date, thereafter withdrawals shall be paid proportionately, on a percentage basis, to all depositors requesting withdrawal until full withdrawal requests are paid to all depositors. A board resolution of deferment shall not affect the payments of withdrawals from federal tax and loan accounts.

The board shall, however, have the right in its discretion, where need is shown, to pay not exceeding one hundred dollars to any account holder in one month.

If, upon examination, the supervisor finds that further postponement of withdrawals is unwarranted, the supervisor may order the association to resume full payment of withdrawals and cancel all written withdrawal requests. Such order shall be in writing.

The association's failure, during a period of postponement, to pay withdrawal requests shall not authorize the supervisor to take charge of or liquidate the association. [1982 c 3 § 41; 1979 c 113 § 5; 1953 c 71 § 5; 1945 c 235 § 54; Rem. Supp. 1945 § 3717-173. Prior: 1939 c 98 § 5; 1933 c 183 §§ 29, 30, 31, 32, 33, 34, 37; 1919 c 169 § 10; 1913 c 110 § 16; 1890 p 56 § 27.]

Severability—1982 c 3: See note following RCW 33.04.002.

Severability—1979 c 113: See note following RCW 33.04.020.

33.20.170 Withdrawals may be limited—Conditions. The supervisor further is empowered, if in his judgment the circumstances warrant it, to issue in writing a declaration that an acute business depression, state of panic, or economic emergency exists, in which event the directors of any

association, state or federal, within the state may limit withdrawals by resolution, subject to the following conditions; that incoming funds shall be applied:

First, to the payment of operating expenses, indebtedness, taxes, insurance, and to the necessary charges for the protection of the association and its investments;

Second, to the payment to members of emergency withdrawals not exceeding twenty-five dollars per month to any member. The board of directors of any association, with the prior written approval of the supervisor, by resolution may authorize the payment of emergency withdrawals not exceeding one hundred dollars per month to any member;

Third, to the payment of dividends on the savings of its members;

Fourth, three-fourths of all remaining receipts of the association, except interest payments, shall be applied to the payment of withdrawals, until all withdrawal requests have been paid.

All such withdrawal payments shall be made to members having withdrawal requests on file in proportion to the amount of such withdrawal requests. [1945 c 235 § 99; Rem. Supp. 1945 § 3717-218. Prior: 1939 c 98 § 5; 1933 c 183 §§ 29, 30, 31, 32, 33, 34; 1919 c 169 § 10; 1913 c 110 § 16; 1890 p 56 § 27.]

33.20.180 Classification of depositors—Regulation of earnings according to class. An association may classify its depositors according to the character, amount, frequency or duration of their dealings with the association and may regulate the earnings in such manner that each depositor receives the same rate of interest as all others of the depositor's class. [1982 c 3 § 42; 1969 c 107 § 9.]

Severability—1982 c 3: See note following RCW 33.04.002.

33.20.190 Withdrawal by association draft or negotiable or transferable order or authorization—Interest eligibility. An association may, on instruction from a depositor, effect withdrawals from the depositor's account by the association's drafts payable to parties and on terms as so instructed. An association may allow a depositor to effect withdrawals or transfers from the depositor's account upon negotiable or transferable order or authorization to the association. To the extent of the subjection of accounts to such withdrawal instructions or orders, such accounts may be specifically classified under RCW 33.20.180 and ineligible to receive interest or eligible only for limited interest. [1982 c 3 § 43; 1980 c 54 § 1; 1969 c 107 § 10.]

Severability—1982 c 3: See note following RCW 33.04.002.

Contingent effective date—1980 c 54: "The provisions of this 1980 amendatory act shall take effect on the effective date of a law enacted by the United States Congress enabling depository institutions in the state of Washington to allow the owner of a deposit or account on which interest or dividends are paid to make withdrawals by negotiable or transferable instruments for the purpose of making transfers to third parties." [1980 c 54 § 3.] Section 303 of the Consumer Checking Account Equity Act of 1980, 94 Stat. 145, authorizes the above-mentioned withdrawals. Section 303 has an effective date of December 31, 1980.

Chapter 33.24

LOANS AND INVESTMENTS

Sections

- 33.24.005 "Mortgage" includes deed of trust and real estate contract.
- 33.24.007 "Real property" defined.
- 33.24.010 Loans to any one person—Limitation.
- 33.24.015 Loans generally—Limitation.
- 33.24.020 Obligations of United States or Canada.
- 33.24.025 Investment in investment trusts or companies.
- 33.24.030 Obligations of this state.
- 33.24.040 Obligations of other states.
- 33.24.050 Obligations of municipal corporations in this state.
- 33.24.060 Obligations of municipal corporations in any state.
- 33.24.065 Obligations issued or guaranteed by multilateral development bank.
- 33.24.070 City or district light, water, and sewer revenue bonds.
- 33.24.080 Local improvement district bonds.
- 33.24.090 Obligations of federal and state agencies—Investment in other associations.
- 33.24.100 Loans or other obligations secured by real property.
- 33.24.115 Forming, incorporating with, or investing in other entities—Limitation.
- 33.24.160 Investment in office equipment and real property interests used in doing business.
- 33.24.200 Personal liability on unlawful loans.
- 33.24.210 Revenue bonds of public utility districts.
- 33.24.220 Stock or bonds of federal home loan bank.
- 33.24.270 Stock in small business investment companies.
- 33.24.295 Loans for nonbusiness family purposes—Limitation.
- 33.24.345 Acquisition of control of association—Authorized.
- 33.24.350 Acquisition of control of association—Definitions.
- 33.24.360 Acquisition of control of association—Unlawful, when—Application—Contents—Notice to other associations.
- 33.24.370 Acquisition of control of association—Action or proceeding to prevent—Grounds.
- 33.24.375 Acquisition of control of association—Application to foreign association branches.
- 33.24.380 Acquisition of control of association—Penalty.

Federal bonds and notes as investment or collateral: Chapter 39.60 RCW.

Interest and usury in general: Chapter 19.52 RCW.

Mortgages: Title 61 RCW.

Real property and conveyances: Title 64 RCW.

33.24.005 "Mortgage" includes deed of trust and real estate contract. The word "mortgage" as used in this title includes deed of trust and real estate contract. [1982 c 3 § 44; 1973 c 130 § 28.]

Severability—1982 c 3: See note following RCW 33.04.002.

Severability—1973 c 130: See note following RCW 33.24.350.

33.24.007 "Real property" defined. Unless the context clearly requires otherwise, "real property" means improved or unimproved real estate and includes leasehold interests in improved or unimproved real estate and includes manufactured housing whether temporarily, semipermanently, or permanently attached to land and mobile homes and manufactured homes whose title has been eliminated under chapter 65.20 RCW. [1989 c 343 § 23; 1982 c 3 § 49.]

Severability—Effective date—1989 c 343: See RCW 65.20.940 and 65.20.950.

Severability—1982 c 3: See note following RCW 33.04.002.

33.24.010 Loans to any one person—Limitation. An association may invest its funds only as provided in this chapter.

It shall not invest more than two and a half percent of its assets in any loan or obligation to any one person, except with the written approval of the supervisor. [1982 c 3 § 45; 1979 c 113 § 6; 1963 c 246 § 7; 1953 c 71 § 6; 1947 c 257 § 5; 1945 c 235 § 58; Rem. Supp. 1947 § 3717-177. Prior: 1939 c 98 § 11; 1933 c 183 §§ 39, 52, 56, 58; 1925 ex.s. c 144 § 5; 1913 c 110 §§ 8, 9; 1903 c 116 § 2; 1890 p 56 §§ 4, 30.]

Severability—1982 c 3: See note following RCW 33.04.002.

Severability—1979 c 113: See note following RCW 33.04.020.

33.24.015 Loans generally—Limitation. An association may invest not more than twenty percent of its assets in loans on such terms as it deems appropriate. [1982 c 3 § 51.]

Severability—1982 c 3: See note following RCW 33.04.002.

33.24.020 Obligations of United States or Canada. An association may invest its funds in loans upon or purchases of the bonds or obligations of or bonds or obligations guaranteed by the United States of America, including bonds of the District of Columbia, of the Dominion of Canada, or those for which the faith of the United States or the Dominion of Canada is pledged to provide for the payment of interest and principal: PROVIDED, That, in the case of bonds of the Dominion of Canada or those for which its faith is pledged, the interest and principal shall be payable in the United States or with exchange to a city in the United States and in lawful money of the United States or its equivalent. [1947 c 257 § 6; 1945 c 235 § 59; Rem. Supp. 1947 § 3717-178. Prior: 1939 c 98 § 11; 1935 c 9 §§ 1, 2, 3; 1933 c 183 § 56.]

33.24.025 Investment in investment trusts or companies. Except as may be limited by the supervisor by rule, an association may invest its funds in obligations of the United States, as authorized by RCW 33.24.020, either directly or in the form of securities of, or other interests in, an open-end or closed-end management type investment company or investment trust registered under the federal investment company act of 1940, as now or hereafter amended, if both of the following conditions are met:

(1) The portfolio of the investment company or investment trust is limited to obligations of the United States and to repurchase agreements fully collateralized by such obligations; and

(2) The investment company or investment trust takes delivery of the collateral for any repurchase agreement either directly or through an authorized custodian. [1989 c 97 § 3.]

33.24.030 Obligations of this state. An association may invest its funds in the bonds or interest bearing obligations of this state or any agency thereof. [1955 c 126 § 1; 1945 c 235 § 60; Rem. Supp. 1945 § 3717-179. Prior: 1939 c 98 § 11; 1933 c 183 § 56.]

33.24.040 Obligations of other states. An association may invest its funds in the bonds or interest bearing obligations of any other state of the United States upon which there is no existing default and upon which there has been

no default for more than ninety days within ten years immediately preceding the investment: PROVIDED, That such state has not been in default for more than ninety days, within said ten years, in the payment of any part of the principal or interest of any debt contracted by it or for which the faith of such state was pledged. [1945 c 235 § 61; Rem. Supp. 1945 § 3717-180. Prior: 1939 c 98 § 11; 1933 c 183 § 56.]

33.24.050 Obligations of municipal corporations in this state. An association may invest its funds in the valid warrants or bonds of any city, town, county, school district, port district, or other municipal corporation in the state of Washington which are issued pursuant to law and for the payment of which the faith and credit of such municipal corporations is pledged and taxes are leviable upon all taxable property within its limits. The aggregate of the investments of an association in any issue of such warrants or bonds shall at no time exceed five percent of the amount of its savings accounts. [1945 c 235 § 62; Rem. Supp. 1945 § 3717-181. Prior: 1939 c 98 § 11; 1933 c 183 § 56.]

33.24.060 Obligations of municipal corporations in any state. An association may invest its funds in the valid warrants or bonds of any city, county, school district, port district, or other municipal corporation in the United States having a population of not less than fifty thousand inhabitants as determined by the last federal census, which municipal corporation has not defaulted in the payment of interest or principal upon any general obligation, including those for which its credit was pledged, within ten years last past, and for the payment of which the faith and credit of such municipal corporation is pledged and taxes are leviable upon all taxable property within its limits. No such investment shall be made unless the warrants or bonds for purchase are rated not less than BAA by Moody's Investors' Service, or have equivalent rating of another standard rating bureau, and the aggregate of the investments of an association in any issue of such warrants or bonds shall at no time exceed five percent of the amount of its savings accounts. [1945 c 235 § 63; Rem. Supp. 1945 § 3717-182. Prior: 1939 c 98 § 11; 1933 c 183 § 56.]

33.24.065 Obligations issued or guaranteed by multilateral development bank. An association may invest in obligations issued or guaranteed by any multilateral development bank in which the United States government formally participates. Such investment in any one multilateral development bank shall not exceed five percent of the association's assets. [1985 c 301 § 3.]

33.24.070 City or district light, water, and sewer revenue bonds. An association may invest its funds in the revenue bonds of any city, town, district, or political subdivision of this state for the payment of which revenue of the city, town, district or political subdivision utility or revenue producing facility is irrevocably pledged.

It may invest its funds in the light, water, or sewer revenue bonds of any city or other municipal corporation in the United States having a population of not less than fifty thousand inhabitants as determined by the last federal census,

which has not defaulted in the payment of interest or principal upon this or any like obligation, including those for which its credit was pledged, within ten years last past, for the payment of which the entire revenue of the city's or other municipal corporation's light, water, or sewer system, less maintenance and operating costs, is irrevocably pledged.

The aggregate of the investments of an association in any issue of such revenue bonds shall at no time exceed five percent of the amount of its savings accounts. [1955 c 126 § 2; 1945 c 235 § 64; Rem. Supp. 1945 § 3717-183. Prior: 1939 c 98 § 11; 1933 c 183 § 56.]

33.24.080 Local improvement district bonds. An association may invest its funds in the bonds of any local improvement district of any city of this state (except bonds issued for an improvement consisting of grading only), the ultimate payment of which is guaranteed by the municipality under the provisions of guaranty laws of this state: **PROVIDED**, That one-half of the lots in the district are improved with revenue producing houses or other improvements and that local improvement district bonds falling within the twenty-five percent, in amount of any issue, last callable for payment shall neither be acquired nor taken as security. The aggregate of the investments of an association in any issue of such bonds shall at no time exceed three percent of the amount of its savings accounts, and it may not have invested, at any one time, more than one hundred thousand dollars in the bonds of any such district. [1953 c 71 § 7; 1945 c 235 § 65; Rem. Supp. 1945 § 3717-184. Prior: 1939 c 98 § 11; 1933 c 183 § 56.]

33.24.090 Obligations of federal and state agencies—Investment in other associations. An association may invest its funds in stock or notes, bonds, debentures, or other such obligations of any federal home loan bank, the Home Owners' Loan Corporation, any federal land bank, the Federal Savings and Loan Insurance Corporation, the Federal Housing Administration, the Federal National Mortgage Association, or any other instrumentality of the federal government, or any state or federal agency organized under the laws of the United States or of the state of Washington authorized to loan to or act as a fiscal agency for, or insurer of, a savings and loan association.

An association may become a member of and invest its funds in other savings and loan associations organized under either federal or state law, which have an authorized office in this state: **PROVIDED**, That the investment in any such other savings and loan association shall not exceed the amount which is insured by the Federal Savings and Loan Insurance Corporation. [1959 c 280 § 3; 1953 c 71 § 8; 1945 c 235 § 66; Rem. Supp. 1945 § 3717-185. Prior: 1939 c 98 § 11; 1935 c 9 §§ 1, 2, 3; 1933 c 183 § 56.]

33.24.100 Loans or other obligations secured by real property. An association may invest its funds in loans, mortgages, or other obligations secured by real property. [1982 c 3 § 46; 1979 c 113 § 7; 1969 c 107 § 5; 1949 c 20 § 6; 1945 c 235 § 67; Rem. Supp. 1949 § 3717-186. Prior: 1939 c 98 § 11; 1935 c 9 §§ 1, 2, 3; 1933 c 183 §§ 56, 58; 1925 ex.s. c 144 § 5; 1913 c 110 §§ 8, 9; 1903 c 116 § 2; 1890 p 56 § 4.]

Severability—1982 c 3: See note following RCW 33.04.002.

Severability—1979 c 113: See note following RCW 33.04.020.

33.24.115 Forming, incorporating with, or investing in other entities—Limitation. An association, alone or in conjunction with other entities, may form, incorporate, or invest in corporations or other entities, whether or not such other corporation or entity is related to the association's business. The aggregate amount of funds invested or used in the formation of corporations or other entities under this section shall not exceed ten percent of the assets of the association. [1982 c 3 § 50.]

Severability—1982 c 3: See note following RCW 33.04.002.

33.24.160 Investment in office equipment and real property interests used in doing business. An association may invest its funds in the acquisition of furniture, fixtures and office equipment convenient and necessary for the carrying on of its business.

An association may invest its funds in real property or leasehold interests therein for use in the transaction of its business. [1982 c 3 § 47; 1945 c 235 § 73; Rem. Supp. 1945 § 3717-192. Prior: 1939 c 98 § 11; 1933 c 183 § 56.]

Severability—1982 c 3: See note following RCW 33.04.002.

33.24.200 Personal liability on unlawful loans. Every director, officer, agent, or employee of an association who shall borrow or who shall knowingly permit any person to borrow any of its funds in violation of the provisions of this title shall be personally liable for any loss or damage which the association may sustain in consequence thereof. [1945 c 235 § 94; Rem. Supp. 1945 § 3717-213.]

33.24.210 Revenue bonds of public utility districts. See RCW 54.24.120.

33.24.220 Stock or bonds of federal home loan bank. See RCW 30.32.020.

Home loan bank as depositary: RCW 30.32.040.

May borrow from home loan bank: RCW 30.32.030.

33.24.270 Stock in small business investment companies. A savings and loan association may purchase and hold for its own investment accounts stock in small business investment companies licensed and regulated by the United States as authorized by the small business act, Public Law 85-536, as amended and now in force, in an amount not to exceed one percent of its assets. [1973 c 130 § 30; 1969 c 107 § 13.]

Severability—1973 c 130: See note following RCW 33.24.350.

Definitions—1973 c 130: See RCW 33.24.350.

33.24.295 Loans for nonbusiness family purposes—Limitation. An association may invest not to exceed twenty percent of its assets in loans for any nonbusiness family purposes. [1982 c 3 § 48; 1979 c 113 § 12; 1973 c 130 § 27.]

Severability—1982 c 3: See note following RCW 33.04.002.

Severability—1979 c 113: See note following RCW 33.04.020.

Severability—1973 c 130: See note following RCW 33.24.350.

33.24.345 Acquisition of control of association—Authorized. A person or other entity, including an association, organized under the laws of this state or authorized to transact business in this state, may acquire any or all of the assets or shares of stock of any association authorized to transact business under this title. [1982 c 3 § 52.]

Severability—1982 c 3: See note following RCW 33.04.002.

33.24.350 Acquisition of control of association—Definitions. Unless the context requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Subsidiary" of a person or other entity means any person or other entity which is controlled by such person or other entity.

(2) "Control" means directly or indirectly or acting in concert with one or more other persons or entities, or through one or more subsidiaries, owning, controlling, or holding with the power to vote twenty-five percent or more of the voting rights of an association.

(3) "Acquiring party" means the person or other entity acquiring control of a savings and loan association. [1982 c 3 § 53; 1973 c 130 § 1.]

Severability—1982 c 3: See note following RCW 33.04.002.

Severability—1973 c 130: "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 c 130 § 32.]

33.24.360 Acquisition of control of association—Unlawful, when—Application—Contents—Notice to other associations. (1) It is unlawful for any acquiring party to acquire control of an association until thirty days after the date of filing with the supervisor an application containing substantially all of the following information and any additional information that the supervisor may prescribe as necessary or appropriate in the public interest or for the protection of deposit account holders, borrowers or stockholders:

(a) The identity, character, and experience of each acquiring party by whom or on whose behalf acquisition is to be made;

(b) The financial and managerial resources and future prospects of each acquiring party involved in the acquisition;

(c) The terms and conditions of any proposed acquisition and the manner in which such acquisition is to be made;

(d) The source and amount of the funds or other consideration used or to be used in making the acquisition and, if any part of these funds or other consideration has been or is to be borrowed or otherwise obtained for the purpose of making the acquisition, a description of the transaction and the names of the parties. However, where a source of funds is a loan made in the lender's ordinary course of business, if the person filing the statement so requests, the supervisor shall not disclose the name of the lender to the public;

(e) Any plans or proposals which any acquiring party making the acquisition may have to liquidate the association to sell its assets, to merge it with any company, or to make any other major changes in its business or corporate structure or management;

(f) The identification of any persons employed, retained or to be compensated by the acquiring party, or by any

person on his behalf, who makes solicitations or recommendations to stockholders for the purpose of assisting in the acquisition, and brief description of the terms of such employment, retainer, or arrangements for compensation;

(g) Copies of all invitations for tenders or advertisements making a tender offer to stockholders for purchase of their stock to be used in connection with the proposed acquisition.

When an unincorporated company is required to file the statements under (1) (a), (b), and (f) of this section, the supervisor may require that the information be given with respect to each partner of a partnership or limited partnership, by each member of a syndicate or group, and by each person who controls a partner or member. When an incorporated company is required to file the statements under (1) (a), (b), and (f) of this section, the supervisor may require that the information be given for the corporation and for each officer and director of the corporation and for each person who is directly or indirectly the beneficial owner of twenty-five percent or more of the outstanding voting securities of the corporation. If any tender offer, request or invitation for tenders or other agreement to acquire control is proposed to be made by means of a registration statement under the federal securities act of 1933 (48 Stat. 74, 15 U.S.C. Sec. 77a), as amended, or in circumstances requiring the disclosure of similar information under the federal securities exchange act of 1934 (48 Stat. 881; 15 U.S.C. Sec. 77b), as amended, or in an application filed with the federal home loan bank board requiring similar disclosure, such registration statement or application may be filed with the supervisor in lieu of the requirements of this section.

(2) The supervisor shall give notice by mail to all associations doing business within the state of the filing of an application to acquire control of an association. The association shall transmit a check to the supervisor for two hundred dollars when filing the application to cover the expense of notification. Persons interested in protesting the application may contact the supervisor in person or by writing prior to a date which shall be given in the notice. [1982 c 3 § 54; 1979 c 113 § 13; 1973 c 130 § 2.]

Severability—1982 c 3: See note following RCW 33.04.002.

Severability—1979 c 113: See note following RCW 33.04.020.

Severability—1973 c 130: See note following RCW 33.24.350.

33.24.370 Acquisition of control of association—Action or proceeding to prevent—Grounds. The supervisor may within thirty days after the date of filing of the application under RCW 33.24.360, file an action or proceeding in superior court to prevent the pending acquisition of control if the supervisor finds any of the following:

(1) The acquisition would substantially lessen competition or would in any manner be in restraint of trade or would result in a monopoly, or would be in furtherance of any combination or conspiracy to monopolize or to attempt to monopolize the savings and loan business in any part of the state of Washington, unless the supervisor also finds that the anticompetitive effects of the proposed acquisition are clearly outweighed in the public interest by the probable effect of the acquisition in meeting the convenience and needs of the community to be served;

(2) The poor financial condition of any acquiring party might jeopardize the financial stability of the association being acquired or might prejudice the interests of the depositors, borrowers, or stockholders of the association or is not in the public interest;

(3) The plan or proposal under which the acquiring party intends to liquidate the association, to sell its assets, or to merge it with any person or company, or to make any other major change in its business or corporate structure or management, is not fair and reasonable to the association's depositors, borrowers, or stockholders or is not in the public interest; or

(4) The competence, experience and integrity of any acquiring party who would control the operation of the association indicates that approval would not be in the interest of the association's depositors, borrowers, or stockholders nor in the public interest. [1982 c 3 § 55; 1973 c 130 § 3.]

Severability—1982 c 3: See note following RCW 33.04.002.

Severability—1973 c 130: See note following RCW 33.24.350.

33.24.375 Acquisition of control of association—Application to foreign association branches. RCW 33.24.345, 33.24.350, 33.24.360, and 33.24.370 do not apply to foreign associations doing business in this state, except when an acquiring party intends to acquire only one or more branches of a foreign association which are located in this state. [1982 c 3 § 56.]

Severability—1982 c 3: See note following RCW 33.04.002.

33.24.380 Acquisition of control of association—Penalty. Any person who wilfully violates any provision of RCW 33.24.360, or any regulation or order thereunder, is guilty of a misdemeanor and shall upon conviction be fined not more than one thousand dollars for each day during which the violation continues. [1973 c 130 § 4.]

Severability—1973 c 130: See note following RCW 33.24.350.

Definitions—1973 c 130: See RCW 33.24.350.

Chapter 33.28 FEES AND TAXES

Sections

- 33.28.010 Filing and copy fees.
- 33.28.020 Fee for examination and supervision costs.
- 33.28.040 Taxation of associations.

33.28.010 Filing and copy fees. The secretary of state shall collect in advance the following fees from each association: For filing articles of incorporation, or amendments thereof, or other certificates required to be filed in his or her office, ten dollars; for furnishing copies of papers filed in his or her office, per folio, twenty cents.

Every association shall also pay to the secretary of state, for filing any instrument with him or her, the same fees as are required of general corporations for filing similar papers. [1981 c 302 § 33; 1945 c 235 § 76; Rem. Supp. 1945 § 3717-195.]

Severability—1981 c 302: See note following RCW 19.76.100.

Corporations, fees in general: Chapter 23B.01 RCW.

33.28.020 Fee for examination and supervision costs. The supervisor shall collect from each association a fee, the amount of which shall be set by rule, to cover the actual cost of examinations and supervision. [1982 c 3 § 57; 1974 ex.s. c 22 § 1; 1969 c 107 § 6; 1961 c 222 § 4; 1945 c 235 § 77; Rem. Supp. 1945 § 3717-196. Prior: 1933 c 183 § 82; 1919 c 169 § 11; 1913 c 110 § 18.]

Severability—1982 c 3: See note following RCW 33.04.002.

33.28.040 Taxation of associations. The fees provided for in this title shall be in lieu of all other corporation fees, licenses, or excises for the privilege of doing business, except for business and occupation taxes imposed pursuant to chapter 82.04 RCW, and except for license fees or taxes imposed by a city or town under RCW 82.14A.010, notwithstanding any other provisions of this section.

Neither an association nor its members shall be taxed upon its deposit accounts as property, nor shall a domestic association be taxed upon its real and tangible personal property at a rate greater than any federal association doing business in this state.

An association is an institution for deposits and neither it nor its property shall be taxed under any law which shall exempt banks or other savings institutions, state or federal, from taxation.

For all purposes of taxation, the assets represented by the contingent fund, guaranty fund, and other reserves (other than reserves for expenses and specific losses) of an association shall be deemed its only permanent capital and, in computing any tax, whether property, income, or excise, appropriate adjustments shall be made to give effect to the nature of such association. [1982 c 3 § 58; 1972 ex.s. c 134 § 4; 1970 ex.s. c 101 § 1; 1945 c 235 § 79; Rem. Supp. 1945 § 3717-198. Prior: 1933 c 183 § 86; 1913 c 110 § 17; 1890 p 56 §§ 35, 38.]

Severability—1982 c 3: See note following RCW 33.04.002.

Effective date—1972 ex.s. c 134: See RCW 82.14A.900.

Severability—1970 ex.s. c 101: "If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1970 ex.s. c 101 § 5.]

Effective date—1970 ex.s. c 101: "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 March 1, 1970." [1970 ex.s. c 101 § 6.]

City or town license fees or taxes on financial institutions: Chapter 82.14A RCW.

Chapter 33.32 FOREIGN ASSOCIATIONS

Sections

- 33.32.020 Examinations and reports.
- 33.32.030 Subject to state regulations and laws.
- 33.32.050 Power of attorney for service of process.
- 33.32.060 Reciprocity.
- 33.32.070 Failure to comply with title as disqualifying act.
- 33.32.080 Nonadmitted foreign associations—Powers relative to secured interests.

33.32.020 Examinations and reports. Unless prohibited by the laws of the state in which it is incorporated, a foreign association or like corporation authorized to do business in this state which, by the laws of the state in which it is incorporated, is required to be examined or to make reports to officers of such state, after each such examination or on the making of each such report, shall furnish to the supervisor a copy of such examination or report, certified by the officer of the state making such examination or receiving the report. [1982 c 3 § 59; 1945 c 235 § 81; Rem. Supp. 1945 § 3717-200. Prior: 1933 c 183 § 87; 1913 c 110 § 21; 1890 p 56 §§ 14, 37.]

Severability—1982 c 3: See note following RCW 33.04.002.

33.32.030 Subject to state regulations and laws. Except as to those matters relating strictly to its internal management which are governed by provisions of the law of the state of its incorporation inconsistent with this title, a foreign association or like corporation authorized to transact business in this state shall conduct its business in conformance with the provisions of this title and all requirements of the supervisor.

All agreements made by any foreign association or like corporation doing business in this state with any resident of this state shall be deemed and construed to be made within this state. [1982 c 3 § 60; 1945 c 235 § 82; Rem. Supp. 1945 § 3717-201. Prior: 1933 c 183 § 87; 1913 c 110 § 21; 1890 p 56 §§ 9, 14.]

Severability—1982 c 3: See note following RCW 33.04.002.

33.32.050 Power of attorney for service of process. No foreign savings and loan association or like corporation shall do business in this state until it shall file with the supervisor a written irrevocable power of attorney providing that service upon the supervisor of any process issued against it by any court in this state shall constitute valid service of such process upon it. Such service shall be had by serving upon the supervisor two copies of such summons or other process, together with the sum of two dollars. The supervisor, upon receipt of any such summons or other process, shall forthwith transmit, by registered mail, one copy thereof to the principal office of such foreign association or corporation. [1945 c 235 § 84; Rem. Supp. 1945 § 3717-203. Prior: 1933 c 183 § 87; 1890 p 56 §§ 9, 10, 12.]

33.32.060 Reciprocity. No foreign savings and loan association shall be permitted to do business in this state on more favorable terms and conditions than the associations organized under the laws of this state are permitted to do business in the state in which such foreign association or corporation is organized. [1945 c 235 § 85; Rem. Supp. 1945 § 3717-204. Prior: 1933 c 183 § 88; 1890 p 56 § 13.]

33.32.070 Failure to comply with title as disqualifying act. Any foreign savings and loan association or like corporation doing business in this state which fails to comply with any provision of this title as required shall not thereafter transact any business within this state. [1982 c 3 § 61; 1945 c 235 § 86; Rem. Supp. 1945 § 3717-205. Prior: 1933 c 183 § 89; 1913 c 110 § 21; 1890 p 56 §§ 14, 20.]

Severability—1982 c 3: See note following RCW 33.04.002.

33.32.080 Nonadmitted foreign associations—Powers relative to secured interests. See chapter 23B.18 RCW.

Chapter 33.36

PROHIBITED ACTS—PENALTIES

Sections

- 33.36.010 Illegal loans or investments.
- 33.36.020 Purchase at discount of accounts or certificates.
- 33.36.030 Preference in case of insolvency.
- 33.36.040 Falsification of books—Exhibiting false document—Making false statement of assets or liabilities.
- 33.36.050 False statement affecting financial standing.
- 33.36.060 Suppressing, secreting, or destroying evidence or records.

Assignment for benefit of creditors: Chapter 7.08 RCW.

False representations: Chapter 9.38 RCW.

33.36.010 Illegal loans or investments. Any director, officer, agent, or employee of an association who, on behalf of such association, shall knowingly and wilfully make or participate in making or consent to any loan or investment contrary to the provisions of this title shall be guilty of a gross misdemeanor. [1945 c 235 § 87; Rem. Supp. 1945 § 3717-206. Prior: 1933 c 183 §§ 53, 62, 102, 111; 1919 c 169 § 16; 1913 c 110 § 27.]

33.36.020 Purchase at discount of accounts or certificates. Any director, officer, agent, attorney, or employee of an association who, directly or indirectly, shall purchase at a discount any savings account in the association or any certificate or debenture of any segregation corporation holding assets formerly held by the association shall be guilty of a gross misdemeanor. [1945 c 235 § 88; Rem. Supp. 1945 § 3717-207. Prior: 1933 c 183 §§ 62, 101.]

33.36.030 Preference in case of insolvency. Every transfer of its property and assets by any association in this state, made in contemplation of insolvency, or after it becomes insolvent, with a view to the preference of one creditor or member over another, or to prevent the proper distribution of its property and assets among its creditors and members, shall be void.

Every director, officer, agent, or employee making such transfer or assisting therein is guilty of a class C felony as provided in chapter 9A.20 RCW. [1982 c 3 § 62; 1945 c 235 § 89; Rem. Supp. 1945 § 3717-208.]

Severability—1982 c 3: See note following RCW 33.04.002.

33.36.040 Falsification of books—Exhibiting false document—Making false statement of assets or liabilities. Every person who subscribes to or knowingly makes or causes to be made any false statement or false entry in the books of any association, or knowingly subscribes to or exhibits any false or fictitious security, document, or paper, with intent to deceive any person authorized to examine into the affairs of any association, or knowingly makes or publishes any false statement of the amount of the assets or liabilities of the association, is guilty of a class C felony as provided in chapter 9A.20 RCW. [1982 c 3 § 63; 1945 c

235 § 90; Rem. Supp. 1945 § 3717-209. Prior: 1933 c 183 § 101; 1919 c 169 §§ 12, 18; 1913 c 110 § 19.]

Severability—1982 c 3: See note following RCW 33.04.002.

33.36.050 False statement affecting financial standing. Any person who wilfully instigates, makes, circulates, or transmits to another or others any statement which the person knows to be false concerning the financial condition or affecting the financial standing of any association doing business in this state, or who wilfully counsels, aids, procures or induces another to start, transmit, or circulate any such statement which the person knows to be false, is guilty of a gross misdemeanor. [1982 c 3 § 64; 1945 c 235 § 92; Rem. Supp. 1945 § 3717-211. Prior: 1933 c 183 § 110.]

Severability—1982 c 3: See note following RCW 33.04.002.

33.36.060 Suppressing, secreting, or destroying evidence or records. Any person who, for the purpose of concealing any material fact, suppresses any evidence or abstract, removes, mutilates, destroys, or secretes any book, paper or record of an association, or of the supervisor, or of anyone connected with the association or the office of the supervisor, is guilty of a class C felony as provided in chapter 9A.20 RCW. [1982 c 3 § 65; 1945 c 235 § 91; Rem. Supp. 1945 § 3717-210. Prior: 1933 c 183 § 106; 1919 c 169 § 19.]

Severability—1982 c 3: See note following RCW 33.04.002.

Chapter 33.40

INSOLVENCY, LIQUIDATION, MERGER

Sections

- 33.40.010 Voluntary liquidation, merger, etc., authorized—Procedure.
- 33.40.020 Supervisor may take possession of domestic association on notice for delinquency.
- 33.40.030 Possession without notice.
- 33.40.040 Procedure on taking possession.
- 33.40.050 Involuntary liquidation—Procedure—Federal insurance corporation as liquidator.
- 33.40.060 Procedure to be as in receivership.
- 33.40.070 Liquidator's powers.
- 33.40.075 Investment of liquidation funds—Use of income.
- 33.40.080 Disposition of records.
- 33.40.110 Voluntary liquidation—Disposition of unclaimed dividends and records.
- 33.40.120 Removal of liquidator—Appellate review.
- 33.40.130 Payment of deposits accepted during economic emergency, preference.
- 33.40.150 Appointment of provisional officers and directors.

33.40.010 Voluntary liquidation, merger, etc., authorized—Procedure. Any domestic association may determine to enter upon voluntary liquidation, to transfer its assets and liabilities to another association, to merge with another association, to segregate its assets into classes, to charge off its losses in excess of its reserves.

Any such liquidation, transfer, merger, segregation, or charge-off shall be effected by the vote of a majority in amount of the members present, in person or by proxy, at any regular or special meeting of the members called for such purpose. Notice of such meeting, stating the purpose thereof, shall be given the supervisor at least thirty days

prior to the meeting and to the members pursuant to the provisions contained in RCW 33.20.010.

If such liquidation, transfer, merger, segregation, or charge-off be authorized by the members at the meeting, the directors of the association are authorized and shall effect such action, and the officers of the association shall execute all proper conveyances, documents, and other papers necessary or proper thereunto. [1949 c 20 § 9; 1945 c 235 § 102; Rem. Supp. 1949 § 3717-221. Prior: 1935 c 171 § 4; 1933 c 183 §§ 60, 78; 1919 c 169 § 17.]

33.40.020 Supervisor may take possession of domestic association on notice for delinquency. Whenever it appears to the supervisor that any domestic association is in an unsound condition or is conducting its business in an unsafe manner or is refusing to submit its books, papers, or concerns to lawful inspection, or that any director or officer thereof refuses to submit to examination on oath touching its concerns and affairs or that it has failed to carry out any authorized order or direction of the supervisor, the supervisor may give notice to the association so offending or delinquent or whose director or officer is thus offending or delinquent to correct such offense or delinquency and, if such association or such director or officer fails to correct the condition, offense, or delinquency within a reasonable time, as determined by the supervisor, the supervisor may take possession of the association. [1982 c 3 § 66; 1945 c 235 § 103; Rem. Supp. 1945 § 3717-222. Prior: 1933 c 183 §§ 68, 71.]

Severability—1982 c 3: See note following RCW 33.04.002.

33.40.030 Possession without notice. Whenever it shall appear to the supervisor that any association is in an unsound or unsafe condition to continue business or is insolvent, the supervisor may take possession thereof without notice. [1945 c 235 § 104; Rem. Supp. 1945 § 3717-223. Prior: 1933 c 183 §§ 68, 71.]

33.40.040 Procedure on taking possession. Upon the supervisor taking possession of any domestic association, the supervisor shall proceed to liquidate the association unless, in the supervisor's discretion, the supervisor shall determine to call a meeting of the members to consider either a proportionate charge-off against the deposit accounts to permit the association thereafter to continue in business, or whether the association should proceed to voluntary liquidation under the management of its board of directors. In such event, if the supervisor approves the decision of a majority in amount of the members present and voting, the supervisor shall order such action to be taken.

During any period of voluntary liquidation, the supervisor may take possession of the association and its assets and complete the liquidation whenever, in the supervisor's discretion, this seems advisable. [1982 c 3 § 67; 1945 c 235 § 105; Rem. Supp. 1945 § 3717-224. Prior: 1935 c 171 § 4; 1933 c 183 §§ 70, 72, 78; 1919 c 169 § 13; 1913 c 110 § 20.]

Severability—1982 c 3: See note following RCW 33.04.002.

33.40.050 Involuntary liquidation—Procedure—Federal insurance corporation as liquidator. Whenever the supervisor determines to liquidate the affairs of a

domestic association, the supervisor shall cause the attorney general to present to the superior court of the county in which the association has its principal place of business a written petition setting forth the date of the taking of possession, the reasons therefor, and other material facts concerning the affairs of the association and, if the court determines that the association should be liquidated, it shall appoint the supervisor, or other responsible person as recommended by the supervisor, as the liquidator of the association and fix and require a bond to be given by the liquidator conditioned for the faithful performance of the duties as such liquidator, but if the association has the insurance protection provided by Title IV of the National Housing Act, as now or hereafter amended, the court upon the request of the supervisor may tender to the federal savings and loan insurance corporation the appointment as liquidator.

Upon the filing with and approval by the court of the bond, the supervisor or other person appointed shall enter upon the duties as liquidator of the affairs of the association, and, under the direction of the court, shall administer and liquidate the assets thereof and apply the same to the payment of the expenses of liquidation and the debts of the association, and distribute the remainder to the deposit accounts proportionately.

If the court tenders the appointment as liquidator to the federal savings and loan insurance corporation, and if the insurance corporation accepts the appointment, it shall have and possess all the powers and privileges provided by the laws of this state with respect to a liquidator of an association, its depositors and other creditors, and be subject to all the duties of such liquidator, except insofar as such powers, privileges, or duties are in conflict with the provisions of Title IV of the National Housing Act, as now or hereafter amended. In any liquidation proceeding in which the insurance corporation is the liquidator, it may proceed to liquidate without being subject to the control of the court and without bond. [1982 c 3 § 68; 1973 c 130 § 29; 1945 c 235 § 106; Rem. Supp. 1945 § 3717-225. Prior: 1935 c 171 § 4; 1933 c 183 §§ 70, 72, 73, 74, 76, 77, 78; 1919 c 169 § 13; 1913 c 110 § 20.]

Severability—1982 c 3: See note following RCW 33.04.002.

Severability—1973 c 130: See note following RCW 33.24.350.

33.40.060 Procedure to be as in receivership. In any such liquidation proceeding, the court, except as otherwise in this title expressly provided, shall have the powers and proceed as in receivership proceedings. [1945 c 235 § 107; Rem. Supp. 1945 § 3717-226. Prior: 1935 c 171 § 4; 1933 c 183 §§ 70, 72, 73, 75, 76, 77, 78; 1919 c 169 § 13; 1913 c 110 § 20.]

33.40.070 Liquidator's powers. The liquidator, upon the approval of the court, may sell, discount, or compromise debts of the association and claims against its debtors. The liquidator, with the approval of the court, may lease, operate, repair, exchange, or sell, either for cash or upon terms, the real and personal property of the association.

The liquidator, with the approval of the court, when funds are available, may pay savings members whose

balances amount to not more than five dollars, the full amount of the balances.

Checks issued or payments held by the liquidator which remain undelivered for six months following the final liquidation dividend shall be deposited with the supervisor, after which the liquidator shall be discharged by the court. During ten years thereafter, the supervisor shall deliver the checks or payments, or the supervisor's own checks in lieu thereof, to the payee, or his legal representative, upon receipt of satisfactory evidence of the payee's right thereto. After the ten years, the supervisor shall cancel all such checks or payments remaining in the supervisor's possession and issue a check against the account for the amount thereof, payable to the state treasurer, and deliver it to the state treasurer. Such payment shall escheat to the state, without further legal proceedings. [1982 c 3 § 69; 1953 c 71 § 10; 1945 c 235 § 108; Rem. Supp. 1945 § 3717-227. Prior: 1935 c 171 § 4; 1933 c 183 §§ 70, 73, 74, 78.]

Severability—1982 c 3: See note following RCW 33.04.002.

33.40.075 Investment of liquidation funds—Use of income. All funds received by the supervisor from liquidations may be invested by the supervisor. The earnings from the moneys so held may be applied toward defraying the expenses incurred in the liquidations. [1982 c 3 § 70; 1951 c 105 § 1.]

Severability—1982 c 3: See note following RCW 33.04.002.

33.40.080 Disposition of records. Upon the termination of any liquidation proceeding, any files, records, documents, books of account, or other papers in the possession of the liquidator shall be surrendered into the possession of the supervisor, who, in his discretion at any time after the expiration of one year, may destroy any of such files, records, documents, books of account or other papers which appear to him to be obsolete or unnecessary for future reference. [1945 c 235 § 109; Rem. Supp. 1945 § 3717-228.]

33.40.110 Voluntary liquidation—Disposition of unclaimed dividends and records. In a voluntary liquidation of a domestic association, checks issued in the liquidation or funds representing liquidating dividends or otherwise which remain undelivered for six months following the final liquidating dividend, shall be deposited with the supervisor, together with any files, records, documents, books of account, or other papers of the association. The supervisor, at any time after one year from delivery, may destroy any of such files, records, documents, books of account, or other papers which appear to the supervisor to be obsolete or unnecessary for future reference. During ten years thereafter, the supervisor shall deliver such checks, or the supervisor's own checks in lieu thereof, or portions of such funds to the payee, or the payee's legal representative, upon receipt of satisfactory evidence of the payee's right thereto. After the ten years, the supervisor shall cancel all such checks remaining in the supervisor's possession and issue a check payable to the state treasurer for the amount thereof together with any other liquidating funds, and deliver them to the state treasurer. Such payment shall escheat to the state without further legal proceedings. [1982 c 3 § 71;

1953 c 71 § 11; 1945 c 235 § 112; Rem. Supp. 1945 § 3717-231.]

Severability—1982 c 3: See note following RCW 33.04.002.

Uniform unclaimed property act: Chapter 63.29 RCW.

33.40.120 Removal of liquidator—Appellate review.

The court, upon notice and hearing, may remove the liquidator for cause. Appellate review of the order of removal may be sought as in other civil cases.

During the pendency of any appeal, the director of general administration shall act as liquidator of the association, without giving any additional bond for the performance of the duties as such liquidator.

If such order of removal shall be affirmed, the director of general administration shall name another liquidator for the association, which nominee, upon qualifying as required for receivers generally, shall succeed to the position of liquidator of the association. [1988 c 202 § 34; 1982 c 3 § 72; 1971 c 81 § 86; 1945 c 235 § 113; Rem. Supp. 1945 § 3717-232.]

Rules of court: Appeal procedures superseded by RAP 2.1, 2.2, 18.22.

Severability—1988 c 202: See note following RCW 2.24.050.

Severability—1982 c 3: See note following RCW 33.04.002.

33.40.130 Payment of deposits accepted during economic emergency, preference. Savings deposits received by an association, during a period or periods of postponement of payment of withdrawals or of acute business depression, panic or economic emergency under authorization or declaration of the supervisor as hereinbefore provided, shall be repaid to the depositors paying in such savings before any liquidation dividends shall be declared or paid if, during such period or periods or at the expiration thereof, the supervisor takes charge of the association for liquidation, as provided in this title. [1982 c 3 § 73; 1945 c 235 § 100; Rem. Supp. 1945 § 3717-219.]

Severability—1982 c 3: See note following RCW 33.04.002.

33.40.150 Appointment of provisional officers and directors. (1) The supervisor of savings and loans, after exercising the authority granted in RCW 33.16.040, may appoint provisional officers and directors, in whole or in part, of an association.

(2) Notice of the appointment shall be served upon the association, and the appointment shall take effect immediately and shall remain in effect until a successor is chosen in accordance with the association's bylaws. [1985 c 239 § 2.]

Chapter 33.43

CONVERSION TO AND FROM FEDERAL ASSOCIATION

Sections

- 33.43.010 Conversion of domestic association to federal association.
- 33.43.020 Federal association—Powers.
- 33.43.030 Conversion of federal association to domestic association.

33.43.010 Conversion of domestic association to federal association. Any domestic association may convert itself into a federal mutual or stock savings and loan

association. Any such conversion shall be effected by the vote of a majority in amount of the members present, in person or by proxy, at any regular or special meeting of the members called for such purpose. Notice of such meeting, stating the purpose thereof, shall be given the supervisor at least thirty days prior to the meeting and to the members pursuant to the provisions contained in RCW 33.20.010.

If such conversion be authorized by the members at the meeting, the directors of the association are authorized and shall effect such action, and the officers of the association shall execute all proper conveyances, documents, and other papers necessary or proper thereunto.

If conversion be authorized, a copy of the minutes of the meeting shall be filed forthwith with the supervisor.

Upon consummation of such conversion, the successor federal savings and loan association shall succeed to all right, title, and interest of the domestic association in and to its assets, and to its liabilities to the creditors and members of the association. Upon such conversion, after the execution and delivery of all instruments of transfer, conveyance and assignment, the domestic association shall be deemed dissolved. [1982 c 3 § 74; 1949 c 20 § 10; 1945 c 235 § 116; Rem. Supp. 1949 § 3717-235. Prior: 1933 ex.s. c 15 §§ 1 through 6. Formerly RCW 33.44.100.]

Severability—1982 c 3: See note following RCW 33.04.002.

33.43.020 Federal association—Powers. Every federal savings and loan association, the home office of which is located in this state, and the savings accounts therein shall have all the rights, powers and privileges and be entitled to the same immunities and exemptions as pertain to savings and loan associations organized under the laws of this state. [1945 c 235 § 117; Rem. Supp. 1945 § 3717-236. Prior: 1939 c 98 § 9; 1933 c 183 § 50. Formerly RCW 33.44.110.]

33.43.030 Conversion of federal association to domestic association. Any federal savings and loan association the home office of which is located in this state may convert itself into a domestic savings and loan association of this state. For any such conversion, such federal association shall proceed as provided in this title for the conversion of a domestic association into a federal association.

Upon consummation of such conversion, the successor domestic association shall succeed to all right, title, and interest of the federal association in and to its assets, and to its liabilities to the creditors and members of such federal association. [1945 c 235 § 118; Rem. Supp. 1945 § 3717-237. Prior: 1939 c 98 § 1. Formerly RCW 33.44.120.]

Chapter 33.44

CONVERSION TO MUTUAL SAVINGS BANK

Sections

- 33.44.020 Conversion to a savings bank or commercial bank—Procedure.
- 33.44.080 Depositor's interest upon conversion.
- 33.44.090 Transfer of securities upon conversion.
- 33.44.125 Waiver of chapter requirements.
- 33.44.130 Rules implementing chapter—Standard.

33.44.020 Conversion to a savings bank or commercial bank—Procedure. Any association organized under the laws of this state, or under the laws of the United States, may, if it has obtained the approval, required by law or regulation, of any federal agencies, including the federal home loan bank board and the federal savings and loan insurance corporation, be converted into a savings bank or commercial bank in the following manner:

(1) The board of directors of such association shall pass a resolution declaring its intention to convert the association into a savings bank or commercial bank and shall apply to the supervisor of banking for leave to submit to the members of the association the question whether the association shall be converted into a savings bank or a commercial bank. A duplicate of the application to the supervisor of banking shall be filed with the supervisor of savings and loan associations, except that no such filing shall be required in the case of an association organized under the laws of the United States. The application shall include a proposal which sets forth the method by and extent to which membership or stockholder interests, as the case may be, in the association are to be converted into membership or stockholder interests, as the case may be, in the savings bank or commercial bank, and the proposal shall allow for any member or stockholder to withdraw the value of his interest at any time within sixty days of the completion of the conversion. The proposal shall be subject to the approval of the supervisor of banking and shall conform to all applicable regulations of the federal home loan bank board, the federal savings and loan insurance corporation, the federal deposit insurance corporation, or other federal regulatory agency.

(2) Thereupon the supervisor of banking shall make the same investigation and determine the same questions as would be required by law to make and determine in case of the submission to the supervisor of banking of a certificate of incorporation of a proposed new savings bank or commercial bank, and the supervisor of banking shall also determine after conference with the supervisor of savings and loan associations whether by the proposed conversion the business needs and conveniences of the members of the association would be served with facility and safety, except that no such conference shall be pertinent to such investigation or determination in the case of an association organized under the laws of the United States. After the supervisor of banking determines whether it is expedient and desirable to permit the proposed conversion, the supervisor of banking shall, within sixty days after the filing of the application, endorse thereon over the official signature of the supervisor of banking the word "granted" or the word "refused", with the date of such endorsement and shall immediately notify the secretary of such association of his decision. If an application to convert to a mutual savings bank is granted, the supervisor of banking shall require the applicants to enter into such an agreement or undertaking with the supervisor of banking as trustee for the depositors with the mutual savings bank to make such contributions in cash to the expense fund of the mutual savings bank as in the supervisor's judgment will be necessary then and from time to time thereafter to pay the operating expenses of the mutual savings bank if its earnings should not be sufficient to pay the same in addition

to the payment of such dividends as may be declared and credited to depositors from its earnings.

If the application is denied by the supervisor of banking, the association, acting by a two-thirds majority of its board of directors, may, within thirty days after receiving the notice of the denial, appeal to the superior court in the manner prescribed in *RCW 34.05.570.

(3) If the application is granted by the supervisor of banking or by the court, as the case may be, the board of directors of the association shall, within sixty days thereafter, submit the question of the proposed conversion to the members of the association at a special meeting called for that purpose. Notice of the meeting shall state the time, place and purpose of the meeting, and that the only question to be voted upon will be, "shall the (naming the association) be converted into a savings bank or commercial bank under the laws of the state of Washington?" The vote on the question shall be by ballot. Any member may vote by proxy or may transmit the member's ballot by mail if the bylaws provide a method for so doing. If two-thirds or more in number of the members voting on the question vote affirmatively, then the board of directors shall have power, and it shall be its duty, to proceed to convert such association into a savings bank or commercial bank; otherwise, the proposed conversion shall be abandoned and shall not be again submitted to the members within three years from the date of the meeting.

(4) If authority for the proposed conversion has been approved by the members as required by this section, the directors shall, within thirty days thereafter, subscribe and acknowledge and file with the supervisor of banking in triplicate a certificate of reincorporation, stating:

(a) The name by which the converted corporation is to be known.

(b) The place where the bank is to be located and its business transacted, naming the city or town and county, which city or town shall be the same as that where the principal place of business of the corporation has theretofore been located.

(c) The name, occupation, residence and post office address of each signer of the certificate.

(d) The amount of the assets of the corporation, the amount of its liabilities and the amount of its contingent, reserve, expense, and guaranty fund, as applicable, as of the first day of the then calendar month.

(e) A declaration that each signer will accept the responsibilities and faithfully discharge the duties of a trustee or director of the bank, and is free from all the disqualifications specified in the laws applicable to savings banks or commercial banks.

(f) Such other items as the supervisor of banking may require.

(5) Upon the filing of the certificate in triplicate, the supervisor of banking shall, within thirty days thereafter, if satisfied that all the provisions of this chapter have been complied with, issue in triplicate an authorization certificate stating that the corporation has complied with all the requirements of law, and that it has authority to transact at the place designated in its certificate of incorporation the business of a savings bank or commercial bank. One of the supervisor's certificates of authorization shall be attached to each of the certificates of reincorporation, and one set of

these shall be filed and retained by the supervisor of banking, one set shall be filed in the office of the secretary of state, and one set shall be transmitted to the bank for its files. Upon the receipt from the corporation of the same fees as are required for filing and recording other incorporation certificates or articles, the secretary of state shall file the certificates and record the same; whereupon the conversion of the association shall be deemed complete, and the signers of said reincorporation certificate and their successors shall thereupon become and be a corporation having the powers and being subject to the duties and obligations prescribed by the laws of this state applicable to savings banks or commercial banks, as the case may be. The time of existence of the corporation shall be perpetual unless provided otherwise in the articles of incorporation of the association or unless sooner terminated pursuant to law. [1982 c 3 § 75; 1981 c 302 § 34; 1979 ex.s. c 57 § 7; 1975 1st ex.s. c 111 § 1; 1927 c 177 § 1; 1917 c 154 § 1; RRS §§ 3749 through 3754. Formerly RCW 33.44.020 through 33.44.070.]

***Reviser's note:** Pursuant to 1988 c 288 § 706 (noted after RCW 34.05.902), a previous reference to RCW 34.04.130 was changed to RCW 34.05.570; but cf. RCW 34.05.510 through 34.05.594.

Severability—1982 c 3: See note following RCW 33.04.002.

Severability—1981 c 302: See note following RCW 19.76.100.

33.44.080 Depositor's interest upon conversion.

Upon the conversion of any association into a savings bank or commercial bank, every person who was a depositor of the association at the time of the conversion shall become and be deemed to be a depositor of the bank in a sum equal to the value of the deposit of the depositor as of the day on which the conversion was consummated. [1982 c 3 § 76; 1927 c 177 § 2; 1917 c 154 § 2; RRS § 3755.]

Severability—1982 c 3: See note following RCW 33.04.002.

33.44.090 Transfer of securities upon conversion.

All mortgages, notes and other securities of any association that has been converted into a savings bank or commercial bank, shall on request of the bank, be delivered to it by the supervisor of savings and loan associations or under the supervisor's direction by any depository having possession thereof. Every such bank shall, as soon as practicable and within such time and by such methods as the supervisor of banking may direct, cause its organization, its securities and investments, the character of its business and its methods of transacting the same to conform to the laws applicable to savings banks or commercial banks, as applicable. [1982 c 3 § 77; 1927 c 177 § 3; 1917 c 154 § 3; RRS § 3756.]

Severability—1982 c 3: See note following RCW 33.04.002.

33.44.125 Waiver of chapter requirements. If, in the opinion of the supervisor of savings and loans and the supervisor of banking, it is necessary for any of the requirements of this chapter to be waived in order to permit an association which is in danger of failing to convert its charter to that of a commercial bank or a savings bank so that the association may be acquired by a commercial bank or a savings bank or a bank holding company, then the supervisor of savings and loans and the supervisor of banking may waive any such requirement. [1982 c 3 § 78.]

Severability—1982 c 3: See note following RCW 33.04.002.

33.44.130 Rules implementing chapter—Standard.

The supervisor of savings and loan associations and the supervisor of banking shall adopt such rules under the administrative procedure act, chapter 34.05 RCW, as are necessary to implement this chapter in a manner which protects the relative interests of members, depositors, borrowers, stockholders, and creditors. [1982 c 3 § 79.]

Severability—1982 c 3: See note following RCW 33.04.002.

Chapter 33.46

CONVERSION OF SAVINGS BANK OR COMMERCIAL BANK TO ASSOCIATION

(Formerly: Conversion of mutual savings bank to building and loan or savings and loan association)

Sections

33.46.010	Definitions.
33.46.020	Conversion of bank to association—Procedure.
33.46.030	Cash contributions to expense fund if becoming domestic mutual association.
33.46.040	Appeal from denial of application.
33.46.050	Certificate of reincorporation—Required—Filing—Contents.
33.46.060	Issuance of authorization certificate—Filing—Completion of conversion—Effect.
33.46.070	Depositor's interest upon conversion.
33.46.080	Transfer of securities—Conformance to state association laws, when.
33.46.090	Assets, liabilities, etc., vested in association upon conversion.
33.46.100	Initial meeting of shareholders of domestic association—Notice—Proxy voting.
33.46.110	Conversion to federal association—Procedure.
33.46.130	Rules implementing chapter—Standard.

33.46.010 Definitions. As used in this chapter, unless the context indicates otherwise:

(1) "Association" means any association organized under the laws of this state or the laws of the United States of America;

(2) "Director" means a member of the board of directors of an association, savings bank, or commercial bank, as applicable;

(3) "Bank" means a savings bank or commercial bank organized under the laws of this state; and

(4) "Trustee" means a member of the managing board of a mutual savings bank. [1982 c 3 § 80; 1975 1st ex.s. c 83 § 1.]

Severability—1982 c 3: See note following RCW 33.04.002.

33.46.020 Conversion of bank to association—Procedure. Any bank may be converted into an association in the following manner:

(1) The trustees or directors of the bank shall pass, by at least a two-thirds favorable vote of all trustees or directors, a resolution declaring its intention to convert the bank into an association, specifying in such resolution the type of association and whether the association is to be organized under the laws of this state, or is to be organized under the laws of the United States of America. If the association is to be a state association the bank shall apply to the supervisor of savings and loan associations for authority to convert into an association. The application shall include a proposal which sets forth the method by and extent to which membership or stockholder interests, as the case may be, in the

bank are to be converted into membership or shareholder interest, as the case may be, in the association, and the proposal shall allow for any member or stockholder to withdraw the value of his interest at any time within sixty days of the completion of the conversion. The proposal is subject to the approval of the supervisor of savings and loans and shall conform to all applicable regulations of the federal deposit insurance corporation, the federal home loan bank board, the federal savings and loan insurance corporation, or other federal regulatory agency.

(2) A duplicate of the application made to the supervisor of savings and loan associations, or such application as may be filed with the federal home loan bank board or other federal agency, shall be filed with the supervisor of banking.

(3) The supervisor of savings and loan associations shall, in the case of an application to convert into a state association, make the same investigation and determine the same questions as he would be required by law to make in determining the case of submission to him of articles of incorporation of a proposed new state association, and shall also determine, after conference with the supervisor of banking, whether the proposed conversion would serve the needs and conveniences of the depositors of the bank.

(4) The supervisor of savings and loan associations shall grant or deny the application within sixty days of its date of filing and shall immediately notify the secretary of the bank of the decision. [1982 c 3 § 81; 1975 1st ex.s. c 83 § 2.]

Severability—1982 c 3: See note following RCW 33.04.002.

33.46.030 Cash contributions to expense fund if becoming domestic mutual association. If the application to become a domestic mutual association is granted, the supervisor of savings and loan associations shall require the applicant to enter into an agreement or undertaking with the supervisor, as trustee for the members of the association, to make such cash contributions to an expense fund of the mutual association as in the supervisor's judgment will be necessary then and from time to time thereafter to pay the operating expenses of the association if its earnings should not be sufficient to pay the same in addition to the payment of such dividends as may be declared and credited to members from its earnings. [1982 c 3 § 82; 1975 1st ex.s. c 83 § 3.]

Severability—1982 c 3: See note following RCW 33.04.002.

33.46.040 Appeal from denial of application. If the application is denied by the supervisor of savings and loan associations, the bank, acting by a two-thirds majority of its trustees or directors, may, within thirty days after receiving notice of such denial, appeal to the superior court of Thurston county pursuant to the provisions of the administrative procedure act, chapter 34.05 RCW. [1982 c 3 § 83; 1975 1st ex.s. c 83 § 4.]

Severability—1982 c 3: See note following RCW 33.04.002.

33.46.050 Certificate of reincorporation—Required—Filing—Contents. If the application is granted by the supervisor of savings and loan associations, or by the court, the trustees or directors of the bank shall, within thirty days thereafter, subscribe, acknowledge, and file with the

supervisor of savings and loan associations, in triplicate, a certificate of reincorporation stating:

(1) The name by which the association is to be known;
 (2) The place where the association is to be located and its business transacted, naming the city or town and the county, which city or town shall be the same as that where the principal place of business of the bank has theretofore been located;

(3) The name, occupation, residence, and post office address of each signer of the certificate;

(4) The amount of the assets of the association, the amount of its liabilities, and the amount of its contingent, expense, or guaranty fund, as applicable, as of the first day of the calendar month during which the certificate is filed; and

(5) A declaration that each signer will accept the responsibilities and faithfully discharge the duties of a director of the association, and is free from all the disqualifications specified in the laws applicable to savings and loan associations. [1982 c 3 § 84; 1981 c 302 § 35; 1975 1st ex.s. c 83 § 5.]

Severability—1982 c 3: See note following RCW 33.04.002.

Severability—1981 c 302: See note following RCW 19.76.100.

33.46.060 Issuance of authorization certificate—Filing—Completion of conversion—Effect. Upon filing the certificate in triplicate as provided in RCW 33.46.050, the supervisor of savings and loan associations shall, within thirty days thereafter, if satisfied that all the provisions of this chapter have been complied with, issue in triplicate an authorization certificate stating that the association has complied with all of the requirements of law, and that it has authority to transact, at the place or places designated in its certificate, the business of an association. The supervisor of savings and loan associations shall retain one set of the triplicate originals of the certificate of reincorporation and of the certificate of authorization and shall transmit the other two sets to the association, which shall retain one set, and file one set with the secretary of state, paying the required fees. Upon such filings being made, the conversion of the bank to the association shall be deemed complete and consummated, and the association shall thereupon be a corporation having the powers and being subject to the duties and obligations prescribed by the laws of this state applicable to state associations, and the time of existence of such association shall be perpetual, unless sooner terminated. [1982 c 3 § 85; 1981 c 302 § 36; 1975 1st ex.s. c 83 § 6.]

Severability—1982 c 3: See note following RCW 33.04.002.

Severability—1981 c 302: See note following RCW 19.76.100.

33.46.070 Depositor's interest upon conversion. Upon conversion of a bank into an association, every person who was a depositor of the bank at the time of the conversion shall become and be deemed to be a depositor of the association in a sum equal to the value of the deposits of the depositor in the bank as of the day on which the conversion was consummated. [1982 c 3 § 86; 1975 1st ex.s. c 83 § 7.]

Severability—1982 c 3: See note following RCW 33.04.002.

33.46.080 Transfer of securities—Conformance to state association laws, when. All mortgages, notes, and other securities of any bank that has been converted into an association shall, on request of the association, be delivered to it by the supervisor of banking or, under the direction of the supervisor of banking, by any depository having possession thereof. If the association is a state association it shall, as soon as practicable and within such time and by such methods as the supervisor of savings and loan associations may direct, cause its organization, its securities and investments, the character of its business, and its methods of transacting the same to conform to the laws applicable to state associations. [1982 c 3 § 87; 1975 1st ex.s. c 83 § 8.]

Severability—1982 c 3: See note following RCW 33.04.002.

33.46.090 Assets, liabilities, etc., vested in association upon conversion. Upon a conversion being consummated all assets, rights and properties of the bank shall vest in and be the property of the association and all liabilities, debts, and obligations of the bank shall be the liabilities, debts, and obligations of the association and any right can be enforced by or against the association the same as it could have been enforced by or against the bank if the conversion had not occurred. [1975 1st ex.s. c 83 § 9.]

33.46.100 Initial meeting of shareholders of domestic association—Notice—Proxy voting. Within twelve months following consummation of the conversion, the directors of a domestic association shall call a meeting of the members for the purpose of electing directors and conducting such other business of the association as is appropriate. Notice of such meeting shall be mailed not less than ten nor more than thirty days in advance of the meeting to the last known address of each member. The notice may also include a proxy form authorizing any one or more persons, who may be directors or officers of the association, selected by the directors, to vote on behalf of any member executing such proxy. [1982 c 3 § 88; 1975 1st ex.s. c 83 § 10.]

Severability—1982 c 3: See note following RCW 33.04.002.

33.46.110 Conversion to federal association—Procedure. If the bank specifies in the resolution that it intends to become a federal association, it shall proceed to make all filings and do all things which are required by federal laws and regulations to qualify as and become a federal association, and when all such things have been accomplished and a charter has been issued by the appropriate federal agency, the bank shall thereupon cease to be a bank organized under the laws of this state. [1982 c 3 § 89; 1975 1st ex.s. c 83 § 11.]

Severability—1982 c 3: See note following RCW 33.04.002.

33.46.130 Rules implementing chapter—Standard. The supervisor of savings and loan associations and the supervisor of banking shall adopt such rules under the administrative procedure act, chapter 34.05 RCW, as are necessary to implement this chapter in a manner which protects the relative interests of members, depositors, borrowers, stockholders, and creditors. [1982 c 3 § 90.]

Severability—1982 c 3: See note following RCW 33.04.002.

Chapter 33.48

STOCK ASSOCIATIONS

(Formerly: Guaranty stock state savings and loan associations)

Sections

- 33.48.025 Applicability of chapter 23B.06 RCW.
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- 33.48.040 Stock dividends, when.
- 33.48.080 Member's proprietary interest—Subordinate to claims of creditors.
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- 33.48.100 Conversion procedure—Domestic stock to domestic mutual association.
- 33.48.110 Conversion procedure—Mutual association to domestic stock association—Rules implementing section—Standard.
- 33.48.120 Conversion procedure—Creation of permanent loss reserve—Disposition of reserve upon liquidation.
- 33.48.130 Withdrawal of charter amendment or conversion application.
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- 33.48.180 Permit authorizing sale of stock—Applicability.
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- 33.48.200 Permit authorizing sale of stock—Application—Contents.
- 33.48.210 Permit authorizing sale of stock—Examination and investigation—Issuance or denial.
- 33.48.220 Recitation in permit to take subscriptions for stock.
- 33.48.230 Sales of stock—Imposition of conditions.
- 33.48.240 Organizing permit—Amendment, alteration, suspension, or revocation by supervisor—Grounds.
- 33.48.250 Purchase by association of stock issued by it—Conditions.
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- 33.48.280 Paid-in or contributed surplus or surplus created by reduction of stock—Application and uses.
- 33.48.290 RCW 33.48.150 through 33.48.280 inapplicable to foreign associations.
- 33.48.320 Waiver of chapter requirements.

33.48.025 Applicability of chapter 23B.06 RCW. Except to the extent provided otherwise in this title, stock associations are subject to the provisions of chapter 23B.06 RCW. [1991 c 72 § 51; 1982 c 3 § 91; 1981 c 84 § 4.]

Severability—1982 c 3: See note following RCW 33.04.002.

33.48.030 Minimum amount of permanent stock required—Preferred or special classes of shares authorized. Stock associations shall have permanent stock which may be issued with or without par value but with a statement of value of nonpar stock in accordance with Title 23B RCW. The minimum amount of such stock shall be twenty-five thousand dollars in the case of associations outside of incorporated cities, or in cities of less than twenty-five thousand population. Associations located in cities of greater population shall have as a minimum, fifty thousand dollars of such stock. The board of such association is authorized and directed to issue and maintain the stock in the following percentages: Three percent upon the first five million dollars; two percent upon the next three million dollars, and one percent upon all additional withdrawable savings: PROVIDED, That associations whose savings are insured by the Federal Savings and Loan Insurance Corporation shall not be required to maintain stock in excess of three hundred

thousand dollars. A stock association may issue preferred or special classes of shares as provided in chapter 23B.06 RCW. [1991 c 72 § 52; 1982 c 3 § 92; 1981 c 84 § 1; 1969 c 107 § 7; 1963 c 246 § 9; 1955 c 122 § 4.]

Severability—1982 c 3: See note following RCW 33.04.002.

33.48.040 Stock dividends, when. No dividends shall be declared on stock until the association has met the net worth and federal insurance requirements of the federal savings and loan insurance corporation. Subject to the provisions of this chapter, stock shall be entitled to such rate of dividend, if earned, as fixed by the board. Stock dividends may be declared and issued by the board at any time, payable from otherwise unallocated surplus and undivided profits. [1982 c 3 § 93; 1981 c 84 § 2; 1979 c 113 § 14; 1955 c 122 § 5.]

Severability—1982 c 3: See note following RCW 33.04.002.

Severability—1979 c 113: See note following RCW 33.04.020.

33.48.080 Member's proprietary interest—Subordinate to claims of creditors. Each member in a stock association shall have a proportionate proprietary interest in its assets and net earnings subordinate to the claims of its creditors with priorities as established by this chapter. [1982 c 3 § 94; 1969 c 107 § 8; 1967 c 49 § 6; 1955 c 122 § 9.]

Severability—1982 c 3: See note following RCW 33.04.002.

33.48.090 Dividends only if interest paid on deposits. No dividend shall be paid or credited upon shares of stock for any period in which the association has not declared and paid interest on deposits eligible to receive interest. [1982 c 3 § 95; 1955 c 122 § 10.]

Severability—1982 c 3: See note following RCW 33.04.002.

33.48.100 Conversion procedure—Domestic stock to domestic mutual association. A domestic stock association may convert to a domestic mutual association under the provisions of applicable statutes and regulations of proper federal and state supervisory authorities. In the event of compliance with such statutes and regulations an appraisal of the stock shall be made by the supervisor, upon written request of the directors of the association, and the appropriate value of the stock may be given consideration in the proceedings to convert by giving credit to such stock from surplus and other reserves. [1982 c 3 § 96; 1955 c 122 § 11.]

Severability—1982 c 3: See note following RCW 33.04.002.

33.48.110 Conversion procedure—Mutual association to domestic stock association—Rules implementing section—Standard. Any mutual association, either domestic or federal, operating in the state of Washington may convert itself into a domestic stock association. The conversion shall be effected by the vote of two-thirds of the members present and voting in person or by proxy at any regular or special meeting of the members called for such purpose. Notice of such meeting, stating the purpose thereof, shall be given to the supervisor and to each member by mailing notice to the

member's last known address at least thirty days prior to the meeting.

At the meeting, the members may adopt a resolution amending its articles of incorporation and bylaws to provide for operation under this chapter as a stock association.

Upon adoption of the resolution, members shall be given notice of the proposed change and shall be offered, for a period of sixty days following the date of the meeting, the right to subscribe for the proposed stock, pro rata to their deposits in such mutual association, and such right shall be transferable. In the event that the total stock required has not, at the end of the sixty day period, been fully subscribed, the unsubscribed portion shall be offered to any former subscribers for such stock.

When the stock has been fully subscribed and paid for, certified copies of the documents relating to the conversion shall be submitted to the supervisor for his approval of the conversion proceedings. Upon notification by the supervisor that the supervisor approves the conversion, the directors shall adopt a resolution declaring the association to be a stock association and thereafter it shall be such.

The supervisor shall adopt such rules under chapter 34.05 RCW, the administrative procedure act, as are necessary to implement this section in a manner which protects the relative interests of members, depositors, borrowers, stockholders, and creditors. [1982 c 3 § 97; 1955 c 122 § 12.]

Severability—1982 c 3: See note following RCW 33.04.002.

33.48.120 Conversion procedure—Creation of permanent loss reserve—Disposition of reserve upon liquidation. The accumulated surplus and unallocated reserves of an association at the time of conversion to a stock association shall be designated as a permanent loss reserve against which any losses incurred on assets may be charged. In case of liquidation the remaining sum in said permanent loss reserve shall be distributed to the depositors in proportion to the withdrawable value of their deposit accounts at the time of liquidation. In liquidation, after payment of all liabilities and the withdrawable value of all types and classes of deposit accounts together with the remainder in the permanent loss reserve heretofore mentioned, any excess shall be paid pro rata to the stockholders. [1982 c 3 § 98; 1955 c 122 § 13.]

Severability—1982 c 3: See note following RCW 33.04.002.

33.48.130 Withdrawal of charter amendment or conversion application. The directors of an association which has voted to amend its charter or convert to another type of institution, may withdraw the application at any time prior to the issuance of the amended charter, by adopting a proper resolution and forwarding a copy to the supervisor. [1955 c 122 § 14.]

33.48.140 Legislative intent—Chapter to control over conflicting provisions. It is the intention of the legislature to grant, by this chapter, authority to create stock associations in this state, by either organization or conversion under its provisions, and in the event of conflict between the provisions of this chapter and other provisions of Title 33 RCW, such other provisions shall be construed in favor of

the accomplishment of the purposes of this chapter. [1982 c 3 § 99; 1955 c 122 § 15.]

Severability—1982 c 3: See note following RCW 33.04.002.

33.48.150 Organizing permit—Required. No subscriptions or funds from proposed stockholders of any proposed association, prior to its incorporation and prior to a decision by the supervisor on its application for approval of its articles of incorporation, may be solicited or taken until a verified application for an organizing permit has been filed and a permit has been issued by the supervisor authorizing such subscription or collection of funds and then, only in accordance with the terms of such permit. [1973 c 130 § 6.]

Severability—1973 c 130: See note following RCW 33.24.350.

Definitions—1973 c 130: See RCW 33.24.350.

33.48.160 Organizing permit—Application. The application for an organizing permit under RCW 33.48.150 shall be in writing, verified as provided by law for the verification of pleadings and shall be filed in the office of the supervisor. Such application shall be signed by the proposed incorporators and shall include the following:

- (1) The names and addresses of its proposed directors, officers and incorporators, to the extent known;
- (2) The proposed location of its office;
- (3) A copy of any contract proposed to be used for the solicitation of stock subscriptions and funds for its preincorporation expenses;
- (4) A copy of any advertisement, circular, or other written matter proposed to be used for soliciting stock subscriptions and funds for its preincorporation expenses;
- (5) A statement of the total funds proposed to be solicited and collected prior to incorporation and an itemized estimate of the preincorporation expenses proposed to be paid;
- (6) A list of the names and addresses and amounts of each of the known proposed stockholders and contributors to the fund for preincorporation expenses; and
- (7) Such additional information as the supervisor may require. [1973 c 130 § 7.]

Severability—1973 c 130: See note following RCW 33.24.350.

Definitions—1973 c 130: See RCW 33.24.350.

33.48.170 Organizing permit—Conditions. The supervisor may impose conditions in the supervisor's organizing permit issued under RCW 33.48.150 concerning the deposit in escrow of funds collected pursuant to said permit, the manner of expenditure of such funds and such other conditions as he deems reasonable and necessary or advisable for the protection of the public and the subscribers to such stock or funds for preincorporation expenses. [1982 c 3 § 100; 1973 c 130 § 8.]

Severability—1982 c 3: See note following RCW 33.04.002.

Severability—1973 c 130: See note following RCW 33.24.350.

33.48.180 Permit authorizing sale of stock—Applicability. No association shall sell, take subscriptions for, or issue any stock until the association applies for and

secures from the supervisor a permit authorizing it to sell stock.

This section does not apply to an offering involving less than five hundred thousand dollars nor to an offering made under a registration statement filed under the federal securities act of 1933 (48 Stat. 74; 15 U.S.C. Sec. 77a). [1982 c 3 § 101; 1973 c 130 § 5.]

Severability—1982 c 3: See note following RCW 33.04.002.

Severability—1973 c 130: See note following RCW 33.24.350.

33.48.190 Permit authorizing sale of guaranty stock—Required prior to sale of issued or outstanding stock. No issued and outstanding stock of an association shall be sold or offered for sale to the public, nor shall subscriptions be solicited or taken for such sales until the association or the selling stockholders have applied for and secured from the supervisor a permit authorizing the sale of the guaranty stock.

This section shall not apply to an offering involving less than ten percent of the issued and outstanding guaranty stock of an association and less than five hundred thousand dollars nor to an offering made under a registration statement filed under the Securities Act of 1933 (48 Stat. 74; 15 U.S.C. Sec. 77a). [1973 c 130 § 9.]

Severability—1973 c 130: See note following RCW 33.24.350.

Definitions—1973 c 130: See RCW 33.24.350.

33.48.200 Permit authorizing sale of stock—Application—Contents. An application for a permit to sell stock shall be in writing and shall be filed in the office of the supervisor by the association.

The application shall include the following:

- (1) Regarding the association:
 - (a) The names and addresses of its officers;
 - (b) The location of its office;
 - (c) An itemized account of its financial condition within ninety days of the filing date; and
 - (d) A copy of all minutes of any proceedings of its directors, shareholders, or stockholders relating to or affecting the issue of such stock;
- (2) Regarding the offering:
 - (a) The names and addresses of the selling stockholders and of the officers of any selling corporation and the partners of any selling partnership;
 - (b) A copy of any contract concerning the sale of the stock;
 - (c) A copy of a prospectus or advertisement or other description of the stock prepared for distribution or publication in accordance with requirements prescribed by the supervisor;
 - (d) A brief description of the method by which the stock is to be offered for sale including the offering price and the underwriting commissions and expense, if any; and
- (3) Such additional information as the supervisor may require. [1982 c 3 § 102; 1973 c 130 § 10.]

Severability—1982 c 3: See note following RCW 33.04.002.

Severability—1973 c 130: See note following RCW 33.24.350.

33.48.210 Permit authorizing sale of stock—Examination and investigation—Issuance or denial. Upon the filing of the application for a permit to sell stock, the

supervisor shall examine the application and other papers and documents filed therewith and he may make a detailed examination, audit, and investigation of the association and its affairs. If the supervisor finds that the proposed plan for the issue and sale of such stock is fair, just and equitable, the supervisor shall issue to the applicant a permit authorizing it to issue and dispose of its stock in such amounts and for such considerations and upon such terms and conditions as the supervisor may provide in the permit. If the supervisor does not so find he shall deny the application and notify the applicant in writing of his decision. [1982 c 3 § 103; 1973 c 130 § 11.]

Severability—1982 c 3: See note following RCW 33.04.002.

Severability—1973 c 130: See note following RCW 33.24.350.

33.48.220 Recitation in permit to take subscriptions for stock. Every permit to take subscriptions for stock shall recite in bold face type that the issuance thereof is permissive only and does not constitute a recommendation or endorsement of the stock permitted to be issued. [1982 c 3 § 104; 1973 c 130 § 12.]

Severability—1982 c 3: See note following RCW 33.04.002.

Severability—1973 c 130: See note following RCW 33.24.350.

33.48.230 Sales of stock—Imposition of conditions. With respect to sales of stock by an association, the supervisor may impose conditions requiring the impoundment of the proceeds from the sale of stock, limiting the expense in connection with the sale of such stock, and other conditions as he deems reasonable and necessary or advisable to insure the disposition of the proceeds from the sale of such stock in the manner and for the purposes provided in the permit. [1982 c 3 § 105; 1973 c 130 § 13.]

Severability—1982 c 3: See note following RCW 33.04.002.

Severability—1973 c 130: See note following RCW 33.24.350.

33.48.240 Organizing permit—Amendment, alteration, suspension, or revocation by supervisor—Grounds. The supervisor may amend, alter, suspend, or revoke any permit issued under RCW 33.48.150 if there is a violation of the terms and conditions of the permit or if the supervisor determines that the subscription or proposed issue and sale is no longer fair, just, and equitable. [1982 c 3 § 106; 1973 c 130 § 14.]

Severability—1982 c 3: See note following RCW 33.04.002.

Severability—1973 c 130: See note following RCW 33.24.350.

33.48.250 Purchase by association of stock issued by it—Conditions. An association may purchase stock issued by it in an amount not to exceed the amount of earned surplus or undivided profits available for dividends on its stock if: The stock so purchased is included for federal estate tax purposes in determining the gross estate of a decedent, and the amount paid for such purchase is entitled to be treated under section 303 of the Internal Revenue Code of 1954 (68A Stat. 3; 26 U.S.C. Sec. 1), or other applicable federal statute or the corresponding provision of any future federal revenue law, as a distribution in full payment in exchange for the stock so purchased, or such purchase is with the prior consent of the supervisor, or such purchase is

pursuant to a put option contained in a plan which has been approved by the supervisor establishing an employee stock ownership plan for the association and its employees pursuant to the provisions of the act of congress entitled "Employee Retirement Income Security Act of 1974", as now constituted or hereafter amended, or Section 409 of the Internal Revenue Code of 1954, as now constituted or hereafter amended. Stock so purchased until sold shall be carried as treasury stock. Upon the purchase of any stock issued by the association, an amount equal to the purchase price shall be set aside from earned surplus or undivided profits available for dividends to a specific reserve account established for this purpose. Upon sale of any of such stock, the amount relating thereto in the specific reserve account shall be returned to the surplus or undivided profits account (as the case may be) and shall be available for dividends. Reacquired stock shall not be resold at less than its reacquisition cost, without the specific approval of the supervisor, and shall not be resold or reissued except in accordance with RCW 33.48.220 through 33.48.240. [1985 c 239 § 3; 1982 c 3 § 107; 1973 c 130 § 15.]

Severability—1982 c 3: See note following RCW 33.04.002.

Severability—1973 c 130: See note following RCW 33.24.350.

33.48.260 Reduction of stock—Conditions. With the prior consent of the supervisor, the stock of an association may be reduced by resolution of the board of directors approved by the vote or written consent of the holders of a majority in amount of the outstanding stock of the association to such amount as the supervisor approves. [1982 c 3 § 108; 1973 c 130 § 16.]

Severability—1982 c 3: See note following RCW 33.04.002.

Severability—1973 c 130: See note following RCW 33.24.350.

33.48.270 Reduction of stock—Disposition of surplus. Any surplus resulting from reduction of stock shall not be available for dividends or other distribution to stockholders except upon liquidation. [1982 c 3 § 109; 1973 c 130 § 17.]

Severability—1982 c 3: See note following RCW 33.04.002.

Severability—1973 c 130: See note following RCW 33.24.350.

33.48.280 Paid-in or contributed surplus or surplus created by reduction of stock—Application and uses. An association may, by action of its board of directors and with the prior approval of the supervisor, apply any part or all of any paid-in or contributed surplus or any surplus created by reduction of stock to the reduction or writing off of any deficit arising from losses or diminution in value of its assets, or may transfer to or designate as a part of its federal insurance account or any other reserve account irrevocably established for the sole purpose of absorbing losses, any part or all of any paid-in or contributed surplus or any surplus created by reduction of stock. [1982 c 3 § 110; 1973 c 130 § 18.]

Severability—1982 c 3: See note following RCW 33.04.002.

Severability—1973 c 130: See note following RCW 33.24.350.

33.48.290 RCW 33.48.150 through 33.48.280 inapplicable to foreign associations. RCW 33.48.150

through 33.48.280 do not apply to foreign associations doing business in this state pursuant to the provisions of chapter 33.32 RCW. [1982 c 3 § 111; 1973 c 130 § 19.]

Severability—1982 c 3: See note following RCW 33.04.002.

Severability—1973 c 130: See note following RCW 33.24.350.

33.48.320 Waiver of chapter requirements. If, in the opinion of the supervisor, it is necessary for any of the requirements of this chapter to be waived in order to permit an association which is in danger of failing to convert its charter from a mutual association to a stock association or from a stock association to a mutual association so that the association may be acquired by an association or a savings and loan holding company, then the supervisor may waive any such requirement. [1982 c 3 § 112.]

Severability—1982 c 3: See note following RCW 33.04.002.

Chapter 33.54

SATELLITE FACILITIES

(See chapter 30.43 RCW)

Title 34

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34.05.001 Legislative intent. The legislature intends, by enacting this 1988 Administrative Procedure Act, to clarify the existing law of administrative procedure, to achieve greater consistency with other states and the federal government in administrative procedure, and to provide greater public and legislative access to administrative decision making. The legislature intends that to the greatest extent possible and unless this chapter clearly requires otherwise, current agency practices and court decisions interpreting the Administrative Procedure Act in effect before July 1, 1989, shall remain in effect. The legislature also intends that the courts should interpret provisions of this chapter consistently with decisions of other courts interpreting similar provisions of other states, the federal government, and model acts. [1988 c 288 § 18.]

PART I
GENERAL PROVISIONS

34.05.010 Definitions. (Effective until January 1, 1993.) The definitions set forth in this section shall apply throughout this chapter, unless the context clearly requires otherwise.

(1) "Adjudicative proceeding" means a proceeding before an agency in which an opportunity for hearing before that agency is required by statute or constitutional right before or after the entry of an order by the agency. Adjudicative proceedings also include all cases of licensing and rate making in which an application for a license or rate change is denied except as limited by RCW 66.08.150, or a license is revoked, suspended, or modified, or in which the granting of an application is contested by a person having standing to contest under the law.

(2) "Agency" means any state board, commission, department, institution of higher education, or officer, authorized by law to make rules or to conduct adjudicative proceedings, except those in the legislative or judicial branches, the governor, or the attorney general except to the extent otherwise required by law.

(3) "Agency action" means licensing, the implementation or enforcement of a statute, the adoption or application

of an agency rule or order, the imposition of sanctions, or the granting or withholding of benefits.

Agency action does not include an agency decision regarding (a) contracting or procurement of goods, services, public works, and the purchase, lease, or acquisition by any other means, including eminent domain, of real estate, as well as all activities necessarily related to those functions, or (b) determinations as to the sufficiency of a showing of interest filed in support of a representation petition, or mediation or conciliation of labor disputes or arbitration of labor disputes under a collective bargaining law or similar statute, or (c) any sale, lease, contract, or other proprietary decision in the management of public lands or real property interests, or (d) the granting of a license, franchise, or permission for the use of trademarks, symbols, and similar property owned or controlled by the agency.

(4) "Agency head" means the individual or body of individuals in whom the ultimate legal authority of the agency is vested by any provision of law. If the agency head is a body of individuals, a majority of those individuals constitutes the agency head.

(5) "Entry" of an order means the signing of the order by all persons who are to sign the order, as an official act indicating that the order is to be effective.

(6) "Filing" of a document that is required to be filed with an agency means delivery of the document to a place designated by the agency by rule for receipt of official documents, or in the absence of such designation, at the office of the agency head.

(7) "Institutions of higher education" are the University of Washington, Washington State University, Central Washington University, Eastern Washington University, Western Washington University, The Evergreen State College, the various community colleges, and the governing boards of each of the above, and the various colleges, divisions, departments, or offices authorized by the governing board of the institution involved to act for the institution, all of which are sometimes referred to in this chapter as "institutions."

(8) "Interpretive statement" means a written expression of the opinion of an agency, entitled an interpretive statement by the agency head or its designee, as to the meaning of a statute or other provision of law, of a court decision, or of an agency order.

(9)(a) "License" means a franchise, permit, certification, approval, registration, charter, or similar form of authorization required by law, but does not include (i) a license required solely for revenue purposes, or (ii) a certification of an exclusive bargaining representative, or similar status, under a collective bargaining law or similar statute, or (iii) a license, franchise, or permission for use of trademarks, symbols, and similar property owned or controlled by the agency.

(b) "Licensing" includes the agency process respecting the issuance, denial, revocation, suspension, or modification of a license.

(10)(a) "Order," without further qualification, means a written statement of particular applicability that finally determines the legal rights, duties, privileges, immunities, or other legal interests of a specific person or persons.

(b) "Order of adoption" means the official written statement by which an agency adopts, amends, or repeals a rule.

(11) "Party to agency proceedings," or "party" in a context so indicating, means:

(a) A person to whom the agency action is specifically directed; or

(b) A person named as a party to the agency proceeding or allowed to intervene or participate as a party in the agency proceeding.

(12) "Party to judicial review or civil enforcement proceedings," or "party" in a context so indicating, means:

(a) A person who files a petition for a judicial review or civil enforcement proceeding; or

(b) A person named as a party in a judicial review or civil enforcement proceeding, or allowed to participate as a party in a judicial review or civil enforcement proceeding.

(13) "Person" means any individual, partnership, corporation, association, governmental subdivision or unit thereof, or public or private organization or entity of any character, and includes another agency.

(14) "Policy statement" means a written description of the current approach of an agency, entitled a policy statement by the agency head or its designee, to implementation of a statute or other provision of law, of a court decision, or of an agency order, including where appropriate the agency's current practice, procedure, or method of action based upon that approach.

(15) "Rule" means any agency order, directive, or regulation of general applicability (a) the violation of which subjects a person to a penalty or administrative sanction; (b) which establishes, alters, or revokes any procedure, practice, or requirement relating to agency hearings; (c) which establishes, alters, or revokes any qualification or requirement relating to the enjoyment of benefits or privileges conferred by law; (d) which establishes, alters, or revokes any qualifications or standards for the issuance, suspension, or revocation of licenses to pursue any commercial activity, trade, or profession; or (e) which establishes, alters, or revokes any mandatory standards for any product or material which must be met before distribution or sale. The term includes the amendment or repeal of a prior rule, but does not include (i) statements concerning only the internal management of an agency and not affecting private rights or procedures available to the public, (ii) declaratory rulings issued pursuant to *RCW 34.05.230, (iii) traffic restrictions for motor vehicles, bicyclists, and pedestrians established by the secretary of transportation or his designee where notice of such restrictions is given by official traffic control devices, or (iv) rules of institutions of higher education involving standards of admission, academic advancement, academic credit, graduation and the granting of degrees, employment relationships, or fiscal processes.

(16) "Rules review committee" or "committee" means the joint administrative rules review committee created pursuant to RCW 34.05.610 for the purpose of selectively reviewing existing and proposed rules of state agencies.

(17) "Rule making" means the process for formulation and adoption of a rule.

(18) "Service," except as otherwise provided in this chapter, means posting in the United States mail, properly addressed, postage prepaid, or personal service. Service by

mail is complete upon deposit in the United States mail. Agencies may, by rule, authorize service by electronic telefacsimile transmission, where copies are mailed simultaneously, or by commercial parcel delivery company. [1989 c 175 § 1; 1988 c 288 § 101; 1982 c 10 § 5. Prior: 1981 c 324 § 2; 1981 c 183 § 1; 1967 c 237 § 1; 1959 c 234 § 1. Formerly RCW 34.04.010.]

***Reviser's note:** RCW 34.05.230 deals with interpretative and policy statements; declaratory orders are issued under RCW 34.05.240.

Effective dates—1989 c 175: "Sections 1 through 35 and 37 through 185 of this act are necessary for the immediate preservation of the public peace, health, or safety, or the support of the state government and its existing public institutions, and shall take effect on July 1, 1989. Section 36 of this act shall take effect on July 1, 1990." [1989 c 175 § 186.]

Severability—1982 c 10: See note following RCW 6.13.080.

Legislative affirmation—1981 c 324: "The legislature affirms that all rule-making authority of state agencies and institutions of higher education is a function delegated by the legislature, and as such, shall be exercised pursuant to the conditions and restrictions contained in this act." [1981 c 324 § 1.]

Severability—1981 c 324: "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 324 § 18.]

34.05.010 Definitions. (Effective January 1, 1993.)

The definitions set forth in this section shall apply throughout this chapter, unless the context clearly requires otherwise.

(1) "Adjudicative proceeding" means a proceeding before an agency in which an opportunity for hearing before that agency is required by statute or constitutional right before or after the entry of an order by the agency. Adjudicative proceedings also include all cases of licensing and rate making in which an application for a license or rate change is denied except as limited by RCW 66.08.150, or a license is revoked, suspended, or modified, or in which the granting of an application is contested by a person having standing to contest under the law.

(2) "Agency" means any state board, commission, department, institution of higher education, or officer, authorized by law to make rules or to conduct adjudicative proceedings, except those in the legislative or judicial branches, the governor, or the attorney general except to the extent otherwise required by law and any local governmental entity that may request the appointment of an administrative law judge under chapter 42.41 RCW.

(3) "Agency action" means licensing, the implementation or enforcement of a statute, the adoption or application of an agency rule or order, the imposition of sanctions, or the granting or withholding of benefits.

Agency action does not include an agency decision regarding (a) contracting or procurement of goods, services, public works, and the purchase, lease, or acquisition by any other means, including eminent domain, of real estate, as well as all activities necessarily related to those functions, or (b) determinations as to the sufficiency of a showing of interest filed in support of a representation petition, or mediation or conciliation of labor disputes or arbitration of labor disputes under a collective bargaining law or similar statute, or (c) any sale, lease, contract, or other proprietary decision in the management of public lands or real property interests, or (d) the granting of a license, franchise, or

permission for the use of trademarks, symbols, and similar property owned or controlled by the agency.

(4) "Agency head" means the individual or body of individuals in whom the ultimate legal authority of the agency is vested by any provision of law. If the agency head is a body of individuals, a majority of those individuals constitutes the agency head.

(5) "Entry" of an order means the signing of the order by all persons who are to sign the order, as an official act indicating that the order is to be effective.

(6) "Filing" of a document that is required to be filed with an agency means delivery of the document to a place designated by the agency by rule for receipt of official documents, or in the absence of such designation, at the office of the agency head.

(7) "Institutions of higher education" are the University of Washington, Washington State University, Central Washington University, Eastern Washington University, Western Washington University, The Evergreen State College, the various community colleges, and the governing boards of each of the above, and the various colleges, divisions, departments, or offices authorized by the governing board of the institution involved to act for the institution, all of which are sometimes referred to in this chapter as "institutions."

(8) "Interpretive statement" means a written expression of the opinion of an agency, entitled an interpretive statement by the agency head or its designee, as to the meaning of a statute or other provision of law, of a court decision, or of an agency order.

(9)(a) "License" means a franchise, permit, certification, approval, registration, charter, or similar form of authorization required by law, but does not include (i) a license required solely for revenue purposes, or (ii) a certification of an exclusive bargaining representative, or similar status, under a collective bargaining law or similar statute, or (iii) a license, franchise, or permission for use of trademarks, symbols, and similar property owned or controlled by the agency.

(b) "Licensing" includes the agency process respecting the issuance, denial, revocation, suspension, or modification of a license.

(10)(a) "Order," without further qualification, means a written statement of particular applicability that finally determines the legal rights, duties, privileges, immunities, or other legal interests of a specific person or persons.

(b) "Order of adoption" means the official written statement by which an agency adopts, amends, or repeals a rule.

(11) "Party to agency proceedings," or "party" in a context so indicating, means:

(a) A person to whom the agency action is specifically directed; or

(b) A person named as a party to the agency proceeding or allowed to intervene or participate as a party in the agency proceeding.

(12) "Party to judicial review or civil enforcement proceedings," or "party" in a context so indicating, means:

(a) A person who files a petition for a judicial review or civil enforcement proceeding; or

(b) A person named as a party in a judicial review or civil enforcement proceeding, or allowed to participate as a party in a judicial review or civil enforcement proceeding.

(13) "Person" means any individual, partnership, corporation, association, governmental subdivision or unit thereof, or public or private organization or entity of any character, and includes another agency.

(14) "Policy statement" means a written description of the current approach of an agency, entitled a policy statement by the agency head or its designee, to implementation of a statute or other provision of law, of a court decision, or of an agency order, including where appropriate the agency's current practice, procedure, or method of action based upon that approach.

(15) "Rule" means any agency order, directive, or regulation of general applicability (a) the violation of which subjects a person to a penalty or administrative sanction; (b) which establishes, alters, or revokes any procedure, practice, or requirement relating to agency hearings; (c) which establishes, alters, or revokes any qualification or requirement relating to the enjoyment of benefits or privileges conferred by law; (d) which establishes, alters, or revokes any qualifications or standards for the issuance, suspension, or revocation of licenses to pursue any commercial activity, trade, or profession; or (e) which establishes, alters, or revokes any mandatory standards for any product or material which must be met before distribution or sale. The term includes the amendment or repeal of a prior rule, but does not include (i) statements concerning only the internal management of an agency and not affecting private rights or procedures available to the public, (ii) declaratory rulings issued pursuant to RCW 34.05.240, (iii) traffic restrictions for motor vehicles, bicyclists, and pedestrians established by the secretary of transportation or his designee where notice of such restrictions is given by official traffic control devices, or (iv) rules of institutions of higher education involving standards of admission, academic advancement, academic credit, graduation and the granting of degrees, employment relationships, or fiscal processes.

(16) "Rules review committee" or "committee" means the joint administrative rules review committee created pursuant to RCW 34.05.610 for the purpose of selectively reviewing existing and proposed rules of state agencies.

(17) "Rule making" means the process for formulation and adoption of a rule.

(18) "Service," except as otherwise provided in this chapter, means posting in the United States mail, properly addressed, postage prepaid, or personal service. Service by mail is complete upon deposit in the United States mail. Agencies may, by rule, authorize service by electronic telefacsimile transmission, where copies are mailed simultaneously, or by commercial parcel delivery company. [1992 c 44 § 10; 1989 c 175 § 1; 1988 c 288 § 101; 1982 c 10 § 5. Prior: 1981 c 324 § 2; 1981 c 183 § 1; 1967 c 237 § 1; 1959 c 234 § 1. Formerly RCW 34.04.010.]

Effective dates—Severability—1992 c 44: See RCW 42.41.901 and 42.41.902.

Effective dates—1989 c 175: "Sections 1 through 35 and 37 through 185 of this act are necessary for the immediate preservation of the public peace, health, or safety, or the support of the state government and its existing public institutions, and shall take effect on July 1, 1989. Section 36 of this act shall take effect on July 1, 1990." [1989 c 175 § 186.]

Severability—1982 c 10: See note following RCW 6.13.080.

Legislative affirmation—1981 c 324: "The legislature affirms that all rule-making authority of state agencies and institutions of higher education is a function delegated by the legislature, and as such, shall be exercised pursuant to the conditions and restrictions contained in this act." [1981 c 324 § 1.]

Severability—1981 c 324: "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 324 § 18.]

34.05.020 Savings—Authority of agencies to comply with chapter—Effect of subsequent legislation. Nothing in this chapter may be held to diminish the constitutional rights of any person or to limit or repeal additional requirements imposed by statute or otherwise recognized by law. Except as otherwise required by law, all requirements or privileges relating to evidence or procedure shall apply equally to agencies and persons. Every agency is granted all authority necessary to comply with the requirements of this chapter through the issuance of rules or otherwise. No subsequent legislation shall be held to supersede or modify the provisions of this chapter or its applicability to any agency except to the extent that such legislation shall do so expressly. [1988 c 288 § 102; 1967 c 237 § 24. Formerly RCW 34.04.940.]

34.05.030 Exclusions from chapter or parts of chapter. (1) This chapter shall not apply to:

- (a) The state militia, or
- (b) The board of clemency and pardons, or
- (c) The department of corrections or the indeterminate sentencing review board with respect to persons who are in their custody or are subject to the jurisdiction of those agencies.

(2) The provisions of RCW 34.05.410 through 34.05.598 shall not apply:

(a) To adjudicative proceedings of the board of industrial insurance appeals except as provided in RCW 7.68.110 and 51.48.131;

(b) Except for actions pursuant to chapter 46.29 RCW, to the denial, suspension, or revocation of a driver's license by the department of licensing;

(c) To the department of labor and industries where another statute expressly provides for review of adjudicative proceedings of a department action, order, decision, or award before the board of industrial insurance appeals;

(d) To actions of the state personnel board, the higher education personnel board, or the personnel appeals board; or

(e) To the extent they are inconsistent with any provisions of chapter 43.43 RCW.

(3) Unless a party makes an election for a formal hearing pursuant to RCW 82.03.140 or 82.03.190, RCW 34.05.410 through 34.05.598 do not apply to a review hearing conducted by the board of tax appeals.

(4) All other agencies, whether or not formerly specifically excluded from the provisions of all or any part of the Administrative Procedure Act, shall be subject to the entire act. [1989 c 175 § 2; 1988 c 288 § 103; 1984 c 141 § 8; 1982 c 221 § 6; 1981 c 64 § 2; 1979 c 158 § 90; 1971 ex.s. c 57 § 17; 1971 c 21 § 1; 1967 ex.s. c 71 § 1; 1967 c 237

§ 7; 1963 c 237 § 1; 1959 c 234 § 15. Formerly RCW 34.04.150.]

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

34.05.040 Operation of chapter if in conflict with federal law. If any part of this chapter is found to be in conflict with federal requirements which are a condition precedent to the allocation of federal funds to the state, the conflicting part of this chapter is inoperative solely to the extent of the conflict and with respect to the agencies directly affected, and such findings or determination shall not affect the operation of the remainder of this chapter in its application to the agencies concerned. [1988 c 288 § 104; 1959 c 234 § 19. Formerly RCW 34.04.930.]

34.05.050 Waiver. Except to the extent precluded by another provision of law, a person may waive any right conferred upon that person by this chapter. [1988 c 288 § 105.]

34.05.060 Informal settlements. Except to the extent precluded by another provision of law and subject to approval by agency order, informal settlement of matters that may make unnecessary more elaborate proceedings under this chapter is strongly encouraged. Agencies may establish by rule specific procedures for attempting and executing informal settlement of matters. This section does not require any party or other person to settle a matter. [1988 c 288 § 106.]

34.05.070 Conversion of proceedings. (1) If it becomes apparent during the course of an adjudicative or rule-making proceeding undertaken pursuant to this chapter that another form of proceeding under this chapter is necessary, is in the public interest, or is more appropriate to resolve issues affecting the participants, on his or her own motion or on the motion of any party, the presiding officer or other official responsible for the original proceeding shall advise the parties of necessary steps for conversion and, if within the official's power, commence the new proceeding. If the agency refuses to convert to another proceeding, that decision is not subject to judicial review. Commencement of the new proceeding shall be accomplished pursuant to the procedural rules of the new proceeding, except that elements already performed need not be repeated.

(2) If appropriate, a new proceeding may be commenced independently of the original proceeding or may replace the original proceeding.

(3) Conversion to a replacement proceeding shall not be undertaken if the rights of any party will be substantially prejudiced.

(4) To the extent feasible the record of the original proceeding shall be included in the record of a replacement proceeding.

(5) The time of commencement of a replacement proceeding shall be considered to be the time of commencement of the original proceeding. [1988 c 288 § 107.]

34.05.080 Variation from time limits. (1) An agency may modify time limits established in this chapter only as

set forth in this section. An agency may not modify time limits relating to rule-making procedures or the time limits for filing a petition for judicial review specified in RCW 34.05.542.

(2) The time limits set forth in this chapter may be modified by rule of the agency or by rule of the chief administrative law judge if:

(a) The agency has an agency head composed of a body of individuals serving part time who do not regularly meet on a schedule that would allow compliance with the time limits of this chapter in the normal course of agency affairs;

(b) The agency does not have a permanent staff to comply with the time limits set forth in this chapter without substantial loss of efficiency and economy; and

(c) The rights of persons dealing with the agency are not substantially impaired.

(3) The time limits set forth in this chapter may be modified by rule if the agency determines that the change is necessary to the performance of its statutory duties. Agency rule may provide for emergency variation when required in a specific case.

(4) Time limits may be changed pursuant to RCW 34.05.040.

(5) Time limits may be waived pursuant to RCW 34.05.050.

(6) Any modification in the time limits set forth in this chapter shall be to new time limits that are reasonable under the specific circumstances.

(7) In an adjudicative proceeding, any agency whose time limits vary from those set forth in this chapter shall provide reasonable and adequate notice of the pertinent time limits to persons affected. The notice may be given by the presiding or reviewing officer involved in the proceeding.

(8) Two years after July 1, 1989, the chief administrative law judge shall cause a survey to be made of variations by agencies from the time limits set forth in this chapter, and shall submit a written report of the results of the survey to the office of the governor. [1989 c 175 § 3; 1988 c 288 § 108.]

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

PART II

PUBLIC ACCESS TO AGENCY RULES

34.05.210 Code and register—Publication and distribution—Omissions, removals, revisions—Judicial notice. (1) The code reviser shall cause the Washington Administrative Code to be compiled, indexed by subject, and published. All current, permanently effective rules of each agency shall be published in the Washington Administrative Code. Compilations shall be supplemented or revised as often as necessary and at least annually in a form compatible with the main compilation.

(2) Subject to the provisions of this chapter, the code reviser shall prescribe a uniform numbering system, form, and style for all proposed and adopted rules.

(3) The code reviser shall publish a register setting forth the text of all rules filed during the appropriate register publication period.

(4) The code reviser may omit from the register or the compilation, rules that would be unduly cumbersome,

expensive, or otherwise inexpedient to publish, if such rules are made available in printed or processed form on application to the adopting agency, and if the register or compilation contains a notice stating the general subject matter of the rules so omitted and stating how copies thereof may be obtained.

(5) The code reviser may edit and revise rules for publication, codification, and compilation, without changing the meaning of any such rule.

(6) When a rule, in whole or in part, is declared invalid and unconstitutional by a court of final appeal, the adopting agency shall give notice to that effect in the register. With the consent of the attorney general, the code reviser may remove obsolete rules or parts of rules from the Washington Administrative Code when:

(a) The rules are declared unconstitutional by a court of final appeal; or

(b) The adopting agency ceases to exist and the rules are not transferred by statute to a successor agency.

(7) Registers and compilations shall be made available, in written form to (a) state elected officials whose offices are created by Article II or III of the state Constitution or by RCW 48.02.010, upon request, (b) to the secretary of the senate and the chief clerk of the house for committee use, as required, but not to exceed the number of standing committees in each body, (c) to county boards of law library trustees and to the Olympia representatives of the Associated Press and the United Press International without request, free of charge, and (d) to other persons at a price fixed by the code reviser.

(8) The board of law library trustees of each county shall keep and maintain a complete and current set of registers and compilations for use and inspection as provided in *RCW 27.24.060.

(9) Judicial notice shall be taken of rules filed and published as provided in RCW 34.05.380 and this section. [1988 c 288 § 201; 1982 1st ex.s. c 32 § 7; 1980 c 186 § 12; 1977 ex.s. c 240 § 9; 1959 c 234 § 5. Formerly RCW 34.04.050.]

***Reviser's note:** RCW 27.24.060 was repealed by 1992 c 62 § 9, effective April 1, 1992.

Severability—1980 c 186: See note following RCW 34.05.320.

Effective date—Severability—1977 ex.s. c 240: See RCW 34.08.905 and 34.08.910.

34.05.220 Rules for agency procedure—Indexes of opinions and statements. (1) In addition to other rule-making requirements imposed by law:

(a) Each agency may adopt rules governing the formal and informal procedures prescribed or authorized by this chapter and rules of practice before the agency, together with forms and instructions. If an agency has not adopted procedural rules under this section, the model rules adopted by the chief administrative law judge under RCW 34.05.250 govern procedures before the agency.

(b) To assist interested persons dealing with it, each agency shall adopt as a rule a description of its organization, stating the general course and method of its operations and the methods whereby the public may obtain information and make submissions or requests. No person may be required to comply with agency procedure not adopted as a rule as herein required.

(2) To the extent not prohibited by federal law or regulation, nor prohibited for reasons of confidentiality by state law, each agency shall keep on file for public inspection all final orders, decisions, and opinions in adjudicative proceedings, interpretive statements, policy statements, and any digest or index to those orders, decisions, opinions, or statements prepared by or for the agency.

(3) No agency order, decision, or opinion is valid or effective against any person, nor may it be invoked by the agency for any purpose, unless it is available for public inspection. This subsection is not applicable in favor of any person who has actual knowledge of the order, decision, or opinion. The agency has the burden of proving that knowledge, but may meet that burden by proving that the person has been properly served with a copy of the order.

(4) Each agency that is authorized by law to exercise discretion in deciding individual cases is encouraged to formalize the general principles that may evolve from these decisions by adopting the principles as rules that the agency will follow until they are amended or repealed. [1989 c 175 § 4; 1988 c 288 § 202; 1981 c 67 § 13; 1967 c 237 § 2; 1959 c 234 § 2. Formerly RCW 34.04.020.]

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

Effective dates—Severability—1981 c 67: See notes following RCW 34.12.010.

34.05.230 Interpretive and policy statements. (1) If the adoption of rules is not feasible and practicable, an agency is encouraged to advise the public of its current opinions, approaches, and likely courses of action by means of interpretive or policy statements. Current interpretive and policy statements are advisory only. An agency is encouraged to convert long-standing interpretive and policy statements into rules.

(2) Each agency shall maintain a roster of interested persons, consisting of persons who have requested in writing to be notified of all interpretive and policy statements issued by that agency. Each agency shall update the roster once each year and eliminate persons who do not indicate a desire to continue on the roster. Whenever an agency issues an interpretive or policy statement, it shall send a copy of the statement to each person listed on the roster. The agency may charge a nominal fee to the interested person for this service. [1988 c 288 § 203.]

34.05.240 Declaratory order by agency—Petition—Court review. (1) Any person may petition an agency for a declaratory order with respect to the applicability to specified circumstances of a rule, order, or statute enforceable by the agency. The petition shall set forth facts and reasons on which the petitioner relies to show:

- (a) That uncertainty necessitating resolution exists;
- (b) That there is actual controversy arising from the uncertainty such that a declaratory order will not be merely an advisory opinion;
- (c) That the uncertainty adversely affects the petitioner;
- (d) That the adverse effect of uncertainty on the petitioner outweighs any adverse effects on others or on the general public that may likely arise from the order requested; and

(e) That the petition complies with any additional requirements established by the agency under subsection (2) of this section.

(2) Each agency may adopt rules that provide for: (a) The form, contents, and filing of petitions for a declaratory order; (b) the procedural rights of persons in relation thereto; and (c) the disposition of those petitions. These rules may include a description of the classes of circumstances in which the agency will not enter a declaratory order and shall be consistent with the public interest and with the general policy of this chapter to facilitate and encourage agencies to provide reliable advice.

(3) Within fifteen days after receipt of a petition for a declaratory order, the agency shall give notice of the petition to all persons to whom notice is required by law, and may give notice to any other person it deems desirable.

(4) RCW 34.05.410 through 34.05.494 apply to agency proceedings for declaratory orders only to the extent an agency so provides by rule or order.

(5) Within thirty days after receipt of a petition for a declaratory order an agency, in writing, shall do one of the following:

(a) Enter an order declaring the applicability of the statute, rule, or order in question to the specified circumstances;

(b) Set the matter for specified proceedings to be held no more than ninety days after receipt of the petition;

(c) Set a specified time no more than ninety days after receipt of the petition by which it will enter a declaratory order; or

(d) Decline to enter a declaratory order, stating the reasons for its action.

(6) The time limits of subsection (5) (b) and (c) of this section may be extended by the agency for good cause.

(7) An agency may not enter a declaratory order that would substantially prejudice the rights of a person who would be a necessary party and who does not consent in writing to the determination of the matter by a declaratory order proceeding.

(8) A declaratory order has the same status as any other order entered in an agency adjudicative proceeding. Each declaratory order shall contain the names of all parties to the proceeding on which it is based, the particular facts on which it is based, and the reasons for its conclusions. [1988 c 288 § 204; 1959 c 234 § 8. Formerly RCW 34.04.080.]

34.05.250 Model rules of procedure. The chief administrative law judge shall adopt model rules of procedure appropriate for use by as many agencies as possible. The model rules shall deal with all general functions and duties performed in common by the various agencies. Each agency shall adopt as much of the model rules as is reasonable under its circumstances. Any agency adopting a rule of procedure that differs from the model rules shall include in the order of adoption a finding stating the reasons for variance. [1988 c 288 § 205.]

PART III
RULE-MAKING PROCEDURES

34.05.310 Solicitation of comments before notice publication—Rules coordinator. (1) In addition to seeking information by other methods, an agency, before publication of a notice of a proposed rule adoption under RCW 34.05.320, is encouraged to solicit comments from the public on a subject of possible rule making under active consideration within the agency, by causing notice to be published in the state register of the subject matter and indicating where, when, and how persons may comment.

(2) Each agency may appoint committees to comment, before publication of a notice of proposed rule adoption under RCW 34.05.320, on the subject of a possible rule-making action under active consideration within the agency.

(3) Each agency shall designate a rules coordinator, who shall have knowledge of the subjects of rules being proposed or prepared within the agency for proposal, maintain the records of any such action, and respond to public inquiries about possible or proposed rules and the identity of agency personnel working, reviewing, or commenting on them. The office and mailing address of the rules coordinator shall be published in the state register at the time of designation and in the first issue of each calendar year thereafter for the duration of the designation. The rules coordinator may be an employee of another agency. [1989 c 175 § 5; 1988 c 288 § 301.]

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

Rules coordinator duties regarding business: RCW 43.17.310.

34.05.315 Rule-making docket. (1) Each agency shall maintain a current public rule-making docket. The rule-making docket shall contain the information specified in subsection (3) of this section.

(2) The rule-making docket shall contain a listing of each pending rule-making proceeding. A rule-making proceeding is pending from the time it is commenced by publication of a notice of proposed rule adoption under RCW 34.05.320 until the proposed rule is withdrawn under RCW 34.05.335 or is adopted by the agency.

(3) For each rule-making proceeding, the docket shall indicate all of the following:

(a) The name and address of agency personnel responsible for the proposed rule;

(b) The subject of the proposed rule;

(c) A citation to all notices relating to the proceeding that have been published in the state register under RCW 34.05.320;

(d) The place where written submissions about the proposed rule may be inspected;

(e) The time during which written submissions will be accepted;

(f) The current timetable established for the agency proceeding, including the time and place of any rule-making hearing, the date of the rule's adoption, filing, publication, and its effective date. [1989 c 175 § 6; 1988 c 288 § 302.]

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

34.05.320 Notice of proposed rule—Contents—Distribution by agency—Institutions of higher education.

(1) At least twenty days before the rule-making hearing at which the agency receives public comment regarding adoption of a rule, the agency shall cause notice of the hearing to be published in the state register. The publication constitutes the proposal of a rule. The notice shall include all of the following:

(a) A title, a description of the rule's purpose, and any other information which may be of assistance in identifying the rule or its purpose;

(b) Citations of the statutory authority for adopting the rule and the specific statute the rule is intended to implement;

(c) A summary of the rule and a statement of the reasons supporting the proposed action;

(d) The agency personnel, with their office location and telephone number, who are responsible for the drafting, implementation, and enforcement of the rule;

(e) The name of the person or organization, whether private, public, or governmental, proposing the rule;

(f) Agency comments or recommendations, if any, regarding statutory language, implementation, enforcement, and fiscal matters pertaining to the rule;

(g) Whether the rule is necessary as the result of federal law or federal or state court action, and if so, a copy of such law or court decision shall be attached to the purpose statement;

(h) When, where, and how persons may present their views on the proposed rule;

(i) The date on which the agency intends to adopt the rule;

(j) A short explanation of the rule, its purpose, and anticipated effects, including in the case of a proposal that would modify existing rules, a short description of the changes the proposal would make; and

(k) A copy of the small business economic impact statement, if applicable, and a statement of steps taken to minimize the economic impact in accordance with RCW 19.85.030.

(2) Upon filing notice of the proposed rule with the code reviser, the adopting agency shall have copies of the notice on file and available for public inspection and shall forward three copies of the notice to the rules review committee.

(3) No later than three days after its publication in the state register, the agency shall cause a copy of the notice of proposed rule adoption to be mailed to each person who has made a request to the agency for a mailed copy of such notices. An agency may charge for the actual cost of providing individual mailed copies of these notices.

(4) In addition to the notice required by subsections (1) and (2) of this section, an institution of higher education shall cause the notice to be published in the campus or standard newspaper of the institution at least seven days before the rule-making hearing. [1992 c 197 § 8; 1989 c 175 § 7; 1988 c 288 § 303; 1982 c 221 § 2; 1982 c 6 § 7; 1980 c 186 § 10; 1977 ex.s. c 84 § 1. Formerly RCW 34.04.045.]

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

Severability—1982 c 6: See RCW 19.85.900.

Severability—1980 c 186: "If any provision of this 1980 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 186 § 29.]

Small business economic impact statement—Purpose—Contents: RCW 19.85.040.

34.05.325 Public participation. (1) The agency shall make a good faith effort to insure that the information on the proposed rule published pursuant to RCW 34.05.320 accurately reflects the rule to be presented and considered at the oral hearing on the rule. Written comment about a proposed rule, including supporting data, shall be accepted by an agency if received no later than the time and date specified in the notice, or such later time and date established at the rule-making hearing.

(2) The agency shall provide an opportunity for oral comment to be received by the agency in a rule-making hearing.

(3) If the agency possesses equipment capable of receiving telefacsimile transmissions or recorded telephonic communications, the agency may provide in its notice of hearing filed under RCW 34.05.320 that interested parties may comment on proposed rules by these means. If the agency chooses to receive comments by these means, the notice of hearing shall provide instructions for making such comments, including, but not limited to, appropriate telephone numbers to be used; the date and time by which comments must be received; required methods to verify the receipt and authenticity of the comments; and any limitations on the number of pages for telefacsimile transmission comments and on the minutes of tape recorded comments. The agency shall accept comments received by these means for inclusion in the official record if the comments are made in accordance with the agency's instructions.

(4) The agency head, a member of the agency head, or a presiding officer designated by the agency head shall preside at the rule-making hearing. Rule-making hearings shall be open to the public. The agency shall cause a record to be made of the hearing by stenographic, mechanical, or electronic means. Unless the agency head presides or is present at substantially all the hearings, the presiding official shall prepare a memorandum for consideration by the agency head, summarizing the contents of the presentations made at the rule-making hearing. The summarizing memorandum is a public document and shall be made available to any person in accordance with chapter 42.17 RCW.

(5) Rule-making hearings are legislative in character and shall be reasonably conducted by the presiding official to afford interested persons the opportunity to present comment. Rule-making hearings may be continued to a later time and place established on the record without publication of further notice under RCW 34.05.320. [1992 c 57 § 1; 1988 c 288 § 304.]

34.05.330 Petition for adoption, amendment, repeal—Agency action. Any person may petition an agency requesting the adoption, amendment, or repeal of any rule. Each agency may prescribe by rule the form for such petitions and the procedure for their submission, consideration, and disposition. Within sixty days after submission of a petition, the agency shall (1) either deny the petition in writing, stating its reasons for the denial, or (2) initiate rule-making proceedings in accordance with this chapter. [1988

c 288 § 305; 1967 c 237 § 5; 1959 c 234 § 6. Formerly RCW 34.04.060.]

34.05.335 Withdrawal of proposal—Time and manner of adoption. (1) A proposed rule may be withdrawn by the proposing agency at any time before adoption. A withdrawn rule may not be adopted unless it is again proposed in accordance with RCW 34.05.320.

(2) Before adopting a rule, an agency shall consider the written and oral submissions, or any memorandum summarizing oral submissions.

(3) Rules not adopted and filed with the code reviser within one hundred eighty days after publication of the text as last proposed in the register shall be regarded as withdrawn. An agency may not thereafter adopt the proposed rule without refileing it in accordance with RCW 34.05.320. The code reviser shall give notice of the withdrawal in the register.

(4) An agency may not adopt a rule before the time established in the published notice, or such later time established on the record or by publication in the state register. [1989 c 175 § 8; 1988 c 288 § 306; 1980 c 186 § 11. Formerly RCW 34.04.048.]

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

Severability—1980 c 186: See note following RCW 34.05.320.

34.05.340 Variance between proposed and final rule. (1) Unless it complies with subsection (3) of this section, an agency may not adopt a rule that is substantially different from the rule proposed in the published notice of proposed rule adoption or a supplemental notice in the proceeding. If an agency contemplates making a substantial variance from a proposed rule described in a published notice, it may file a supplemental notice with the code reviser meeting the requirements of RCW 34.05.320 and reopen the proceedings for public comment on the proposed variance, or the agency may withdraw the proposed rule and commence a new rule-making proceeding to adopt a substantially different rule. If a new rule-making proceeding is commenced, relevant public comment received regarding the initial proposed rule shall be considered in the new proceeding.

(2) The following factors shall be considered in determining whether an adopted rule is substantially different from the proposed rule on which it is based:

(a) The extent to which a reasonable person affected by the adopted rule would have understood that the published proposed rule would affect his or her interests;

(b) The extent to which the subject of the adopted rule or the issues determined in it are substantially different from the subject or issues involved in the published proposed rule; and

(c) The extent to which the effects of the adopted rule differ from the effects of the published proposed rule.

(3) If the agency, without filing a supplemental notice under subsection (1) of this section, adopts a rule that varies in content from the proposed rule, the general subject matter of the adopted rule must remain the same as the proposed rule. The agency shall briefly describe any changes, other than editing changes, and the principal reasons for adopting the changes. The brief description shall be filed with the

code reviser together with the order of adoption for publication in the state register. Within sixty days of publication of the adopted rule in the state register, any interested person may petition the agency to amend any portion of the adopted rule that is substantially different from the proposed rule. The petition shall briefly demonstrate how the adopted rule is substantially different from the proposed rule and shall contain the text of the petitioner's proposed amendment. For purposes of the petition, an adopted rule is substantially different if the issues determined in the adopted rule differ from the issues determined in the proposed rule or the anticipated effects of the adopted rule differ from those of the proposed rule. If the petition meets the requirements of this subsection and RCW 34.05.330, the agency shall initiate rule-making proceedings upon the proposed amendments within the time provided in RCW 34.05.330. [1989 c 175 § 9; 1988 c 288 § 307.]

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

34.05.345 Failure to give twenty days notice of intended action—Effect. Except for emergency rules adopted under RCW 34.05.350, when twenty days notice of intended action to adopt, amend, or repeal a rule has not been published in the state register, as required by RCW 34.05.320, the code reviser shall not publish such rule and such rule shall not be effective for any purpose. [1988 c 288 § 308; 1967 c 237 § 4. Formerly RCW 34.04.027.]

34.05.350 Emergency rules and amendments. (1) If an agency for good cause finds:

(a) That immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest; or

(b) That state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule, the agency may dispense with those requirements and adopt, amend, or repeal the rule on an emergency basis. The agency's finding and a concise statement of the reasons for its finding shall be incorporated in the order for adoption of the emergency rule or amendment filed with the office of the code reviser under RCW 34.05.380 and with the rules review committee.

(2) An emergency rule adopted under this section takes effect upon filing with the code reviser, unless a later date is specified in the order of adoption, and may not remain in effect for longer than one hundred twenty days after filing. Identical or substantially similar emergency rules may not be adopted in sequence unless conditions have changed or the agency has filed notice of its intent to adopt the rule as a permanent rule, and is actively undertaking the appropriate procedures to adopt the rule as a permanent rule. This section does not relieve any agency from compliance with any law requiring that its permanent rules be approved by designated persons or bodies before they become effective. [1989 c 175 § 10; 1988 c 288 § 309; 1981 c 324 § 4; 1977 ex.s. c 240 § 8; 1959 c 234 § 3. Formerly RCW 34.04.030.]

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

Legislative affirmation—Severability—1981 c 324: See notes following RCW 34.05.010.

Effective date—Severability—1977 ex.s. c 240: See RCW 34.08.905 and 34.08.910.

34.05.355 Concise explanatory statement. (1) At the time it files an adopted rule with the code reviser or within thirty days thereafter, an agency shall place into the rule-making file maintained under RCW 34.05.370 a concise explanatory statement about the rule, identifying (a) the agency's reasons for adopting the rule, and (b) a description of any difference between the text of the proposed rule as published in the register and the text of the rule as adopted, other than editing changes, stating the reasons for change.

(2) Upon the request of any interested person within thirty days after adoption of a rule, the agency shall issue a concise statement of the principal reasons for overruling the considerations urged against its adoption. [1988 c 288 § 310.]

34.05.360 Order adopting rule, contents. The order of adoption by which each rule is adopted by an agency shall contain all of the following:

- (1) The date the agency adopted the rule;
- (2) A concise statement of the purpose of the rule;
- (3) A reference to all rules repealed, amended, or suspended by the rule;
- (4) A reference to the specific statutory or other authority authorizing adoption of the rule;
- (5) Any findings required by any provision of law as a precondition to adoption or effectiveness of the rule; and
- (6) The effective date of the rule if other than that specified in RCW 34.05.380(2). [1988 c 288 § 311.]

34.05.365 Incorporation by reference. An agency may incorporate by reference and without publishing the incorporated matter in full, all or any part of a code, standard, rule, or regulation that has been adopted by an agency of the United States, of this state, or of another state, by a political subdivision of this state, or by a generally recognized organization or association if incorporation of the full text in the agency rules would be unduly cumbersome, expensive, or otherwise inexpedient. The reference in agency rules shall fully identify the incorporated matter. An agency may incorporate by reference such matter in its rules only if the agency, organization, or association originally issuing that matter makes copies readily available to the public. The incorporating agency shall have, maintain, and make available for public inspection a copy of the incorporated matter. The rule must state where copies of the incorporated matter are available. [1988 c 288 § 312.]

34.05.370 Rule-making file. (1) Each agency shall maintain an official rule-making file for each rule that it (a) proposes by publication in the state register, or (b) adopts. The file and materials incorporated by reference shall be available for public inspection.

(2) The agency rule-making file shall contain all of the following:

(a) Copies of all publications in the state register with respect to the rule or the proceeding upon which the rule is based;

(b) Copies of any portions of the agency's public rule-making docket containing entries relating to the rule or the proceeding on which the rule is based;

(c) All written petitions, requests, submissions, and comments received by the agency and all other written material regarded by the agency as important to adoption of the rule or the proceeding on which the rule is based;

(d) Any official transcript of oral presentations made in the proceeding on which the rule is based or, if not transcribed, any tape recording or stenographic record of them, and any memorandum prepared by a presiding official summarizing the contents of those presentations;

(e) The concise explanatory statement required by RCW 34.05.355;

(f) All petitions for exceptions to, amendment of, or repeal or suspension of, the rule; and

(g) Any other material placed in the file by the agency.

(3) Internal agency documents are exempt from inclusion in the rule-making file under subsection (2) of this section to the extent they constitute preliminary drafts, notes, recommendations, and intra-agency memoranda in which opinions are expressed or policies formulated or recommended, except that a specific document is not exempt from inclusion when it is publicly cited by an agency in connection with its decision.

(4) Upon judicial review, the file required by this section constitutes the official agency rule-making file with respect to that rule. Unless otherwise required by another provision of law, the official agency rule-making file need not be the exclusive basis for agency action on that rule. [1988 c 288 § 313.]

34.05.375 Substantial compliance with procedures.

No rule proposed after July 1, 1989, is valid unless it is adopted in substantial compliance with RCW 34.05.310 through 34.05.395. Inadvertent failure to mail notice of a proposed rule adoption to any person as required by RCW 34.05.320(3) does not invalidate a rule. No action based upon this section may be maintained to contest the validity of any rule unless it is commenced within two years after the effective date of the rule. [1988 c 288 § 314.]

34.05.380 Filing with code reviser—Register—Effective dates. (1) Each agency shall file in the office of the code reviser a certified copy of all rules it adopts, except for rules contained in tariffs filed with or published by the Washington utilities and transportation commission. The code reviser shall place upon each rule a notation of the time and date of filing and shall keep a permanent register of filed rules open to public inspection. In filing a rule, each agency shall use the standard form prescribed for this purpose by the code reviser.

(2) Emergency rules adopted under RCW 34.05.350 become effective upon filing unless a later date is specified in the order of adoption. All other rules become effective upon the expiration of thirty days after the date of filing, unless a later date is required by statute or specified in the order of adoption.

(3) A rule may become effective immediately upon its filing with the code reviser or on any subsequent date earlier than that established by subsection (2) of this section, if the agency establishes that effective date in the adopting order and finds that:

(a) Such action is required by the state or federal Constitution, a statute, or court order;

(b) The rule only delays the effective date of another rule that is not yet effective; or

(c) The earlier effective date is necessary because of imminent peril to the public health, safety, or welfare.

The finding and a brief statement of the reasons therefor required by this subsection shall be made a part of the order adopting the rule.

(4) With respect to a rule made effective pursuant to subsection (3) of this section, each agency shall make reasonable efforts to make the effective date known to persons who may be affected by it. [1989 c 175 § 11; 1988 c 288 § 315; 1987 c 505 § 17; 1980 c 87 § 11; 1959 c 234 § 4. Formerly RCW 34.04.040.]

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

34.05.385 Rules for filing and form of rules and notices. The code reviser may adopt rules for carrying out the provisions of this chapter relating to the filing and publication of rules and notices of intention to adopt rules, including the form and style to be employed by the various agencies in the drafting of such rules and notices. [1988 c 288 § 316; 1967 c 237 § 13. Formerly RCW 34.04.055.]

34.05.390 Style, format, and numbering—Agency compliance. After the rules of an agency have been published by the code reviser:

(1) All agency orders amending or rescinding such rules, or creating new rules, shall be formulated in accordance with the style, format, and numbering system of the Washington Administrative Code;

(2) Any subsequent printing or reprinting of such rules shall be printed in the style and format (including the numbering system) of such code; and

(3) Amendments of previously adopted rules shall incorporate any editorial corrections made by the code reviser. [1988 c 288 § 317; 1967 c 237 § 14. Formerly RCW 34.04.057.]

34.05.395 Format and style of amendatory and new sections—Failure to comply. (1) Rules proposed or adopted by an agency pursuant to this chapter that amend existing sections of the administrative code shall have the words which are amendatory to such existing sections underlined. Any matter to be deleted from an existing section shall be indicated by setting such matter forth in full, enclosed by double parentheses, and such deleted matter shall be lined out with hyphens. A new section shall be designated "NEW SECTION" in upper case type and such designation shall be underlined, but the complete text of the section shall not be underlined. No rule may be forwarded by any agency to the code reviser, nor may the code reviser accept for filing any rule unless the format of such rule is in compliance with the provisions of this section.

(2) Once the rule has been formally adopted by the agency the code reviser need not, except with regard to the register published pursuant to RCW 34.05.210(3), include the items enumerated in subsection (1) of this section in the official code.

(3) Any addition to or deletion from an existing code section not filed by the agency in the style prescribed by subsection (1) of this section shall in all respects be ineffectual, and shall not be shown in subsequent publications or codifications of that section unless the ineffectual portion of the rule is clearly distinguished and an explanatory note is appended thereto by the code reviser in accordance with RCW 34.05.210. [1988 c 288 § 318; 1980 c 186 § 14; 1977 c 19 § 1. Formerly RCW 34.04.058.]

Severability—1980 c 186: See note following RCW 34.05.320.

PART IV ADJUDICATIVE PROCEEDINGS

34.05.410 Application of Part IV. (1) Adjudicative proceedings are governed by RCW 34.05.413 through 34.05.476, except as otherwise provided:

(a) By a rule that adopts the procedures for brief adjudicative proceedings in accordance with the standards provided in RCW 34.05.482 for those proceedings;

(b) By RCW 34.05.479 pertaining to emergency adjudicative proceedings; or

(c) By RCW 34.05.240 pertaining to declaratory proceedings.

(2) RCW 34.05.410 through 34.05.494 do not apply to rule-making proceedings unless another statute expressly so requires. [1988 c 288 § 401.]

34.05.413 Commencement—When required. (1) Within the scope of its authority, an agency may commence an adjudicative proceeding at any time with respect to a matter within the agency's jurisdiction.

(2) When required by law or constitutional right, and upon the timely application of any person, an agency shall commence an adjudicative proceeding.

(3) An agency may provide forms for and, by rule, may provide procedures for filing an application for an adjudicative proceeding. An agency may require by rule that an application be in writing and that it be filed at a specific address, in a specified manner, and within specified time limits. The agency shall allow at least twenty days to apply for an adjudicative proceeding from the time notice is given of the opportunity to file such an application.

(4) If an agency is required to hold an adjudicative proceeding, an application for an agency to enter an order includes an application for the agency to conduct appropriate adjudicative proceedings, whether or not the applicant expressly requests those proceedings.

(5) An adjudicative proceeding commences when the agency or a presiding officer notifies a party that a prehearing conference, hearing, or other stage of an adjudicative proceeding will be conducted. [1989 c 175 § 12; 1988 c 288 § 402.]

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

34.05.416 Decision not to conduct an adjudication.

If an agency decides not to conduct an adjudicative proceeding in response to an application, the agency shall furnish the applicant a copy of its decision in writing, with a brief statement of the agency's reasons and of any administrative review available to the applicant. [1988 c 288 § 403.]

34.05.419 Agency action on applications for adjudication. After receipt of an application for an adjudicative proceeding, other than a declaratory order, an agency shall proceed as follows:

(1) Except in situations governed by subsection (2) or (3) of this section, within ninety days after receipt of the application or of the response to a timely request made by the agency under subsection (2) of this section, the agency shall do one of the following:

(a) Approve or deny the application, in whole or in part, on the basis of brief or emergency adjudicative proceedings, if those proceedings are available under this chapter for disposition of the matter;

(b) Commence an adjudicative proceeding in accordance with this chapter; or

(c) Dispose of the application in accordance with RCW 34.05.416;

(2) Within thirty days after receipt of the application, the agency shall examine the application, notify the applicant of any obvious errors or omissions, request any additional information the agency wishes to obtain and is permitted by law to require, and notify the applicant of the name, mailing address, and telephone number of an office that may be contacted regarding the application;

(3) If the application seeks relief that is not available when the application is filed but may be available in the future, the agency may proceed to make a determination of eligibility within the time limits provided in subsection (1) of this section. If the agency determines that the applicant is eligible, the agency shall maintain the application on the agency's list of eligible applicants as provided by law and, upon request, shall notify the applicant of the status of the application. [1988 c 288 § 404.]

34.05.422 Rate changes, licenses. (1) Unless otherwise provided by law: (a) Applications for rate changes and uncontested applications for licenses may, in the agency's discretion, be conducted as adjudicative proceedings; (b) applications for licenses that are contested by a person having standing to contest under the law and review of denials of applications for licenses or rate changes shall be conducted as adjudicative proceedings; and (c) an agency may not revoke, suspend, or modify a license unless the agency gives notice of an opportunity for an appropriate adjudicative proceeding in accordance with this chapter or other statute.

(2) An agency with authority to grant or deny a professional or occupational license shall notify an applicant for a new or renewal license not later than twenty days prior to the date of the examination required for that license of any grounds for denial of the license which are based on specific information disclosed in the application submitted to the agency. The agency shall notify the applicant either that the license is denied or that the decision to grant or deny the

license will be made at a future date. If the agency fails to give the notification prior to the examination and the applicant is denied licensure, the examination fee shall be refunded to the applicant. If the applicant takes the examination, the agency shall notify the applicant of the result.

(3) When a licensee has made timely and sufficient application for the renewal of a license or a new license with reference to any activity of a continuing nature, an existing full, temporary, or provisional license does not expire until the application has been finally determined by the agency, and, in case the application is denied or the terms of the new license limited, until the last day for seeking review of the agency order or a later date fixed by order of the reviewing court.

(4) If the agency finds that public health, safety, or welfare imperatively requires emergency action, and incorporates a finding to that effect in its order, summary suspension of a license may be ordered pending proceedings for revocation or other action. These proceedings shall be promptly instituted and determined. [1989 c 175 § 13; 1988 c 288 § 405; 1980 c 33 § 1; 1967 c 237 § 8. Formerly RCW 34.04.170.]

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

34.05.425 Presiding officers—Disqualification, substitution. (1) Except as provided in subsection (2) of this section, in the discretion of the agency head, the presiding officer in an administrative hearing shall be:

(a) The agency head or one or more members of the agency head;

(b) If the agency has statutory authority to do so, a person other than the agency head or an administrative law judge designated by the agency head to make the final decision and enter the final order; or

(c) One or more administrative law judges assigned by the office of administrative hearings in accordance with chapter 34.12 RCW.

(2) An agency expressly exempted under RCW 34.12.020(4) or other statute from the provisions of chapter 34.12 RCW or an institution of higher education shall designate a presiding officer as provided by rules adopted by the agency.

(3) Any individual serving or designated to serve alone or with others as presiding officer is subject to disqualification for bias, prejudice, interest, or any other cause provided in this chapter or for which a judge is disqualified.

(4) Any party may petition for the disqualification of an individual promptly after receipt of notice indicating that the individual will preside or, if later, promptly upon discovering facts establishing grounds for disqualification.

(5) The individual whose disqualification is requested shall determine whether to grant the petition, stating facts and reasons for the determination.

(6) When the presiding officer is an administrative law judge, the provisions of this section regarding disqualification for cause are in addition to the motion of prejudice available under RCW 34.12.050.

(7) If a substitute is required for an individual who becomes unavailable as a result of disqualification or any other reason, the substitute must be appointed by the appropriate appointing authority.

(8) Any action taken by a duly appointed substitute for an unavailable individual is as effective as if taken by the unavailable individual. [1989 c 175 § 14; 1988 c 288 § 406.]

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

34.05.428 Representation. (1) A party to an adjudicative proceeding may participate personally or, if the party is a corporation or other artificial person, by a duly authorized representative.

(2) Whether or not participating in person, any party may be advised and represented at the party's own expense by counsel or, if permitted by provision of law, other representative. [1989 c 175 § 15; 1988 c 288 § 407.]

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

34.05.431 Conference—Procedure and participation. (1) Agencies may hold prehearing or other conferences for the settlement or simplification of issues. Every agency shall by rule describe the conditions under which and the manner in which conferences are to be held.

(2) In the discretion of the presiding officer, and where the rights of the parties will not be prejudiced thereby, all or part of the conference may be conducted by telephone, television, or other electronic means. Each participant in the conference must have an opportunity to participate effectively in, to hear, and, if technically and economically feasible, to see the entire proceeding while it is taking place. [1988 c 288 § 408.]

34.05.434 Notice of hearing. (1) The agency or the office of administrative hearings shall set the time and place of the hearing and give not less than seven days advance written notice to all parties and to all persons who have filed written petitions to intervene in the matter.

(2) The notice shall include:

(a) Unless otherwise ordered by the presiding officer, the names and mailing addresses of all parties to whom notice is being given and, if known, the names and addresses of their representatives;

(b) If the agency intends to appear, the mailing address and telephone number of the office designated to represent the agency in the proceeding;

(c) The official file or other reference number and the name of the proceeding;

(d) The name, official title, mailing address, and telephone number of the presiding officer, if known;

(e) A statement of the time, place and nature of the proceeding;

(f) A statement of the legal authority and jurisdiction under which the hearing is to be held;

(g) A reference to the particular sections of the statutes and rules involved;

(h) A short and plain statement of the matters asserted by the agency; and

(i) A statement that a party who fails to attend or participate in a hearing or other stage of an adjudicative proceeding may be held in default in accordance with this chapter.

(3) If the agency is unable to state the matters required by subsection (2)(h) of this section at the time the notice is

served, the initial notice may be limited to a statement of the issues involved. If the proceeding is initiated by a person other than the agency, the initial notice may be limited to the inclusion of a copy of the initiating document. Thereafter, upon request, a more definite and detailed statement shall be furnished.

(4) The notice may include any other matters considered desirable by the agency. [1988 c 288 § 409; 1980 c 31 § 1; 1967 c 237 § 9; 1959 c 234 § 9. Formerly RCW 34.04.090.]

34.05.437 Pleadings, briefs, motions, service. (1) The presiding officer, at appropriate stages of the proceedings, shall give all parties full opportunity to submit and respond to pleadings, motions, objections, and offers of settlement.

(2) At appropriate stages of the proceedings, the presiding officer may give all parties full opportunity to file briefs, proposed findings of fact and conclusions of law, and proposed initial or final orders.

(3) A party that files a pleading, brief, or other paper with the agency or presiding officer shall serve copies on all other parties, unless a different procedure is specified by agency rule. [1988 c 288 § 410.]

34.05.440 Default. (1) Failure of a party to file an application for an adjudicative proceeding within the time limit or limits established by statute or agency rule constitutes a default and results in the loss of that party's right to an adjudicative proceeding, and the agency may proceed to resolve the case without further notice to, or hearing for the benefit of, that party, except that any default or other dispositive order affecting that party shall be served upon him or her or upon his or her attorney, if any.

(2) If a party fails to attend or participate in a hearing or other stage of an adjudicative proceeding, other than failing to timely request an adjudicative proceeding as set out in subsection (1) of this section, the presiding officer may serve upon all parties a default or other dispositive order, which shall include a statement of the grounds for the order.

(3) Within seven days after service of a default order under subsection (2) of this section, or such longer period as provided by agency rule, the party against whom it was entered may file a written motion requesting that the order be vacated, and stating the grounds relied upon. During the time within which a party may file a written motion under this subsection, the presiding officer may adjourn the proceedings or conduct them without the participation of that party, having due regard for the interests of justice and the orderly and prompt conduct of the proceedings. [1989 c 175 § 16; 1988 c 288 § 411.]

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

34.05.443 Intervention. (1) The presiding officer may grant a petition for intervention at any time, upon determining that the petitioner qualifies as an intervenor under any provision of law and that the intervention sought is in the interests of justice and will not impair the orderly and prompt conduct of the proceedings.

(2) If a petitioner qualifies for intervention, the presiding officer may impose conditions upon the intervenor's participation in the proceedings, either at the time that intervention is granted or at any subsequent time. Conditions may include:

(a) Limiting the intervenor's participation to designated issues in which the intervenor has a particular interest demonstrated by the petition; and

(b) Limiting the intervenor's use of discovery, cross-examination, and other procedures so as to promote the orderly and prompt conduct of the proceedings; and

(c) Requiring two or more intervenors to combine their presentations of evidence and argument, cross-examination, discovery, and other participation in the proceedings.

(3) The presiding officer shall timely grant or deny each pending petition for intervention, specifying any conditions, and briefly stating the reasons for the order. The presiding officer may modify the order at any time, stating the reasons for the modification. The presiding officer shall promptly give notice of the decision granting, denying, or modifying intervention to the petitioner for intervention and to all parties. [1988 c 288 § 412.]

34.05.446 Subpoenas, discovery, and protective orders. (1) The presiding officer may issue subpoenas and may enter protective orders. A subpoena may be issued with like effect by the agency or the attorney of record in whose behalf the witness is required to appear.

(2) An agency may by rule determine whether or not discovery is to be available in adjudicative proceedings and, if so, which forms of discovery may be used.

(3) Except as otherwise provided by agency rules, the presiding officer may decide whether to permit the taking of depositions, the requesting of admissions, and all other procedures authorized by rules 26 through 36 of the superior court civil rules. The presiding officer may condition use of discovery on a showing of necessity and unavailability by other means. In exercising such discretion, the presiding officer shall consider: (a) Whether all parties are represented by counsel; (b) whether undue expense or delay in bringing the case to hearing will result; (c) whether the discovery will promote the orderly and prompt conduct of the proceeding; and (d) whether the interests of justice will be promoted.

(4) Discovery orders and protective orders entered under this section may be enforced under the provisions of this chapter on civil enforcement of agency action.

(5) Subpoenas issued under this section may be enforced under RCW 34.05.588(1).

(6) The subpoena powers created by this section shall be state-wide in effect.

(7) Witnesses in an adjudicatory proceeding shall be paid the same fees and allowances, in the same manner and under the same conditions, as provided for witnesses in the courts of this state by chapter 2.40 RCW and by RCW 5.56.010, except that the agency shall have the power to fix the allowance for meals and lodging in like manner as is provided in RCW 5.56.010 as to courts. The person initiating an adjudicative proceeding or the party requesting issuance of a subpoena shall pay the fees and allowances and the cost of producing records required to be produced by

subpoena. [1989 c 175 § 17; 1988 c 288 § 413; 1967 c 237 § 10. Formerly RCW 34.04.105.]

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

34.05.449 Procedure at hearing. (1) The presiding officer shall regulate the course of the proceedings, in conformity with applicable rules and the prehearing order, if any.

(2) To the extent necessary for full disclosure of all relevant facts and issues, the presiding officer shall afford to all parties the opportunity to respond, present evidence and argument, conduct cross-examination, and submit rebuttal evidence, except as restricted by a limited grant of intervention or by the prehearing order.

(3) In the discretion of the presiding officer, and where the rights of the parties will not be prejudiced thereby, all or part of the hearing may be conducted by telephone, television, or other electronic means. Each party in the hearing must have an opportunity to participate effectively in, to hear, and, if technically and economically feasible, to see the entire proceeding while it is taking place.

(4) The presiding officer shall cause the hearing to be recorded by a method chosen by the agency. The agency is not required, at its expense, to prepare a transcript, unless required to do so by a provision of law. Any party, at the party's expense, may cause a reporter approved by the agency to prepare a transcript from the agency's record, or cause additional recordings to be made during the hearing if the making of the additional recording does not cause distraction or disruption.

(5) The hearing is open to public observation, except for the parts that the presiding officer states to be closed under a provision of law expressly authorizing closure or under a protective order entered by the presiding officer pursuant to applicable rules. A presiding officer may order the exclusion of witnesses upon a showing of good cause. To the extent that the hearing is conducted by telephone, television, or other electronic means, and is not closed, the availability of public observation is satisfied by giving members of the public an opportunity, at reasonable times, to hear or inspect the agency's record, and to inspect any transcript obtained by the agency. [1989 c 175 § 18; 1988 c 288 § 414.]

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

34.05.452 Rules of evidence—Cross-examination.

(1) Evidence, including hearsay evidence, is admissible if in the judgment of the presiding officer it is the kind of evidence on which reasonably prudent persons are accustomed to rely in the conduct of their affairs. The presiding officer shall exclude evidence that is excludable on constitutional or statutory grounds or on the basis of evidentiary privilege recognized in the courts of this state. The presiding officer may exclude evidence that is irrelevant, immaterial, or unduly repetitious.

(2) If not inconsistent with subsection (1) of this section, the presiding officer shall refer to the Washington Rules of Evidence as guidelines for evidentiary rulings.

(3) All testimony of parties and witnesses shall be made under oath or affirmation.

(4) Documentary evidence may be received in the form of copies or excerpts, or by incorporation by reference.

(5) Official notice may be taken of (a) any judicially cognizable facts, (b) technical or scientific facts within the agency's specialized knowledge, and (c) codes or standards that have been adopted by an agency of the United States, of this state or of another state, or by a nationally recognized organization or association. Parties shall be notified either before or during hearing, or by reference in preliminary reports or otherwise, of the material so noticed and the sources thereof, including any staff memoranda and data, and they shall be afforded an opportunity to contest the facts and material so noticed. A party proposing that official notice be taken may be required to produce a copy of the material to be noticed. [1988 c 288 § 415; 1959 c 234 § 10. Formerly RCW 34.04.100.]

34.05.455 Ex parte communications. (1) A presiding officer may not communicate, directly or indirectly, regarding any issue in the proceeding other than communications necessary to procedural aspects of maintaining an orderly process, with any person employed by the agency without notice and opportunity for all parties to participate, except as provided in this subsection:

(a) Where the ultimate legal authority of an agency is vested in a multimember body, and where that body presides at an adjudication, members of the body may communicate with one another regarding the proceeding;

(b) Any presiding officer may receive aid from legal counsel, or from staff assistants who are subject to the presiding officer's supervision; and

(c) Presiding officers may communicate with other employees or consultants of the agency who have not participated in the proceeding in any manner, and who are not engaged in any investigative or prosecutorial functions in the same or a factually related case.

(d) This subsection does not apply to communications required for the disposition of ex parte matters specifically authorized by statute.

(2) Unless required for the disposition of ex parte matters specifically authorized by statute or unless necessary to procedural aspects of maintaining an orderly process, a presiding officer may not communicate, directly or indirectly, regarding any issue in the proceeding, with any person not employed by the agency who has a direct or indirect interest in the outcome of the proceeding, without notice and opportunity for all parties to participate.

(3) Unless necessary to procedural aspects of maintaining an orderly process, persons to whom a presiding officer may not communicate under subsections (1) and (2) of this section may not communicate with presiding officers without notice and opportunity for all parties to participate.

(4) If, before serving as presiding officer in an adjudicative proceeding, a person receives an ex parte communication of a type that could not properly be received while serving, the person, promptly after starting to serve, shall disclose the communication in the manner prescribed in subsection (5) of this section.

(5) A presiding officer who receives an ex parte communication in violation of this section shall place on the record of the pending matter all written communications received, all written responses to the communications, and a memorandum stating the substance of all oral communica-

tions received, all responses made, and the identity of each person from whom the presiding officer received an ex parte communication. The presiding officer shall advise all parties that these matters have been placed on the record. Upon request made within ten days after notice of the ex parte communication, any party desiring to rebut the communication shall be allowed to place a written rebuttal statement on the record. Portions of the record pertaining to ex parte communications or rebuttal statements do not constitute evidence of any fact at issue in the matter unless a party moves the admission of any portion of the record for purposes of establishing a fact at issue and that portion is admitted pursuant to RCW 34.05.452.

(6) If necessary to eliminate the effect of an ex parte communication received in violation of this section, a presiding officer who receives the communication may be disqualified, and the portions of the record pertaining to the communication may be sealed by protective order.

(7) The agency shall, and any party may, report any violation of this section to appropriate authorities for any disciplinary proceedings provided by law. In addition, each agency by rule may provide for appropriate sanctions, including default, for any violations of this section. [1988 c 288 § 416.]

34.05.458 Separation of functions. (1) A person who has served as investigator, prosecutor, or advocate in an adjudicative proceeding or in its preadjudicative stage, or one who is subject to the authority, direction, or discretion of such a person, may not serve as a presiding officer in the same proceeding.

(2) A person, including an agency head, who has participated in a determination of probable cause or other equivalent preliminary determination in an adjudicative proceeding may serve as presiding officer or assist or advise a presiding officer in the same proceeding unless a party demonstrates grounds for disqualification in accordance with RCW 34.05.425.

(3) A person may serve as presiding officer at successive stages of the same adjudicative proceeding unless a party demonstrates grounds for disqualification in accordance with RCW 34.05.425. [1988 c 288 § 417.]

34.05.461 Entry of orders. (1) Except as provided in subsection (2) of this section:

(a) If the presiding officer is the agency head or one or more members of the agency head, the presiding officer may enter an initial order if further review is available within the agency, or a final order if further review is not available;

(b) If the presiding officer is a person designated by the agency to make the final decision and enter the final order, the presiding officer shall enter a final order; and

(c) If the presiding officer is one or more administrative law judges, the presiding officer shall enter an initial order.

(2) With respect to agencies exempt from chapter 34.12 RCW or an institution of higher education, the presiding officer shall transmit a full and complete record of the proceedings, including such comments upon demeanor of witnesses as the presiding officer deems relevant, to each agency official who is to enter a final or initial order after considering the record and evidence so transmitted.

(3) Initial and final orders shall include a statement of findings and conclusions, and the reasons and basis therefor, on all the material issues of fact, law, or discretion presented on the record, including the remedy or sanction and, if applicable, the action taken on a petition for a stay of effectiveness. Any findings based substantially on credibility of evidence or demeanor of witnesses shall be so identified. Findings set forth in language that is essentially a repetition or paraphrase of the relevant provision of law shall be accompanied by a concise and explicit statement of the underlying evidence of record to support the findings. The order shall also include a statement of the available procedures and time limits for seeking reconsideration or other administrative relief. An initial order shall include a statement of any circumstances under which the initial order, without further notice, may become a final order.

(4) Findings of fact shall be based exclusively on the evidence of record in the adjudicative proceeding and on matters officially noticed in that proceeding. Findings shall be based on the kind of evidence on which reasonably prudent persons are accustomed to rely in the conduct of their affairs. Findings may be based on such evidence even if it would be inadmissible in a civil trial. However, the presiding officer shall not base a finding exclusively on such inadmissible evidence unless the presiding officer determines that doing so would not unduly abridge the parties' opportunities to confront witnesses and rebut evidence. The basis for this determination shall appear in the order.

(5) Where it bears on the issues presented, the agency's experience, technical competency, and specialized knowledge may be used in the evaluation of evidence.

(6) If a person serving or designated to serve as presiding officer becomes unavailable for any reason before entry of the order, a substitute presiding officer shall be appointed as provided in RCW 34.05.425. The substitute presiding officer shall use any existing record and may conduct any further proceedings appropriate in the interests of justice.

(7) The presiding officer may allow the parties a designated time after conclusion of the hearing for the submission of memos, briefs, or proposed findings.

(8) Initial or final orders shall be served in writing within ninety days after conclusion of the hearing or after submission of memos, briefs, or proposed findings in accordance with subsection (7) of this section unless this period is waived or extended for good cause shown.

(9) The presiding officer shall cause copies of the order to be served on each party and the agency. [1989 c 175 § 19; 1988 c 288 § 418.]

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

34.05.464 Review of initial orders. (1) As authorized by law, an agency may by rule provide that initial orders in specified classes of cases may become final without further agency action unless, within a specified period, (a) the agency head upon its own motion determines that the initial order should be reviewed, or (b) a party to the proceedings files a petition for administrative review of the initial order. Upon occurrence of either event, notice shall be given to all parties to the proceeding.

(2) As authorized by law, an agency head may appoint a person to review initial orders and to prepare and enter final agency orders.

(3) RCW 34.05.425 and 34.05.455 apply to any person reviewing an initial order on behalf of an agency as part of the decision process, and to persons communicating with them, to the same extent that it is applicable to presiding officers.

(4) The officer reviewing the initial order (including the agency head reviewing an initial order) is, for the purposes of this chapter, termed the reviewing officer. The reviewing officer shall exercise all the decision-making power that the reviewing officer would have had to decide and enter the final order had the reviewing officer presided over the hearing, except to the extent that the issues subject to review are limited by a provision of law or by the reviewing officer upon notice to all the parties. In reviewing findings of fact by presiding officers, the reviewing officers shall give due regard to the presiding officer's opportunity to observe the witnesses.

(5) The reviewing officer shall personally consider the whole record or such portions of it as may be cited by the parties.

(6) The reviewing officer shall afford each party an opportunity to present written argument and may afford each party an opportunity to present oral argument.

(7) The reviewing officer shall enter a final order disposing of the proceeding or remand the matter for further proceedings, with instructions to the presiding officer who entered the initial order. Upon remanding a matter, the reviewing officer shall order such temporary relief as is authorized and appropriate.

(8) A final order shall include, or incorporate by reference to the initial order, all matters required by RCW 34.05.461(3).

(9) The reviewing officer shall cause copies of the final order or order remanding the matter for further proceedings to be served upon each party. [1989 c 175 § 20; 1988 c 288 § 419.]

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

34.05.467 Stay. A party may submit to the presiding or reviewing officer, as is appropriate to the stage of the proceeding, a petition for stay of effectiveness of a final order within ten days of its service unless otherwise provided by statute or stated in the final order. Disposition of the petition for stay shall be made by the presiding officer, reviewing officer, or agency head as provided by agency rule. Disposition may be made either before or after the effective date of the final order. Disposition denying a stay is not subject to judicial review. [1988 c 288 § 420.]

34.05.470 Reconsideration. (1) Within ten days of the service of a final order, any party may file a petition for reconsideration, stating the specific grounds upon which relief is requested. The place of filing and other procedures, if any, shall be specified by agency rule.

(2) No petition for reconsideration may stay the effectiveness of an order.

(3) If a petition for reconsideration is timely filed, and the petitioner has complied with the agency's procedural

rules for reconsideration, if any, the time for filing a petition for judicial review does not commence until the agency disposes of the petition for reconsideration. The agency is deemed to have denied the petition for reconsideration if, within twenty days from the date the petition is filed, the agency does not either: (a) Dispose of the petition; or (b) serve the parties with a written notice specifying the date by which it will act on the petition.

(4) Unless the petition for reconsideration is deemed denied under subsection (3) of this section, the petition shall be disposed of by the same person or persons who entered the order, if reasonably available. The disposition shall be in the form of a written order denying the petition, granting the petition and dissolving or modifying the final order, or granting the petition and setting the matter for further hearing.

(5) The filing of a petition for reconsideration is not a prerequisite for seeking judicial review. An order denying reconsideration, or a notice provided for in subsection (3)(b) of this section is not subject to judicial review. [1989 c 175 § 21; 1988 c 288 § 421.]

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

34.05.473 Effectiveness of orders. (1) Unless a later date is stated in an order or a stay is granted, an order is effective when entered, but:

(a) A party may not be required to comply with a final order unless the party has been served with or has actual knowledge of the final order;

(b) A nonparty may not be required to comply with a final order unless the agency has made the final order available for public inspection and copying or the nonparty has actual knowledge of the final order;

(c) For purposes of determining time limits for further administrative procedure or for judicial review, the determinative date is the date of service of the order.

(2) Unless a later date is stated in the initial order or a stay is granted, the time when an initial order becomes a final order in accordance with RCW 34.05.461 is determined as follows:

(a) When the initial order is entered, if administrative review is unavailable; or

(b) When the agency head with such authority enters an order stating, after a petition for administrative review has been filed, that review will not be exercised.

(3) This section does not preclude an agency from taking immediate action to protect the public interest in accordance with RCW 34.05.479. [1989 c 175 § 22; 1988 c 288 § 422.]

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

34.05.476 Agency record. (1) An agency shall maintain an official record of each adjudicative proceeding under this chapter.

(2) The agency record shall include:

(a) Notices of all proceedings;

(b) Any prehearing order;

(c) Any motions, pleadings, briefs, petitions, requests, and intermediate rulings;

(d) Evidence received or considered;

(e) A statement of matters officially noticed;

- (f) Proffers of proof and objections and rulings thereon;
- (g) Proposed findings, requested orders, and exceptions;
- (h) The recording prepared for the presiding officer at the hearing, together with any transcript of all or part of the hearing considered before final disposition of the proceeding;
- (i) Any final order, initial order, or order on reconsideration;
- (j) Staff memoranda or data submitted to the presiding officer, unless prepared and submitted by personal assistants and not inconsistent with RCW 34.05.455; and
- (k) Matters placed on the record after an ex parte communication.

(3) Except to the extent that this chapter or another statute provides otherwise, the agency record constitutes the exclusive basis for agency action in adjudicative proceedings under this chapter and for judicial review of adjudicative proceedings. [1988 c 288 § 423.]

34.05.479 Emergency adjudicative proceedings. (1) Unless otherwise provided by law, an agency may use emergency adjudicative proceedings in a situation involving an immediate danger to the public health, safety, or welfare requiring immediate agency action.

(2) The agency may take only such action as is necessary to prevent or avoid the immediate danger to the public health, safety, or welfare that justifies use of emergency adjudication.

(3) The agency shall enter an order, including a brief statement of findings of fact, conclusions of law, and policy reasons for the decision if it is an exercise of the agency's discretion, to justify the determination of an immediate danger and the agency's decision to take the specific action.

(4) The agency shall give such notice as is practicable to persons who are required to comply with the order. The order is effective when entered.

(5) After entering an order under this section, the agency shall proceed as quickly as feasible to complete any proceedings that would be required if the matter did not involve an immediate danger.

(6) The agency record consists of any documents regarding the matter that were considered or prepared by the agency. The agency shall maintain these documents as its official record.

(7) Unless otherwise required by a provision of law, the agency record need not constitute the exclusive basis for agency action in emergency adjudicative proceedings or for judicial review thereof.

(8) This section shall not apply to agency action taken pursuant to a provision of law that expressly authorizes the agency to issue a cease and desist order. The agency may proceed, alternatively, under that independent authority. [1988 c 288 § 424.]

Designation of persons for emergency adjudications by utilities and transportation commission: RCW 80.01.060.

34.05.482 Brief adjudicative proceedings—Applicability. (1) An agency may use brief adjudicative proceedings if:

(a) The use of those proceedings in the circumstances does not violate any provision of law;

(b) The protection of the public interest does not require the agency to give notice and an opportunity to participate to persons other than the parties;

(c) The matter is entirely within one or more categories for which the agency by rule has adopted this section and RCW 34.05.485 through 34.05.494; and

(d) The issue and interests involved in the controversy do not warrant use of the procedures of RCW 34.05.413 through 34.05.479.

(2) Brief adjudicative proceedings are not authorized for public assistance and food stamp programs provided for in Title 74 RCW, including but not limited to public assistance as defined in RCW 74.04.005(1). [1988 c 288 § 425.]

34.05.485 Brief adjudicative proceedings—Procedure. (1) If not specifically prohibited by law, the following persons may be designated as the presiding officer of a brief adjudicative proceeding:

(a) The agency head;

(b) One or more members of the agency head;

(c) One or more administrative law judges; or

(d) One or more other persons designated by the agency head.

(2) Before taking action, the presiding officer shall give each party an opportunity to be informed of the agency's view of the matter and to explain the party's view of the matter.

(3) At the time any unfavorable action is taken the presiding officer shall serve upon each party a brief statement of the reasons for the decision. Within ten days, the presiding officer shall give the parties a brief written statement of the reasons for the decision and information about any internal administrative review available.

(4) The brief written statement is an initial order. If no review is taken of the initial order as authorized by RCW 34.05.488 and 34.05.491, the initial order shall be the final order. [1989 c 175 § 23; 1988 c 288 § 426.]

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

34.05.488 Brief proceedings—Administrative review—Applicability. Unless prohibited by any provision of law, an agency, on its own motion, may conduct administrative review of an order resulting from brief adjudicative proceedings. An agency shall conduct this review upon the written or oral request of a party if the agency receives the request within twenty-one days after service of the written statement required by RCW 34.05.485(3). [1989 c 175 § 24; 1988 c 288 § 427.]

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

34.05.491 Brief proceedings—Administrative review—Procedures. Unless otherwise provided by statute:

(1) If the parties have not requested review, the agency may review an order resulting from a brief adjudicative proceeding on its own motion and without notice to the parties, but it may not take any action on review less favorable to any party than the original order without giving that party notice and an opportunity to explain that party's view of the matter.

(2) The reviewing officer may be any person who could have presided at the brief proceeding, but the reviewing

officer must be one who is authorized to grant appropriate relief upon review.

(3) The reviewing officer shall give each party an opportunity to explain the party's view of the matter and shall make any inquiries necessary to ascertain whether the proceeding must be converted to a formal adjudicative hearing.

(4) The order on review must be in writing, must include a brief statement of the reasons for the decision, and must be entered within twenty days after the date of the initial order or of the request for review, whichever is later. The order shall include a description of any further available administrative review or, if none is available, a notice that judicial review may be available.

(5) A request for administrative review is deemed to have been denied if the agency does not make a disposition of the matter within twenty days after the request is submitted. [1988 c 288 § 428.]

34.05.494 Agency record in brief proceedings. (1)

The agency record consists of any documents regarding the matter that were considered or prepared by the presiding officer for the brief adjudicative proceeding or by the reviewing officer for any review. The agency shall maintain these documents as its official record.

(2) Unless otherwise required by a provision of law, the agency record need not constitute the exclusive basis for agency action in brief adjudicative proceedings or for the judicial review of brief adjudicative proceedings. [1988 c 288 § 429.]

PART V

JUDICIAL REVIEW AND CIVIL ENFORCEMENT

34.05.510 Relationship between this chapter and other judicial review authority. This chapter establishes the exclusive means of judicial review of agency action, except:

(1) The provisions of this chapter for judicial review do not apply to litigation in which the sole issue is a claim for money damages or compensation and the agency whose action is at issue does not have statutory authority to determine the claim.

(2) Ancillary procedural matters before the reviewing court, including intervention, class actions, consolidation, joinder, severance, transfer, protective orders, and other relief from disclosure of privileged or confidential material, are governed, to the extent not inconsistent with this chapter, by court rule.

(3) To the extent that de novo review or jury trial review of agency action is expressly authorized by provision of law. [1988 c 288 § 501.]

34.05.514 Petition for review—Where filed. (1) Except as provided in subsection (2) of this section and *RCW 34.05.538, proceedings for review under this chapter shall be instituted by filing a petition in the superior court, at the petitioner's option, for (a) Thurston county, (b) the county of the petitioner's residence or principal place of business, or (c) in any county where the property owned by

the petitioner and affected by the contested decision is located.

(2) For proceedings involving institutions of higher education, the petition shall be filed either in the county in which the principal office of the institution involved is located or in the county of a branch campus if the action involves such branch. [1988 c 288 § 502.]

*Reviser's note: RCW 34.05.538 was repealed by 1989 c 175 § 185, effective July 1, 1989.

34.05.518 Direct review by court of appeals. The final decision of an administrative agency in an adjudicative proceeding under this chapter may be directly reviewed by the court of appeals upon certification by the superior court pursuant to this section. An application for direct review must be filed with the superior court within thirty days of the filing of the petition for review in superior court. The superior court may certify a case for direct review only if the judicial review is limited to the record of the agency proceeding and the court finds that:

(1) Fundamental and urgent issues affecting the future administrative process or the public interest are involved which require a prompt determination;

(2) Delay in obtaining a final and prompt determination of such issues would be detrimental to any party or the public interest;

(3) An appeal to the court of appeals would be likely regardless of the determination in superior court; and

(4) The appellate court's determination in the proceeding would have significant precedential value. [1988 c 288 § 503; 1980 c 76 § 1. Formerly RCW 34.04.133.]

34.05.522 Refusal of review by court of appeals.

The court of appeals may refuse to accept review of a case certified pursuant to RCW 34.05.518. The refusal to accept such review is not subject to further appellate review, notwithstanding anything in Rule 13.3 of the Rules of Appellate Procedure to the contrary. [1988 c 288 § 504; 1980 c 76 § 2. Formerly RCW 34.04.135.]

34.05.526 Appellate review by supreme court or court of appeals. An aggrieved party may secure appellate review of any final judgment of the superior court under this chapter by the supreme court or the court of appeals. The review shall be secured in the manner provided by law for review of superior court decisions in other civil cases. [1988 c 288 § 505; 1988 c 202 § 35; 1971 c 81 § 87; 1959 c 234 § 14. Formerly RCW 34.04.140.]

Reviser's note: This section was amended by 1988 c 202 § 35, effective June 9, 1988, and by 1988 c 288 § 505, effective July 1, 1989, 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—1988 c 202: See note following RCW 2.24.050.

34.05.530 Standing. A person has standing to obtain judicial review of agency action if that person is aggrieved or adversely affected by the agency action. A person is aggrieved or adversely affected within the meaning of this section only when all three of the following conditions are present:

(1) The agency action has prejudiced or is likely to prejudice that person;

(2) That person's asserted interests are among those that the agency was required to consider when it engaged in the agency action challenged; and

(3) A judgment in favor of that person would substantially eliminate or redress the prejudice to that person caused or likely to be caused by the agency action. [1988 c 288 § 506.]

34.05.534 Exhaustion of administrative remedies.

A person may file a petition for judicial review under this chapter only after exhausting all administrative remedies available within the agency whose action is being challenged, or available within any other agency authorized to exercise administrative review, except:

(1) A petitioner for judicial review of a rule need not have participated in the rule-making proceeding upon which that rule is based, or have petitioned for its amendment or repeal;

(2) A petitioner for judicial review need not exhaust administrative remedies to the extent that this chapter or any other statute states that exhaustion is not required; or

(3) The court may relieve a petitioner of the requirement to exhaust any or all administrative remedies upon a showing that:

(a) The remedies would be patently inadequate;

(b) The exhaustion of remedies would be futile; or

(c) The grave irreparable harm that would result from having to exhaust administrative remedies would clearly outweigh the public policy requiring exhaustion of administrative remedies. [1988 c 288 § 507.]

34.05.542 Time for filing petition for review.

Subject to other requirements of this chapter or of another statute:

(1) A petition for judicial review of a rule may be filed at any time, except as limited by RCW 34.05.375.

(2) A petition for judicial review of an order shall be filed with the court and served on the agency, the office of the attorney general, and all parties of record within thirty days after service of the final order.

(3) A petition for judicial review of agency action other than the adoption of a rule or the entry of an order is not timely unless filed with the court and served on the agency, the office of the attorney general, and all other parties of record within thirty days after the agency action, but the time is extended during any period that the petitioner did not know and was under no duty to discover or could not reasonably have discovered that the agency had taken the action or that the agency action had a sufficient effect to confer standing upon the petitioner to obtain judicial review under this chapter.

(4) Service of the petition on the agency shall be by delivery of a copy of the petition to the office of the director, or other chief administrative officer or chairperson of the agency, at the principal office of the agency. Service of a copy by mail upon the other parties of record and the office of the attorney general shall be deemed complete upon deposit in the United States mail, as evidenced by the postmark.

(5) Failure to timely serve a petition on the office of the attorney general is not grounds for dismissal of the petition. [1988 c 288 § 509.]

34.05.546 Petition for review—Contents. A petition for review must set forth:

(1) The name and mailing address of the petitioner;

(2) The name and mailing address of the petitioner's attorney, if any;

(3) The name and mailing address of the agency whose action is at issue;

(4) Identification of the agency action at issue, together with a duplicate copy, summary, or brief description of the agency action;

(5) Identification of persons who were parties in any adjudicative proceedings that led to the agency action;

(6) Facts to demonstrate that the petitioner is entitled to obtain judicial review;

(7) The petitioner's reasons for believing that relief should be granted; and

(8) A request for relief, specifying the type and extent of relief requested. [1988 c 288 § 510.]

34.05.550 Stay and other temporary remedies.

(1) Unless precluded by law, the agency may grant a stay, in whole or in part, or other temporary remedy.

(2) After a petition for judicial review has been filed, a party may file a motion in the reviewing court seeking a stay or other temporary remedy.

(3) If judicial relief is sought for a stay or other temporary remedy from agency action based on public health, safety, or welfare grounds the court shall not grant such relief unless the court finds that:

(a) The applicant is likely to prevail when the court finally disposes of the matter;

(b) Without relief the applicant will suffer irreparable injury;

(c) The grant of relief to the applicant will not substantially harm other parties to the proceedings; and

(d) The threat to the public health, safety, or welfare is not sufficiently serious to justify the agency action in the circumstances.

(4) If the court determines that relief should be granted from the agency's action granting a stay or other temporary remedies, the court may remand the matter or may enter an order denying a stay or granting a stay on appropriate terms. [1989 c 175 § 25; 1988 c 288 § 511.]

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

34.05.554 Limitation on new issues. (1) Issues not raised before the agency may not be raised on appeal, except to the extent that:

(a) The person did not know and was under no duty to discover or could not have reasonably discovered facts giving rise to the issue;

(b) The agency action subject to judicial review is a rule and the person has not been a party in adjudicative proceedings that provided an adequate opportunity to raise the issue;

(c) The agency action subject to judicial review is an order and the person was not notified of the adjudicative proceeding in substantial compliance with this chapter; or

(d) The interests of justice would be served by resolution of an issue arising from:

(i) A change in controlling law occurring after the agency action; or

(ii) Agency action occurring after the person exhausted the last feasible opportunity for seeking relief from the agency.

(2) The court shall remand to the agency for determination any issue that is properly raised pursuant to subsection (1) of this section. [1988 c 288 § 512.]

34.05.558 Judicial review of facts confined to record. Judicial review of disputed issues of fact shall be conducted by the court without a jury and must be confined to the agency record for judicial review as defined by this chapter, supplemented by additional evidence taken pursuant to this chapter. [1988 c 288 § 513.]

34.05.562 New evidence taken by court or agency.

(1) The court may receive evidence in addition to that contained in the agency record for judicial review, only if it relates to the validity of the agency action at the time it was taken and is needed to decide disputed issues regarding:

(a) Improper constitution as a decision-making body or grounds for disqualification of those taking the agency action;

(b) Unlawfulness of procedure or of decision-making process; or

(c) Material facts in rule making, brief adjudications, or other proceedings not required to be determined on the agency record.

(2) The court may remand a matter to the agency, before final disposition of a petition for review, with directions that the agency conduct fact-finding and other proceedings the court considers necessary and that the agency take such further action on the basis thereof as the court directs, if:

(a) The agency was required by this chapter or any other provision of law to base its action exclusively on a record of a type reasonably suitable for judicial review, but the agency failed to prepare or preserve an adequate record;

(b) The court finds that (i) new evidence has become available that relates to the validity of the agency action at the time it was taken, that one or more of the parties did not know and was under no duty to discover or could not have reasonably been discovered until after the agency action, and (ii) the interests of justice would be served by remand to the agency;

(c) The agency improperly excluded or omitted evidence from the record; or

(d) A relevant provision of law changed after the agency action and the court determines that the new provision may control the outcome. [1988 c 288 § 514.]

34.05.566 Agency record for review—Costs. (1) Within thirty days after service of the petition for judicial review, or within further time allowed by the court or by other provision of law, the agency shall transmit to the court the original or a certified copy of the agency record for judicial review of the agency action. The record shall consist of any agency documents expressing the agency

action, other documents identified by the agency as having been considered by it before its action and used as a basis for its action, and any other material described in this chapter as the agency record for the type of agency action at issue, subject to the provisions of this section.

(2) If part of the record has been preserved without a transcript, the agency shall prepare a transcript for inclusion in the record transmitted to the court, except for portions that the parties stipulate to omit in accordance with subsection (4) of this section.

(3) The agency may charge a nonindigent petitioner with the reasonable costs of preparing any necessary copies and transcripts for transmittal to the court. A failure by the petitioner to pay any of this cost to the agency relieves the agency from the responsibility for preparation of the record and transmittal to the court.

(4) The record may be shortened, summarized, or organized temporarily or, by stipulation of all parties, permanently.

(5) The court may tax the cost of preparing transcripts and copies of the record:

(a) Against a party who unreasonably refuses to stipulate to shorten, summarize, or organize the record; or

(b) In accordance with any provision of law.

(6) Additions to the record pursuant to RCW 34.05.562 must be made as ordered by the court.

(7) The court may require or permit subsequent corrections or additions to the record. [1989 c 175 § 26; 1988 c 288 § 515.]

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

34.05.570 Judicial review. (1) Generally. Except to the extent that this chapter or another statute provides otherwise:

(a) The burden of demonstrating the invalidity of agency action is on the party asserting invalidity;

(b) The validity of agency action shall be determined in accordance with the standards of review provided in this section, as applied to the agency action at the time it was taken;

(c) The court shall make a separate and distinct ruling on each material issue on which the court's decision is based; and

(d) The court shall grant relief only if it determines that a person seeking judicial relief has been substantially prejudiced by the action complained of.

(2) Review of rules. (a) A rule may be reviewed by petition for declaratory judgment filed pursuant to this subsection or in the context of any other review proceeding under this section. In an action challenging the validity of a rule, the agency shall be made a party to the proceeding.

(b) The validity of any rule may be determined upon petition for a declaratory judgment addressed to the superior court of Thurston county, when it appears that the rule, or its threatened application, interferes with or impairs or immediately threatens to interfere with or impair the legal rights or privileges of the petitioner. The declaratory judgment order may be entered whether or not the petitioner has first requested the agency to pass upon the validity of the rule in question.

(c) In a proceeding involving review of a rule, the court shall declare the rule invalid only if it finds that it violates constitutional provisions, exceeds the statutory authority of the agency, was adopted without compliance with statutory rule-making procedures, or could not conceivably have been the product of a rational decision-maker.

(3) Review of agency orders in adjudicative proceedings. The court shall grant relief from an agency order in an adjudicative proceeding only if it determines that:

(a) The order, or the statute or rule on which the order is based, is in violation of constitutional provisions on its face or as applied;

(b) The order is outside the statutory authority or jurisdiction of the agency conferred by any provision of law;

(c) The agency has engaged in unlawful procedure or decision-making process, or has failed to follow a prescribed procedure;

(d) The agency has erroneously interpreted or applied the law;

(e) The order is not supported by evidence that is substantial when viewed in light of the whole record before the court, which includes the agency record for judicial review, supplemented by any additional evidence received by the court under this chapter;

(f) The agency has not decided all issues requiring resolution by the agency;

(g) A motion for disqualification under RCW 34.05.425 or 34.12.050 was made and was improperly denied or, if no motion was made, facts are shown to support the grant of such a motion that were not known and were not reasonably discoverable by the challenging party at the appropriate time for making such a motion;

(h) The order is inconsistent with a rule of the agency unless the agency explains the inconsistency by stating facts and reasons to demonstrate a rational basis for inconsistency; or

(i) The order is arbitrary or capricious.

(4) Review of other agency action.

(a) All agency action not reviewable under subsection (2) or (3) of this section shall be reviewed under this subsection.

(b) A person whose rights are violated by an agency's failure to perform a duty that is required by law to be performed may file a petition for review pursuant to RCW 34.05.514, seeking an order pursuant to this subsection requiring performance. Within twenty days after service of the petition for review, the agency shall file and serve an answer to the petition, made in the same manner as an answer to a complaint in a civil action. The court may hear evidence, pursuant to RCW 34.05.562, on material issues of fact raised by the petition and answer.

(c) Relief for persons aggrieved by the performance of an agency action, including the exercise of discretion, or an action under (b) of this subsection can be granted only if the court determines that the action is:

(i) Unconstitutional;

(ii) Outside the statutory authority of the agency or the authority conferred by a provision of law;

(iii) Arbitrary or capricious; or

(iv) Taken by persons who were not properly constituted as agency officials lawfully entitled to take such action. [1989 c 175 § 27; 1988 c 288 § 516; 1977 ex.s. c 52 § 1;

1967 c 237 § 6; 1959 c 234 § 13. Formerly RCW 34.04.130.]

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

34.05.574 Type of relief. (1) In a review under RCW 34.05.570, the court may (a) affirm the agency action or (b) order an agency to take action required by law, order an agency to exercise discretion required by law, set aside agency action, enjoin or stay the agency action, remand the matter for further proceedings, or enter a declaratory judgment order. The court shall set out in its findings and conclusions, as appropriate, each violation or error by the agency under the standards for review set out in this chapter on which the court bases its decision and order. In reviewing matters within agency discretion, the court shall limit its function to assuring that the agency has exercised its discretion in accordance with law, and shall not itself undertake to exercise the discretion that the legislature has placed in the agency. The court shall remand to the agency for modification of agency action, unless remand is impracticable or would cause unnecessary delay.

(2) The sole remedy available to a person who is wrongfully denied licensure based upon a failure to pass an examination administered by a state agency, or under its auspices, is the right to retake the examination free of the defect or defects the court may have found in the examination or the examination procedure.

(3) The court may award damages, compensation, or ancillary relief only to the extent expressly authorized by another provision of law.

(4) If the court sets aside or modifies agency action or remands the matter to the agency for further proceedings, the court may make any interlocutory order it finds necessary to preserve the interests of the parties and the public, pending further proceedings or agency action. [1989 c 175 § 28; 1988 c 288 § 517.]

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

34.05.578 Petition by agency for enforcement. (1) In addition to other remedies provided by law, an agency may seek enforcement of its rule or order by filing a petition for civil enforcement in the superior court.

(2) The petition must name as respondent each alleged person against whom the agency seeks to obtain civil enforcement.

(3) Venue is determined as in other civil cases.

(4) A petition for civil enforcement filed by an agency may request, and the court may grant, declaratory relief, temporary or permanent injunctive relief, any other civil remedy provided by law, or any combination of the foregoing. [1988 c 288 § 518.]

34.05.582 Petition by others for enforcement. (1) Any person who would qualify under this chapter as having standing to obtain judicial review of an agency's failure to enforce an order directed to another person may file a petition for civil enforcement of that order, but the action may not be commenced:

(a) Until at least sixty days after the petitioner has given notice of the alleged violation and of the petitioner's intent to seek civil enforcement to the head of the agency con-

cerned, to the attorney general, and to each person against whom the petitioner seeks civil enforcement;

(b) If the agency has filed and is diligently prosecuting a petition for civil enforcement of the same order against the same person; or

(c) If a petition for review of the same order has been filed and a stay is in effect.

(2) The petition shall name, as respondents, the agency whose order is sought to be enforced and each person against whom the petitioner seeks civil enforcement.

(3) The agency whose order is sought to be enforced may move to dismiss the petition on the grounds that it fails to qualify under this section or that the enforcement would be contrary to the policy of the agency. The court shall grant the motion to dismiss the petition unless the petitioner demonstrates that (a) the petition qualifies under this section and (b) the agency's failure to enforce its order is based on an exercise of discretion that is arbitrary or capricious.

(4) Except to the extent expressly authorized by law, a petition for civil enforcement may not request, and the court may not grant, any monetary payment apart from taxable costs. [1988 c 288 § 519.]

34.05.586 Defenses, limitations on. (1) Except as expressly provided in this section, a respondent may not assert as a defense in a proceeding for civil enforcement any fact or issue that the respondent had an opportunity to assert before the agency or a reviewing court and did not, or upon which the final determination of the agency or a reviewing court was adverse to the respondent. A respondent may assert as a defense only the following:

(a) That the rule or order is invalid under RCW 34.05.570(3) (a), (b), (c), (d), (g), or (h), but only when the respondent did not know and was under no duty to discover, or could not reasonably have discovered, facts giving rise to this issue;

(b) That the interest of justice would be served by resolution of an issue arising from:

(i) A change in controlling law occurring after the agency action; or

(ii) Agency action after the respondent has exhausted the last foreseeable opportunity for seeking relief from the agency or from a reviewing court;

(c) That the order does not apply to the respondent or that the respondent has not violated the order; or

(d) A defense specifically authorized by statute to be raised in a civil enforcement proceeding.

(2) The limitations of subsection (1) of this section do not apply to the extent that:

(a) The agency action sought to be enforced is a rule and the respondent has not been a party in an adjudicative proceeding that provided an adequate opportunity to raise the issue; or

(b) The agency action sought to be enforced is an order and the respondent was not notified actually or constructively of the related adjudicative proceeding in substantial compliance with this chapter.

(3) The court, to the extent necessary for the determination of the matter, may take new evidence. [1989 c 175 § 29; 1988 c 288 § 520.]

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

34.05.588 Enforcement of agency subpoena. (1) If a person fails to obey an agency subpoena issued in an adjudicative proceeding, or obeys the subpoena but refuses to testify or produce documents when requested concerning a matter under examination, the agency or attorney issuing the subpoena may petition the superior court of any county where the hearing is being conducted, where the subpoenaed person resides or is found, or where subpoenaed documents are located, for enforcement of the subpoena. The petition shall be accompanied by a copy of the subpoena and proof of service, shall set forth in what specific manner the subpoena has not been complied with, and shall request an order of the court to compel compliance. Upon such petition, the court shall enter an order directing the person to appear before the court at a time and place fixed in the order to show cause why the person has not obeyed the subpoena or has refused to testify or produce documents. A copy of the court's show cause order shall be served upon the person. If it appears to the court that the subpoena was properly issued, and that the particular questions the person refused to answer or the requests for production of documents were reasonable and relevant, the court shall enter an order that the person appear before the agency at the time and place fixed in the order and testify or produce the required documents, and on failing to obey this order the person shall be dealt with as for contempt of court.

(2) Agencies with statutory authority to issue investigative subpoenas may petition for enforcement of such subpoenas in accordance with subsection (1) of this section. The agency may petition the superior court of any county where the subpoenaed person resides or is found, or where subpoenaed documents are located. If it appears to the court that the subpoena was properly issued, that the investigation is being conducted for a lawfully authorized purpose, and that the testimony or documents required to be produced are adequately specified and relevant to the investigation, the court shall enter an order that the person appear before the agency at the time and place fixed in the order and testify or produce the required documents, and failing to obey this order the person shall be dealt with as for contempt of court.

(3) Petitions for enforcement of agency subpoenas are not subject to RCW 34.05.578 through 34.05.590. [1989 c 175 § 30.]

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

34.05.590 Incorporation of other judicial review provisions. Proceedings for civil enforcement are governed by the following provisions of this chapter on judicial review, as modified where necessary to adapt them to those proceedings:

(1) RCW 34.05.510(2) (ancillary procedural matters); and

(2) RCW 34.05.566 (agency record for judicial review). [1988 c 288 § 521.]

34.05.594 Review by higher court. Decisions on petitions for civil enforcement are reviewable as in other civil cases. [1988 c 288 § 522.]

34.05.598 Frivolous petitions. The provisions of RCW 4.84.185 relating to civil actions that are frivolous and advanced without reasonable cause apply to petitions for judicial review under this chapter. [1988 c 288 § 607.]

PART VI
LEGISLATIVE REVIEW

34.05.610 Joint administrative rules review committee—Members—Appointment—Terms—Vacancies. (1) There is hereby created a joint administrative rules review committee which shall be a bipartisan committee consisting of four senators and four representatives from the state legislature. The senate members of the committee shall be appointed by the president of the senate, and the house members of the committee shall be appointed by the speaker of the house. Not more than two members from each house may be from the same political party. All appointments to the committee are subject to approval by the caucuses to which the appointed members belong.

(2) Members shall be appointed as soon as possible after the legislature convenes in regular session in an odd-numbered year, and their terms shall extend until their successors are appointed and qualified at the next regular session of the legislature in an odd-numbered year or until such members no longer serve in the legislature, whichever occurs first. Members may be reappointed to a committee.

(3) The president of the senate shall appoint the chairperson in even-numbered years and the vice chairperson in odd-numbered years from among committee membership. The speaker of the house shall appoint the chairperson in odd-numbered years and the vice chairperson in even-numbered years from among committee membership. Such appointments shall be made in January of each year as soon as possible after a legislative session convenes.

(4) A vacancy on the committee shall be filled by appointment of a legislator from the same political party as the original appointment. The appropriate appointing authority shall make the appointment within thirty days of the vacancy occurring. [1988 c 288 § 601; 1983 c 53 § 1; 1981 c 324 § 5. Formerly RCW 34.04.210.]

Legislative affirmation—Severability—1981 c 324: See notes following RCW 34.05.010.

34.05.620 Review of proposed rules—Notice. Whenever a majority of the members of the rules review committee determines that a proposed rule is not within the intent of the legislature as expressed in the statute which the rule implements, the committee shall give the affected agency written notice of its decision. The notice shall be given at least seven days prior to any hearing scheduled for consideration of or adoption of the proposed rule pursuant to RCW 34.05.320. The notice shall include a statement of the review committee's findings and the reasons therefor. When the agency holds a hearing on the proposed rule, the agency shall consider the review committee's decision. [1988 c 288 § 602; 1987 c 451 § 1; 1981 c 324 § 6. Formerly RCW 34.04.220.]

Legislative affirmation—Severability—1981 c 324: See notes following RCW 34.05.010.

34.05.630 Review of existing rules—Policy statements, guidelines, issuances—Notice—Hearing. (1) All rules required to be filed pursuant to RCW 34.05.380, and emergency rules adopted pursuant to RCW 34.05.350, are subject to selective review by the legislature.

(2) The rules review committee may review an agency's use of policy statements, guidelines, and issuances that are of general applicability, or their equivalents to determine whether or not an agency has failed to adopt a rule.

(3) If the rules review committee finds by a majority vote of its members: (a) That an existing rule is not within the intent of the legislature as expressed by the statute which the rule implements, (b) that the rule has not been adopted in accordance with all applicable provisions of law, or (c) that an agency is using a policy statement, guideline, or issuance in place of a rule, the agency affected shall be notified of such finding and the reasons therefor. Within thirty days of the receipt of the rules review committee's notice, the agency shall file notice of a hearing on the rules review committee's finding with the code reviser and mail notice to all persons who have made timely request of the agency for advance notice of its rule-making proceedings as provided in RCW 34.05.320. The agency's notice shall include the rules review committee's findings and reasons therefor, and shall be published in the Washington state register in accordance with the provisions of chapter 34.08 RCW.

(4) The agency shall consider fully all written and oral submissions regarding (a) whether the rule in question is within the intent of the legislature as expressed by the statute which the rule implements, (b) whether the rule was adopted in accordance with all applicable provisions of law, or (c) whether the agency is using a policy statement, guideline, or issuance in place of a rule. [1988 c 288 § 603; 1987 c 451 § 2; 1981 c 324 § 7. Formerly RCW 34.04.230.]

Legislative affirmation—Severability—1981 c 324: See notes following RCW 34.05.010.

34.05.640 Committee objections to agency action or failure to adopt rule—Statement in register and WAC—Suspension of rule. (1) Within seven days of an agency hearing held after notification of the agency by the rules review committee pursuant to RCW 34.05.620 or 34.05.630, the affected agency shall notify the committee of its action on a proposed or existing rule to which the committee objected or on a committee finding of the agency's failure to adopt rules. If the rules review committee determines, by a majority vote of its members, that the agency has failed to provide for the required hearings or notice of its action to the committee, the committee may file notice of its objections, together with a concise statement of the reasons therefor, with the code reviser within thirty days of such determination.

(2) If the rules review committee finds, by a majority vote of its members: (a) That the proposed or existing rule in question has not been modified, amended, withdrawn, or repealed by the agency so as to conform with the intent of the legislature, or (b) that the agency is using a policy statement, guideline, or issuance in place of a rule, the rules review committee may, within thirty days from notification by the agency of its action, file with the code reviser notice of its objections together with a concise statement of the

reasons therefor. Such notice and statement shall also be provided to the agency by the rules review committee.

(3) If the rules review committee makes an adverse finding under subsection (2) of this section, the committee may, by a two-thirds vote of its members, recommend suspension of an existing rule. Within seven days of such vote the committee shall transmit to the governor, the code reviser, and the agency written notice of its objection and recommended suspension and the concise reasons therefor. Within thirty days of receipt of the notice, the governor shall transmit to the committee, the code reviser, and the agency written approval or disapproval of the recommended suspension. If the suspension is approved by the governor, it is effective from the date of that approval and continues until ninety days after the expiration of the next regular legislative session.

(4) The code reviser shall publish transmittals from the rules review committee or the governor issued pursuant to subsection (1), (2), or (3) of this section in the Washington state register and shall publish in the next supplement and compilation of the Washington Administrative Code a reference to the committee's objection or recommended suspension and the governor's action on it and to the issue of the Washington state register in which the full text thereof appears.

(5) The reference shall be removed from a rule published in the Washington Administrative Code if a subsequent adjudicatory proceeding determines that the rule is within the intent of the legislature or was adopted in accordance with all applicable laws, whichever was the objection of the rules review committee. [1988 c 288 § 604; 1987 c 451 § 3; 1981 c 324 § 8. Formerly RCW 34.04.240.]

Legislative affirmation—Severability—1981 c 324: See notes following RCW 34.05.010.

34.05.650 Recommendations by committee to legislature. The rules review committee may recommend to the legislature that the original enabling legislation serving as authority for the adoption of any rule reviewed by the committee be amended or repealed in such manner as the committee deems advisable. [1988 c 288 § 605; 1987 c 451 § 4; 1981 c 324 § 9. Formerly RCW 34.04.250.]

Legislative affirmation—Severability—1981 c 324: See notes following RCW 34.05.010.

34.05.660 Review and objection procedures—No presumption established. It is the express policy of the legislature that establishment of procedures for review of administrative rules by the legislature and the notice of objection required by RCW 34.05.630(2) and 34.05.640(2) in no way serves to establish a presumption as to the legality or constitutionality of a rule in any subsequent judicial proceedings interpreting such rules. [1988 c 288 § 606; 1981 c 324 § 10. Formerly RCW 34.04.260.]

Legislative affirmation—Severability—1981 c 324: See notes following RCW 34.05.010.

34.05.670 Review of compliance with regulatory fairness act. The joint administrative rules review committee may review any rule to determine whether an agency

complied with the regulatory fairness requirements of chapter 19.85 RCW. [1992 c 197 § 3.]

34.05.680 Small business economic impact statements—Notice—Hearings—Reviews—Objections. The joint administrative rules review committee shall provide notice, conduct its hearings and reviews, and provide notice of committee objections to small business economic impact statements required under chapter 19.85 RCW in the same manner as is provided for notice, hearings, reviews, and objections to rules under this chapter. [1992 c 197 § 4.]

PART IX TECHNICAL PROVISIONS

34.05.900 Captions and headings. Section captions and subchapter headings used in this chapter do not constitute any part of the law. [1988 c 288 § 703.]

34.05.901 Severability—1988 c 288. 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. [1988 c 288 § 704.]

34.05.902 Effective date—Application—1988 c 288. RCW 34.05.001 through 34.05.902 shall take effect on July 1, 1989, and shall apply to all rule-making actions and agency proceedings begun on or after that date. Rule-making actions or other agency proceedings begun before July 1, 1989, shall be completed under the applicable provisions of chapter 28B.19 or 34.04 RCW existing immediately before that date in the same manner as if they were not amended by chapter 288, Laws of 1988 or repealed by section 701 of chapter 288, Laws of 1988. [1988 c 288 § 705.]

Recodification—Correction of statutory references—1988 c 288: "Parts X through XV of this act shall constitute a new chapter in Title 34 RCW, and the sections amended or set forth in this act shall be recodified in the order they appear in this act. The code reviser shall correct all statutory references to these sections and to the repealed chapters 28B.19 and 34.04 RCW to reflect this recodification and repeal." [1988 c 288 § 706.]

Chapter 34.08

WASHINGTON STATE REGISTER ACT OF 1977

Sections	
34.08.010	Legislative finding.
34.08.020	Washington State Register—Created—Publication period—Contents.
34.08.030	Preparation and transmittal of material by agencies to code reviser—Rules regarding.
34.08.040	Publication in register deemed official notice—Certification of material.
34.08.050	Institutions of higher education considered state agencies for certain purposes.
34.08.900	Short title.
34.08.905	Effective date—1977 ex.s. c 240.
34.08.910	Severability—1977 ex.s. c 240.

Regulatory fairness act: Chapter 19.85 RCW.

34.08.010 Legislative finding. The legislature finds that a need exists to adequately inform the public on the conduct of the people's business by state government, and that providing adequate notice of the affairs of government enables the public to actively participate in the conduct of state government. The legislature further finds that the promulgation of rules by state agencies has a direct effect on the ability of the people to conduct their personal affairs and knowledgeably deal with state government. It is therefore the intent and purpose of RCW 1.08.110 and 42.30.075 and of this chapter to require the publication of a state register by which the public will be adequately informed of the activities of government and where they may actively participate in the conduct of state government and influence the decision making process of the people's business. [1977 ex.s. c 240 § 1.]

34.08.020 Washington State Register—Created—Publication period—Contents. There is hereby created a state publication to be called the Washington State Register, which shall be published on no less than a monthly basis. The register shall contain, but is not limited to, the following materials received by the code reviser's office during the pertinent publication period:

(1)(a) The full text of any proposed new or amendatory rule, as defined in RCW 34.05.010, and the citation of any existing rules the repeal of which is proposed, prior to the public hearing on such proposal. Such material shall be considered, when published, to be the official notification of the intended action, and no state agency or official thereof may take action on any such rule except on emergency rules adopted in accordance with RCW 34.05.350, until twenty days have passed since the distribution date of the register in which the rule and hearing notice have been published or a notice regarding the omission of the rule has been published pursuant to RCW 34.05.210(4) as now or hereafter amended;

(b) The small business economic impact statement, if required by RCW 19.85.030, preceding the full text of the proposed new or amendatory rule;

(2) The full text of any new or amendatory rule adopted, and the citation of any existing rule repealed, on a permanent or emergency basis;

(3) Executive orders and emergency declarations of the governor;

(4) Public meeting notices of any and all agencies of state government, including state elected officials whose offices are created by Article III of the state Constitution or RCW 48.02.010;

(5) Rules of the state supreme court which have been adopted but not yet published in an official permanent codification;

(6) Summaries of attorney general opinions and letter opinions, noting the number, date, subject, and other information, and prepared by the attorney general for inclusion in the register;

(7) Juvenile disposition standards and security guidelines proposed and adopted under RCW 13.40.030;

(8) Proposed and adopted rules of the commission on judicial conduct; and

(9) The maximum allowable rates of interest and retail installment contract service charges filed by the state

treasurer under RCW 19.52.025 and 63.14.135. In addition, the highest rate of interest permissible for the current month and the maximum retail installment contract service charge for the current year shall be published in each issue of the register. The publication of the maximum allowable interest rate established pursuant to RCW 19.52.025 shall be accompanied by the following advisement: NOTICE: FEDERAL LAW PERMITS FEDERALLY INSURED FINANCIAL INSTITUTIONS IN THE STATE TO CHARGE THE HIGHEST RATE OF INTEREST THAT MAY BE CHARGED BY ANY FINANCIAL INSTITUTION IN THE STATE. THE MAXIMUM ALLOWABLE RATE OF INTEREST SET FORTH ABOVE MAY NOT APPLY TO A PARTICULAR TRANSACTION. [1987 c 186 § 8; 1986 c 60 § 3; 1983 c 2 § 8. Prior: 1982 c 6 § 6; 1981 c 299 § 18; 1980 c 186 § 15; 1977 ex.s. c 240 § 3.]

Severability—1983 c 2: See note following RCW 18.71.030.

Severability—1982 c 6: See RCW 19.85.900.

Severability—1980 c 186: See note following RCW 34.05.320.

Schedule of regular meetings of state agencies: RCW 42.30.075.

34.08.030 Preparation and transmittal of material by agencies to code reviser—Rules regarding. All material included in the register pursuant to RCW 34.08.020 shall be prepared by the appropriate agency or official and transmitted to the code reviser in accordance with rules adopted by the code reviser prescribing the style, format, and numbering system therefor, the date of receipt for inclusion within a particular register, and such other requirements as may be necessary for the orderly and efficient publication of the register and the Washington Administrative Code. [1977 ex.s. c 240 § 4.]

34.08.040 Publication in register deemed official notice—Certification of material. The publication of any information in the Washington State Register shall be deemed to be official notice of such information, and publication in the register of such information and materials shall be certified to be the true and correct copy of such rules or other information as filed in the code reviser's office. The code reviser shall certify, to any court of record, the publication of any notice or information, and attached to such certification shall be the agency's declaration of compliance with the provisions of the Open Public Meetings Act (chapter 42.30 RCW), the Administrative Procedure Act (chapter 34.05 RCW), and this chapter. [1989 c 175 § 31; 1977 ex.s. c 240 § 5.]

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

34.08.050 Institutions of higher education considered state agencies for certain purposes. For the purposes of the state register and this chapter, an institution of higher education, as defined in RCW 34.05.010, shall be considered to be a state agency. [1989 c 175 § 32; 1977 ex.s. c 240 § 6.]

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

34.08.900 Short title. This 1977 amendatory act may be known as the Washington State Register Act of 1977. [1977 ex.s. c 240 § 15.]

34.08.905 Effective date—1977 ex.s. c 240. This 1977 amendatory act shall take effect January 1, 1978. [1977 ex.s. c 240 § 16.]

34.08.910 Severability—1977 ex.s. c 240. 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 240 § 17.]

Chapter 34.12

OFFICE OF ADMINISTRATIVE HEARINGS

Sections

- 34.12.010 Office created—Conduct of hearings—Chief administrative law judge, appointment, term, qualifications, removal.
- 34.12.020 Definitions.
- 34.12.030 Administrative law judges—Appointment and contractual basis—Clerical personnel—Discipline and termination of administrative law judges—Civil service—Rules for operation of office.
- 34.12.035 State patrol disciplinary hearings.
- 34.12.037 Human rights commission proceedings.
- 34.12.038 Local government whistleblower proceedings.
- 34.12.039 Local government whistleblower proceedings—Costs.
- 34.12.040 Hearings conducted by administrative law judges—Criteria for assignment.
- 34.12.042 Exclusion of certain hearings by utilities and transportation commission.
- 34.12.050 Administrative law judge—Motion of prejudice against—Request for assignment of.
- 34.12.060 Initial decision or proposal for decision—Findings of fact and conclusions of law—Inapplicability to state patrol disciplinary hearings.
- 34.12.070 Record of hearings.
- 34.12.080 Procedural conduct of hearings—Rules.
- 34.12.090 Transfer of employees and equipment.
- 34.12.100 Salaries.
- 34.12.110 Application of chapter.
- 34.12.120 Appointment of chief administrative law judge.
- 34.12.130 Administrative hearings revolving fund—Created, purposes.
- 34.12.140 Transfers and payments into revolving fund—Limitation on employment security department payments—Allotment by director of financial management—Disbursements from fund by voucher.
- 34.12.150 Accounting procedures.
- 34.12.160 Direct payments by agencies, when authorized.

Bilingual services for non-English speaking public assistance applicants and recipients: RCW 74.04.025.

34.12.010 Office created—Conduct of hearings—Chief administrative law judge, appointment, term, qualifications, removal. A state office of administrative hearings is hereby created. The office shall be independent of state administrative agencies and shall be responsible for impartial administration of administrative hearings in accordance with the legislative intent expressed by this chapter. Hearings shall be conducted with the greatest degree of informality consistent with fairness and the nature of the proceeding. The office shall be under the direction of a chief administrative law judge, appointed by the governor with the advice and consent of the senate, for a term of five years. The person appointed is required, as a condition of appointment, to be admitted to practice law in the state of Washington, and may be removed for cause. [1981 c 67 § 1.]

Effective dates—1981 c 67: "Sections 12 and 37 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 immediately. The remainder of the act shall take effect July 1, 1982." [1981 c 67 § 40.] For codification of 1981 c 67, see Codification Tables, Volume 0.

Severability—1981 c 67: "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 67 § 39.]

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

(1) "Office" means the office of administrative hearings.

(2) "Administrative law judge" means any person appointed by the chief administrative law judge to conduct or preside over hearings as provided in this chapter.

(3) "Hearing" means an adjudicative proceeding within the meaning of RCW 34.05.010(1) conducted by a state agency under RCW 34.05.413 through 34.05.476.

(4) "State agency" means any state board, commission, department, or officer authorized by law to make rules or to conduct adjudicative proceedings, except those in the legislative or judicial branches, the pollution control hearings board, the shorelines hearings board, the forest practices appeals board, the environmental hearings office, the board of industrial insurance appeals, the state personnel board, the higher education personnel board, the public employment relations commission, the personnel appeals board, and the board of tax appeals. [1989 c 175 § 33; 1982 c 189 § 1; 1981 c 67 § 2.]

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

Effective date—1982 c 189: "This act shall take effect July 1, 1982." [1982 c 189 § 16.]

Effective dates—Severability—1981 c 67: See notes following RCW 34.12.010.

34.12.030 Administrative law judges—Appointment and contractual basis—Clerical personnel—Discipline and termination of administrative law judges—Civil service—Rules for operation of office. (1) The chief administrative law judge shall appoint administrative law judges to fulfill the duties prescribed in this chapter. All administrative law judges shall have a demonstrated knowledge of administrative law and procedures. The chief administrative law judge may establish different levels of administrative law judge positions.

(2) The chief administrative law judge may also contract with qualified individuals to serve as administrative law judges for specified hearings. Such individuals shall be compensated for their services on a contractual basis for each hearing, in accordance with chapter 43.88 RCW. The chief administrative law judge may not contract with any individual who is at that time an employee of the state.

(3) The chief administrative law judge may appoint such clerical and other specialized or technical personnel as may be necessary to carry on the work of this chapter.

(4) The administrative law judges appointed under subsection (1) of this section are subject to discipline and termination, for cause, by the chief administrative law judge. Upon written request by the person so disciplined or terminated, the chief administrative law judge shall forthwith put

the reasons for such action in writing. The person affected has a right of review by the superior court of Thurston county on petition for reinstatement or other remedy filed within thirty days of receipt of such written reasons.

(5) All employees of the office except the chief administrative law judge and the administrative law judges are subject to chapter 41.06 RCW.

(6) The office may adopt rules for its own operation and in furtherance of this chapter in accordance with chapter 34.05 RCW. [1981 c 67 § 3.]

Effective dates—Severability—1981 c 67: See notes following RCW 34.12.010.

34.12.035 State patrol disciplinary hearings. The chief administrative law judge shall designate an administrative law judge to serve, as the need arises, as presiding officer in state patrol disciplinary hearings conducted under RCW 43.43.090. [1984 c 141 § 6.]

34.12.037 Human rights commission proceedings. When requested by the state human rights commission, the chief administrative law judge shall assign an administrative law judge to conduct proceedings under chapter 49.60 RCW. [1985 c 185 § 29.]

34.12.038 Local government whistleblower proceedings. (Effective January 1, 1993.) When requested by a local government, the chief administrative law judge shall assign an administrative law judge to conduct proceedings under chapter 42.41 RCW. [1992 c 44 § 8.]

Effective dates—Severability—1992 c 44: See RCW 42.41.901 and 42.41.902.

34.12.039 Local government whistleblower proceedings—Costs. (Effective January 1, 1993.) Costs for the services of the office of administrative hearings for the initial twenty-four hours of services on a hearing under chapter 42.41 RCW shall be billed to the local government administrative hearings account. Costs for services beyond the initial twenty-four hours of services shall be allocated to the parties by the administrative law judge, the proportion to be borne by each party at the discretion of the administrative law judge. The charges for these costs shall be billed to the affected local government that shall recover payment from any other party specified by the administrative law judge. [1992 c 44 § 9.]

Effective date—Severability—1992 c 44: See RCW 42.41.901 and 42.41.902.

34.12.040 Hearings conducted by administrative law judges—Criteria for assignment. Whenever a state agency conducts a hearing which is not presided over by officials of the agency who are to render the final decision, the hearing shall be conducted by an administrative law judge assigned under this chapter. In assigning administrative law judges, the chief administrative law judge shall wherever practical (1) use personnel having expertise in the field or subject matter of the hearing, and (2) assign administrative law judges primarily to the hearings of particular agencies on a long-term basis. [1981 c 67 § 4.]

Effective dates—Severability—1981 c 67: See notes following RCW 34.12.010.

34.12.042 Exclusion of certain hearings by utilities and transportation commission. RCW 34.12.040 shall not apply to transportation tariff docket hearings conducted by the Washington utilities and transportation commission. The Washington utilities and transportation commission may, however, on its own motion, refer any transportation docket item to an administrative law judge where it is determined that the transportation tariff item in question may have an overall economic impact on transportation costs. [1982 c 189 § 13.]

Effective date—1982 c 189: See note following RCW 34.12.020.

34.12.050 Administrative law judge—Motion of prejudice against—Request for assignment of. (1) Any party to a hearing being conducted under the provisions of this chapter (including the state agency, whether or not it is nominally a party) may file with the chief administrative law judge a motion of prejudice, with supporting affidavit, against the administrative law judge assigned to preside at the hearing. The first such motion filed by any party shall be automatically granted.

(2) Any state agency may request from the chief administrative law judge the assignment of an administrative law judge for the purpose of conducting a rule-making or investigatory proceeding. [1981 c 67 § 5.]

Effective dates—Severability—1981 c 67: See notes following RCW 34.12.010.

34.12.060 Initial decision or proposal for decision—Findings of fact and conclusions of law—Inapplicability to state patrol disciplinary hearings. When an administrative law judge presides at a hearing under this chapter and a majority of the officials of the agency who are to render the final decision have not heard substantially all of the oral testimony and read all exhibits submitted by any party, it shall be the duty of such judge, or in the event of his unavailability or incapacity, of another judge appointed by the chief administrative law judge, to issue an initial decision or proposal for decision including findings of fact and conclusions of law in accordance with RCW 34.05.461 or 34.05.485. However, this section does not apply to a state patrol disciplinary hearing conducted under RCW 43.43.090. [1989 c 175 § 34; 1984 c 141 § 7; 1982 c 189 § 2; 1981 c 67 § 6.]

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

Effective date—1982 c 189: See note following RCW 34.12.020.

Effective dates—Severability—1981 c 67: See notes following RCW 34.12.010.

34.12.070 Record of hearings. The chief administrative law judge may establish a method of making a record of all hearings and may employ or contract in order to implement such method. [1981 c 67 § 7.]

Effective dates—Severability—1981 c 67: See notes following RCW 34.12.010.

34.12.080 Procedural conduct of hearings—Rules. All hearings shall be conducted in conformance with the

Administrative Procedure Act, chapter 34.05 RCW. After consultation with affected agencies, the chief administrative law judge may promulgate rules governing the procedural conduct of the hearings. Such rules shall seek the maximum procedural uniformity in agency hearings consistent with demonstrable needs for individual agency variation. [1981 c 67 § 8.]

Effective dates—Severability—1981 c 67: See notes following RCW 34.12.010.

34.12.090 Transfer of employees and equipment.

(1) All state employees who have exclusively or principally conducted or presided over hearings for state agencies prior to July 1, 1982, shall be transferred to the office.

(2) All state employees who have exclusively or principally served as support staff for those employees transferred under subsection (1) of this section shall be transferred to the office.

(3) All equipment or other tangible property in possession of state agencies, used or held exclusively or principally by personnel transferred under subsection (1) of this section shall be transferred to the office unless the office of financial management, in consultation with the head of the agency and the chief administrative law judge, determines that the equipment or property will be more efficiently used by the agency if such property is not transferred. [1981 c 67 § 9.]

Effective dates—Severability—1981 c 67: See notes following RCW 34.12.010.

34.12.100 Salaries. The chief administrative law judge shall be paid a salary fixed by the governor after recommendation of the state committee on agency officials' salaries. The salaries of administrative law judges appointed under the terms of this chapter shall be determined by the chief administrative law judge after recommendation of the state committee on agency officials' salaries. [1986 c 155 § 10; 1981 c 67 § 10.]

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

Effective dates—Severability—1981 c 67: See notes following RCW 34.12.010.

34.12.110 Application of chapter. The creation of the office of administrative hearings and the transfer of duties and personnel under this chapter shall not affect the validity of any rule, action, decision, or proceeding held or promulgated by any state agency before July 1, 1982. This chapter applies to hearings occurring after July 1, 1982. [1981 c 67 § 11.]

Effective dates—Severability—1981 c 67: See notes following RCW 34.12.010.

34.12.120 Appointment of chief administrative law judge. The governor shall appoint the chief administrative law judge. [1989 c 175 § 35; 1981 c 67 § 12.]

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

Effective dates—Severability—1981 c 67: See notes following RCW 34.12.010.

34.12.130 Administrative hearings revolving fund—Created, purposes. The administrative hearings revolving

fund is hereby created in the state treasury for the purpose of centralized funding, accounting, and distribution of the actual costs of the services provided to agencies of the state government by the office of administrative hearings. [1982 c 189 § 9.]

Effective date—1982 c 189: See note following RCW 34.12.020.

34.12.140 Transfers and payments into revolving fund—Limitation on employment security department payments—Allotment by director of financial management—Disbursements from fund by voucher. The amounts to be disbursed from the administrative hearings revolving fund from time to time shall be transferred thereto by the state treasurer from funds appropriated to any and all agencies for administrative hearings expenses on a quarterly basis. Agencies operating in whole or in part from nonappropriated funds shall pay into the administrative hearings revolving fund such funds as will fully reimburse funds appropriated to the office of administrative hearings for any services provided activities financed by nonappropriated funds. The funds from the employment security department for the administrative hearings services provided by the office of administrative hearings shall not exceed that portion of the resources provided to the employment security department by the department of labor, employment and training administration, for such administrative hearings services. To satisfy department of labor funding requirements, the office of administrative hearings shall meet or exceed timeliness standards under federal regulations in the conduct of employment security department appeals.

The director of financial management shall allot all such funds to the office of administrative hearings for the operation of the office, pursuant to appropriation, in the same manner as appropriated funds are allocated to other agencies under chapter 43.88 RCW.

Disbursements from the administrative hearings revolving fund shall be pursuant to vouchers executed by the chief administrative law judge or his designee. [1982 c 189 § 10.]

Effective date—1982 c 189: See note following RCW 34.12.020.

34.12.150 Accounting procedures. The chief administrative law judge shall keep such records as are necessary to facilitate proper allocation of costs to funds and agencies served and the director of financial management shall prescribe appropriate accounting procedures to accurately allocate costs to funds and agencies served. Billings shall be adjusted in line with actual costs incurred at intervals not to exceed six months. [1982 c 189 § 11.]

Effective date—1982 c 189: See note following RCW 34.12.020.

34.12.160 Direct payments by agencies, when authorized. In cases where there are unanticipated demands for services of the office of administrative hearings or where there are insufficient funds on hand or available for payment through the administrative hearings revolving fund or in other cases of necessity, the chief administrative law judge may request payment for services directly from agencies for whom the services are performed to the extent that revenues or other funds are available. Upon approval by the director of financial management, the agency shall make the request-

ed payment. The payment may be made on either an advance or reimbursable basis as approved by the director of financial management. [1982 c 189 § 12.]

Effective date—1982 c 189: See note following RCW 34.12.020.

Title 35

CITIES AND TOWNS

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airports: RCW 14.08.112.

declaratory judgments: Chapter 7.25 RCW.

eminent domain by cities: Chapter 8.12 RCW.

form, terms, maturity: Chapter 39.44 RCW.

industrial development: Chapter 39.84 RCW.

juvenile correctional institution, authorized investment: RCW 72.19.120.

mutual savings banks, authorized investment for: RCW 32.20.070, 32.20.090, 32.20.100.

refunding of: Chapter 39.53 RCW.

savings and loan associations, authorized investment: RCW 33.24.060, 33.24.070.

state-wide city employees' retirement system funds, investment in: RCW 41.44.100.

United States, sale of bonds to at private sale: Chapter 39.48 RCW.

utility or waterworks, refunding with general obligation funding bonds: Chapter 39.53 RCW.

Boundaries and plats: Title 58 RCW.

Boundary review board, extension of water and sewer service beyond corporate boundaries to go before: RCW 36.93.090.

Bribery of public officer: State Constitution Art. 2 § 30.

Bridges

as part of state highway system: Chapter 47.24 RCW.

eminent domain for: RCW 8.12.030.

Buildings

earthquake standards for construction: Chapter 70.86 RCW.

newly constructed, appraisal by assessor: RCW 36.21.070 and 36.21.080.

Burial of dead, authority to provide for: RCW 68.52.030.

Camping resort contracts—Nonapplicability of certain laws to—Club not subdivision except under city, county powers: RCW 19.105.510.

Cemeteries: Title 68 RCW.

Charters

alternative propositions, submission of: State Constitution Art. 11 § 10 (Amendment 40).

amendment by special law prohibited: State Constitution Art. 2 § 28(8). power of certain cities to frame, procedure: State Constitution Art. 11 § 10 (Amendment 40).

City and town treasurers' duties under Washington Clean Air Act: RCW 70.94.094.

City attorney

ballot titles and explanatory statements prepared by: RCW 29.27.060.

eminent domain by cities, military purposes, for, duties: RCW 8.04.170, 8.04.180.

food, drug and cosmetic act violations, prosecution by: RCW 69.04.160.

City council, unincorporated towns on United States land, powers of review: RCW 58.28.520.

City engineer, tidelands and shorelands, records of plats filed with: RCW 79.94.040.

City halls, jointly with county courthouses: RCW 36.64.010 through 36.64.040.

City treasurer

bonds, compensation payment in eminent domain proceedings, liability on: RCW 8.12.500.

cemetery improvement funds, deposit with: RCW 68.52.050.

cities of first class, employees' retirement fund custodian: RCW 41.28.080.

city street fund, notice of illegal use: RCW 47.08.100.

firemen's pension board member: RCW 41.16.020.

misappropriation of funds: RCW 42.20.090.

moneys to be deposited with treasurer: State Constitution Art. 11 § 15.

motor vehicle funds, distribution to: RCW 46.68.080.

police relief and pension board member: RCW 41.20.010.

use of money by official: State Constitution Art. 11 § 14.

Civil service, generally: Title 41 RCW.

Claims

auditing and paying false claim, penalty: RCW 42.20.060.

contracts and liabilities incurred in violation of indebtedness limitations are void: RCW 39.36.040.

towns, against: Chapter 45.52 RCW.

Classification by population: State Constitution Art. 11 § 10 (Amendment 40).

Clerks

city streets as part of state highway system certified to clerk: RCW 47.24.010.

elections, cancellation of registration, sworn statement by city clerk: RCW 29.10.120.

firemen's pension board member: RCW 41.16.020.

ordinances recorded by: RCW 5.44.080.

police relief and pension board of trustees member: RCW 41.20.010.

volunteer fire fighters' relief and pension board of trustees, member of: RCW 41.24.060.

Code of ethics for

municipal officers—Contract interests: Chapter 42.23 RCW.

public officers and employees: Chapter 42.22 RCW.

Commission form

canvass of election returns: RCW 29.62.140.

nonpartisan primaries: Chapter 29.21 RCW.

Comptroller

first class cities retirement system, duties of: RCW 41.28.040, 41.28.080.

member firemen's relief and pension boards: RCW 41.16.020, 41.16.040.

member volunteer fire fighters' board of trustees: RCW 41.24.060, 41.24.070.

Conditional sales contracts for purchase of real or personal property: RCW 39.30.010.

Continuity of government in event of enemy attack, succession to office of executive heads: RCW 42.14.050.

Contractors' registration, exemption from: RCW 18.27.090(1).

Contracts

for purchase of real or personal property: RCW 39.30.010.

indebtedness limitations, contracts made in violation of, void: RCW 39.36.040.

joint city halls with county courthouses: RCW 36.64.010 through 36.64.040.

parks and recreation cooperation: RCW 67.20.020.

- Conveyance of real property by public bodies—Recording:* RCW 65.08.095.
- Corporate stock or bonds not to be owned by:* State Constitution Art. 8 § 7.
- Corporation counsel, eminent domain by cities, military purposes, for:* RCW 8.04.170, 8.04.180.
- Counties, city harbor in two counties, effect upon assessments:* RCW 36.08.030.
- County highways, open spaces in cities and towns:* Chapter 36.89 RCW.
- County property, transfer to municipality, approval necessary:* RCW 36.34.280.
- County roads and bridges, assistance in finances:* RCW 36.76.110.
- County sewerage, water and drainage systems, authority, procedure:* Chapter 36.94 RCW.
- Courthouses, jointly with city halls:* RCW 36.64.010 through 36.64.040.
- Creation by special act prohibited:* State Constitution Art. 2 § 28(8).
- Credit not to be loaned:* State Constitution Art. 8 § 7.
- Crimes**
- civil rights, denial by:* RCW 9.91.010.
- gambling:* Chapters 9.46, 9.47 RCW.
- Dams**
- ditches, etc., restrictions for purpose of fish conservation:* Chapter 75.20 RCW.
- fishways required, penalty:* RCW 77.16.210.
- Diking and drainage districts:* Chapters 85.05, 86.09 RCW.
- Drainage districts, inclusion within:* RCW 85.06.230.
- Earthquake standards for construction:* Chapter 70.86 RCW.
- Elective officers, recall:* State Constitution Art. 1 §§ 33, 34 (Amendment 8), chapter 29.82 RCW.
- Electors, qualifications of:* State Constitution Art. 6 § 1 (Amendment 63).
- Electric**
- energy, falling waters—Sale or purchase authorized:* RCW 43.52.410.
- franchises and rights of way:* Chapter 80.32 RCW.
- revenue bonds, mutual savings banks, investment in:* RCW 32.20.070, 32.20.100.
- Electrical**
- apparatus use and construction rules, violation of, penalty:* RCW 19.29.050.
- installations, requirements and inspection:* Chapter 19.28 RCW.
- utilities, franchises for electrical utilities on streets:* RCW 80.32.010.
- Electricity, steam generation:* RCW 43.21.250 through 43.21.410.
- Elevators, lifting devices, and moving walks:* Chapter 70.87 RCW.
- Emergency vehicle, authorized, defined:* RCW 46.04.040.
- Eminent domain**
- bridges, for:* RCW 8.12.030, 47.24.030.
- generally:* State Constitution Art. 1 § 16 (Amendment 9), Title 8 RCW.
- limited access streets, acquisition of land, by:* RCW 47.52.050.
- state lands:* RCW 8.12.030, 8.12.080, 79.01.128.
- streets and highways, wharves and bridges for state highway purposes:* RCW 47.24.030.
- watersheds, state land:* RCW 79.01.128.
- Fees, special permits for motor vehicle oversize or overweight movement, fees paid to cities and towns, when:** RCW 46.44.096.
- Ferries, joint acquisition with counties:** RCW 36.54.020.
- Financing procedures, validation:** Chapter 39.90 RCW.
- Fines**
- payment into police relief and pension fund:* RCW 41.20.130.
- superior court jurisdiction to determine legality of:* RCW 2.08.010.
- supreme court jurisdiction to determine legality of:* RCW 2.04.010.
- Fire department vehicles, lighting, plates:** RCW 46.37.184 through 46.37.188 and 46.37.190.
- Fire fighters**
- chief as member of volunteer fire fighters' relief and pension board of trustees:* RCW 41.24.060.
- civil service, qualifications of applicants for positions:* RCW 41.08.070.
- jury duty, exemption from:* RCW 2.36.080.
- militia duty, exemption:* RCW 38.44.030.
- Fire fighters' retirement and pension acts:** Chapters 41.16, 41.18, 41.24 RCW.
- Fire prevention, areas withdrawn from fire protection and emergency medical districts:** RCW 52.08.035.
- Fire protection districts**
- annexed to or incorporated into city or town, firemen's retirement and job security rights protected:* RCW 41.16.250.
- joint operation:* RCW 52.08.035.
- withdrawal from:* RCW 52.08.025.
- Fireworks, permit for:** RCW 70.77.260.
- First class cities**
- assessment rolls, county assessor's duties:* RCW 36.21.020.
- birth and death records, furnishing of, fees:* RCW 70.58.107.
- clerical help, county treasurer:* RCW 36.29.150.
- elections, names of candidates, order on ballots:* RCW 29.21.010.
- elections, nonpartisan primaries:* Chapter 29.21 RCW.
- harbor improvements, joint planning authorized:* RCW 88.32.240, 88.32.250.
- public health pooling fund:* Chapter 70.12 RCW.
- retirement and pensions:* Chapter 41.28 RCW.
- taxes, collection by county treasurer:* RCW 36.29.100, 36.29.110, 36.29.150.
- vital statistics, primary registration district:* RCW 70.58.010.
- Flood control**
- benefits, liability for:* RCW 86.09.529.
- maintenance, state participation in:* Chapter 86.26 RCW.
- Food and beverage workers' permits:** Chapter 69.06 RCW.
- Fourth class cities (see Towns, chapter 35.27 RCW).**
- Franchises and privileges**
- bridges jointly owned or operated with state:* RCW 47.44.040.
- electric franchises and rights of way on city streets:* RCW 80.32.010.
- Fresh pursuit, uniform act:** Chapter 10.89 RCW.
- Funds**
- assessment fund for compensation of eminent domain damages by city to be kept separate:* RCW 8.12.480.
- city street fund, established, use:* RCW 47.24.040.
- city street fund, illegal use of, procedure to correct:* RCW 47.08.100.
- current expense, sale of unclaimed property:* RCW 63.32.030.
- general, justice and inferior courts act of 1961, bail forfeitures paid into:* RCW 3.30.090.
- general, policemen's relief and pension fund, surplus paid into general fund:* RCW 41.20.140.
- motor vehicle fund, purposes authorized for use:* RCW 36.82.070.
- police pension, surplus funds to general fund:* RCW 41.20.140.
- police pension fund, sale of unclaimed property:* RCW 63.32.030.
- public health pooling fund, generally:* Chapter 70.12 RCW.
- state-wide city employees' retirement fund:* RCW 41.44.100.
- street, county road and bridge violations, fines paid into:* RCW 36.82.210.
- street, directional signs, paid from:* RCW 47.36.040.
- Gambling activities, cities or towns, as affecting:** Chapter 9.46 RCW.
- Garbage, eminent domain by cities for garbage dumps:** RCW 8.12.030.
- Grand jury, inquiry as to misconduct:** RCW 10.27.100.
- Harbor areas lying in two or more counties, transfer of territory:** Chapter 36.08 RCW.
- Harbor improvements, joint planning for by first class cities and counties:** RCW 88.32.240, 88.32.250.
- Harbor line commission and restraint on disposition:** State Constitution Art. 15 § 1 (Amendment 15).
- Health departments**
- boarding home licensing, administered by, when:* RCW 18.20.100.
- generally:* Chapters 70.05 and 70.08 RCW.
- mentally ill:* Chapter 43.20A RCW.
- vital statistics:* Chapter 70.58 RCW, RCW 70.58.107.
- Health districts:** Chapter 70.46 RCW.
- Hearses, authority to provide:** RCW 68.52.030.
- Highway advertising control act of 1961 restricts placing of signs by:** Chapter 47.42 RCW.
- Highway funds, allocation of:** State Constitution Art. 2 § 40 (Amendment 18).

Title 35**Title 35 RCW: Cities and Towns****Highways**

abandoned, transfer to city or town: RCW 36.75.090.
franchises: Chapter 47.44 RCW.
return of street to city or town: RCW 47.24.010.
roads or streets, cooperative agreements to benefit: RCW 47.28.140.
sale, lease or gift of municipally owned land to state for, without bids: RCW 47.12.040.
vertical clearances over: RCW 46.44.020.

Historical materials, expenditure of funds for preservation and exhibition of authorized: RCW 27.48.010.

Hospitalization and medical aid for public employees and dependents, premiums, governmental contributions authorized: RCW 41.04.180, 41.04.190.

Hospitals

eminent domain for: RCW 8.12.030.
for mentally ill, private establishments, prescription of standards: RCW 71.12.550.
joint operation with counties: RCW 36.62.030, 36.62.110.

Incorporation

fire protection districts, effect upon: RCW 52.08.021, 52.08.035.
general laws, must be under: State Constitution Art. 11 § 10 (Amendment 40).

Indebtedness

bankruptcy readjustment and relief from debts: Chapter 39.64 RCW.
computation of: RCW 39.36.030.
eminent domain, contracting indebtedness to pay compensation for, reimbursement from local assessments: RCW 8.12.250.
limitations upon: State Constitution Art. 7 § 2 (Amendments 55, 59), Art. 8 § 6 (Amendment 27), chapter 39.36 RCW, RCW 39.52.020, 84.52.050.

Industrial development revenue bonds: Chapter 39.84 RCW.

Insurance companies, excise or privilege taxes, state preemption: RCW 48.14.020(4).

Intergovernmental disposition of property: Chapter 39.33 RCW.

Investment

by mutual savings banks in bonds and warrants of: RCW 32.20.070, 32.20.120.
by savings and loan associations in bonds or warrants of: RCW 33.24.050.
of municipal funds in savings and loan associations by county or other municipal corporation treasurer authorized: RCW 36.29.020.
of public and trust funds in federal agency bonds: Chapter 39.60 RCW.

Jails

city and county jails act: Chapter 70.48 RCW.
eminent domain for: RCW 8.12.030.
working of prisoners permitted: RCW 9.92.130.

Joint governmental activities: Chapter 36.64 RCW.

Joint operating agencies for electric power: Chapter 43.52 RCW.

Joint operations by municipal corporations, deposit and control of funds: RCW 43.09.285.

Judgment against public corporations, enforcement: RCW 6.17.080.

Judicial officers, inferior, powers: RCW 2.28.090.

Legal publications: Chapter 65.16 RCW.

Libraries, conditional sales contracts by cities and towns for purchase of property for libraries authorized, vote required if exceeds indebtedness: RCW 39.30.010.

Library service, contracts for authorized: RCW 27.12.180.

Library trustees, removal of: RCW 27.12.190.

Licenses, exemptions: RCW 36.71.090.

Liens for

employees for contributions to benefit plans: Chapter 60.76 RCW.
labor and materials on public works: Chapter 60.28 RCW.

Limitation of actions, application of statute of limitations to actions by: RCW 4.16.160.

Limitation on tax levies: State Constitution Art. 7 § 2 (Amendments 55, 59), RCW 84.52.050.

Local adopt-a-highway programs: RCW 47.40.105.

Lost and found property: Chapter 63.21 RCW.

Markets and marketing, eminent domain by cities for: RCW 8.12.030.

Material removed for channel or harbor improvement, or flood control—Use for public purpose: RCW 79.90.150.

Mayor

agent to receive summons: RCW 4.28.080.
bonds, signing of: RCW 39.52.020.
cemetery board, appointment by: RCW 68.52.045.
cemetery improvement fund, indorsement by of payments from: RCW 68.52.050.
district court districting committee: RCW 3.38.010.
firemen's pension board, member of: RCW 41.16.020.
issuance of search warrant by for violation of cigarette tax: RCW 82.24.190.
notification to of illegal use of city road funds: RCW 47.08.100.
police relief and pension board of trustees, member of: RCW 41.20.010.
public works contractor's bond, liability of mayor for failure to take: RCW 39.08.015.
state limited access facility through city or town, board of review to review plan, mayor to appoint members of: RCW 47.52.150.
volunteer fire fighters' relief and pension board member: RCW 41.24.060.

Meetings of governmental bodies, open to public: Chapter 42.30 RCW.

Mental health and retardation services—Interstate contracts by cities in boundary counties: RCW 71.28.010.

Militia and military affairs, eminent domain for military purposes: RCW 8.04.170, 8.04.180.

Milk inspectors, dairies or dairy products, appointment by cities and towns: RCW 15.32.510.

Minutes of governmental bodies, open to public: Chapter 42.32 RCW.

Misconduct of public officers: Chapter 42.20 RCW.

Motor vehicle excise fund apportionment and distribution to cities and towns, purposes to be used for: RCW 82.44.150.
preemption by state: RCW 82.36.440.

Motor vehicle fuel importer use tax proceeds, distribution to: RCW 82.37.190.

Motor vehicle fuel tax distribution and allocation of proceeds to: RCW 82.36.020.
distribution to, use of to pay indebtedness incurred in construction and repair of arterial highways: RCW 82.36.020(5).
refunds for urban transportation systems: RCW 82.36.275.

Motor vehicle fund, allocation of and distribution: RCW 46.68.100, 46.68.110.

Motor vehicle inspection by: Chapter 46.32 RCW.

Motor vehicle wreckers' regulation by, to conform with chapter 46.80 RCW: RCW 46.80.160.

Motor vehicles, special permits for oversize or overweight movements, collection of fees: RCW 46.44.096.

Municipal corporations, state auditor's office, division of: RCW 43.09.190 through 43.09.340.

Municipal courts

authorization, establishment, generally: Chapter 3.46 RCW.
jurisdiction: State Constitution Art. 4 §§ 4, 6 (Amendment 28).
legislature may provide: State Constitution Art. 4 § 1.
traffic school for offenders, court may compel attendance: RCW 46.83.050.

Nuisances

powder magazine nearby is public nuisance, when: RCW 7.48.140.
public: Chapter 9.66 RCW.

Officers and employees

actions against, venue: RCW 4.12.020(2).
code of ethics—Contracts: Chapter 42.23 RCW.
code of ethics—State agencies and legislative employees: Chapter 42.22 RCW.
continuity of government in event of enemy attack, succession: RCW 42.14.050.
eligibility to hold office: RCW 42.04.020.
hospitalization and medical aid for employees and dependents: RCW 41.04.180, 41.04.190.
hours of labor: Chapter 49.28 RCW.

- jury duty, exemption from:* RCW 2.36.080.
military leave: RCW 38.40.060.
minimum wage: RCW 49.46.010(5).
misconduct, penalty: Chapter 42.20 RCW.
public moneys deposited with treasurer: State Constitution Art. 11 § 15.
salaries, not to be changed during term: State Constitution Art. 11 § 8 (Amendment 57).
subversive activities: Chapter 9.81 RCW.
term not to be extended: State Constitution Art. 11 § 8 (Amendment 57).
use of public money by, felony: State Constitution Art. 11 § 14.
vacancies: Chapter 42.12 RCW:
- Official bonds**
payment of premiums: RCW 48.28.040.
security to city or town: Chapter 42.08 RCW.
- Offshore items, use of in performance of public works contracts:** Chapter 39.25 RCW.
- Old age and survivors' insurance:** Chapters 41.47, 41.48 RCW.
- Ordinances**
adoption at public meetings: RCW 42.30.060.
air pollution control: Chapter 70.94 RCW.
airport joint operation: RCW 14.08.200(8).
combined city-county health department, establishment: RCW 70.08.010.
contractor's bond: RCW 39.08.030.
declaratory judgment as to: Chapter 7.24 RCW.
electrical installations: RCW 19.28.010, 19.28.360.
eminent domain, authority to acquire recreational facilities by: RCW 67.20.010.
eminent domain, ordinance to provide methods of payment of compensation: RCW 8.12.040.
evidence, admissible as, when: RCW 5.44.080.
industrial insurance, benefits to injured employees under: RCW 51.12.050.
industrial insurance, employer's responsibility for absence of safeguards when required by: RCW 51.48.070.
liquor control, power of municipalities to adopt police regulations: RCW 66.08.120.
minimum wage law supplementary to: RCW 49.46.120.
payment of lower wages than obligated, penalty: RCW 49.52.050.
plots resurvey authorized and regulation of: RCW 58.10.030, 58.10.040.
port district regulations, adoption: RCW 53.08.220.
recording as evidence of passage: RCW 5.44.080.
state-wide city employees' retirement, election to join by: RCW 41.44.050, 41.44.090.
water distribution system, city may accept conveyance of and agree to maintain by: RCW 57.08.040.
- Organization under general laws required:** State Constitution Art. 11 § 10 (Amendment 40).
- Outdoor recreation land acquisition or improvement under marine recreation land act:** Chapter 43.99 RCW.
- Parks and recreation**
authority to acquire and operate: RCW 67.20.010.
conditional sales contracts by cities and towns for purchase of property for parks authorized, vote required if exceeds indebtedness: RCW 39.30.010.
districts: Chapter 36.69 RCW.
eminent domain by cities for: RCW 8.12.030.
state tidelands and shorelands: RCW 79.08.080, 79.08.090.
- Peddlers' and hawkers' licenses:** Chapter 36.71 RCW, RCW 73.04.050, 73.04.060.
- Planning commissions**
airport zoning commission, appointment as: RCW 14.12.070(2).
cemeteries, establishment or extension recommendations concerning: RCW 68.20.080.
- Plats and boundaries:** Title 58 RCW.
- Police**
attendance enforcement officer, may act as: RCW 28A.225.050.
civil service, qualifications of applicants for positions: RCW 41.12.070.
enforcement of traffic laws or regulations: Chapter 46.64 RCW.
game laws, duty to enforce: RCW 77.12.070.
health regulations by state board of health, duty to enforce, penalty: RCW 43.20.050.
jury duty, exempt from: RCW 2.36.080.
limited highway access facilities, concurrent jurisdiction: RCW 47.52.200.
- militia, exemption from service:* RCW 38.44.030.
motor vehicle accident reports: RCW 46.52.070.
motor vehicle dealer's license application, police chief to certify: RCW 46.70.041.
motor vehicle wreckers' records, inspection by: RCW 46.80.080, 46.80.150.
pawnbroker reports to: RCW 19.60.040.
regulations to be enforced: State Constitution Art. 11 § 11.
retirement and pensions, first class cities: Chapter 41.20 RCW.
retirement and pensions, state-wide city employees' retirement system: Chapter 41.44 RCW.
second-hand dealers reports to: RCW 19.60.040.
unclaimed property: Chapter 63.32 RCW.
- Pollution control**
eminent domain by cities for: RCW 8.12.030.
municipal bonding authority: Chapter 70.95A RCW.
- Population determination, generally:** Chapter 43.62 RCW.
- Port district must submit park or recreational plans to municipal park agency:** RCW 53.08.270.
- Port district regulations, adoption as city ordinance:** RCW 53.08.220.
- Powers of county commissioners to alter boundaries inapplicable where boundary review board created:** RCW 36.93.220.
- Prepayment of taxes and assessments:** RCW 35.21.650.
- Printing:** RCW 43.78.130 through 43.78.160.
- Prisons (see Jails).**
- Property**
forest lands, conveying to state for forestry purposes: RCW 76.12.040.
intergovernmental disposition of: RCW 39.33.010.
sale, exchange, or lease to state or political subdivision authorized: RCW 39.33.010.
state highway purposes, acquisition for: RCW 47.12.040.
- Public buildings, provision to be made for use by aged and handicapped:** Chapter 70.92 RCW.
- Public contracts and indebtedness, generally:** Title 39 RCW.
- Public employment**
civil service and retirement rights preserved when elective office assumed: RCW 41.04.120.
subversive person ineligible: RCW 9.81.040.
wage deduction for charitable contributions: RCW 41.04.035, 41.04.036.
- Public funds, private use prohibited:** State Constitution Art. 11 § 14.
- Public health pooling fund:** Chapter 70.12 RCW.
- Public lands, assessment against:** Chapter 79.44 RCW.
- Public markets, eminent domain by cities for:** RCW 8.12.030.
- Public utilities, school children of employees, attendance in school district:** RCW 28A.225.190.
- Public utility districts**
restrictions on use of power facilities: RCW 54.04.040.
tax on revenue: RCW 54.28.070.
- Public works, liens for labor and materials performed:** Chapter 60.28 RCW.
- Purchases**
authority to acquire and operate certain recreational facilities and camps: Chapter 67.20 RCW.
conditional sales contracts for purchase of real or personal property: RCW 39.30.010.
fuel, restriction on purchase or use of out-of-state fuel, penalty: RCW 39.24.020, 39.24.030.
preferential, exceptions: RCW 19.06.020, 43.78.130 through 43.78.160.
- Railroad**
crossings, signals and devices, allocations of funds to defray costs of: RCW 81.53.271 through 81.53.275, 81.53.281.
industrial crossing, inspection, not applicable within limits of first class cities: RCW 81.54.040.
- Railways, street:** Chapter 81.64 RCW.
- Recall of elective officers:** State Constitution Art. 1 § 33, 34 (Amendment 8), chapter 29.82 RCW.
- Reclamation districts:** Chapter 89.30 RCW.
- Records**
destruction of, procedure for: RCW 40.14.070.

Title 35**Title 35 RCW: Cities and Towns**

- historical records, transfer to depository agency, procedure for:* RCW 40.14.070.
- Redistricting by local governments and municipal corporations—Census information for—Plan, prepared when, criteria for, hearing on, request for review of, certification, remand—Sanctions when review request frivolous:* RCW 29.70.100.
- Referendum, electric utility transmission line construction and maintenance franchise:* RCW 80.32.040.
- Reincorporation, under general laws permitted to cities under special charter:* State Constitution Art. 11 § 10 (Amendment 40).
- River and harbor improvement districts, planning:* RCW 88.32.240.
- Sanitary regulations may be enforced:* State Constitution Art. 11 § 11.
- Sanitation, secretary of health, assistance:* RCW 70.54.040.
- School districts*
containing all or part of city or town: RCW 28A.315.250.
educational service districts, agreements with other governmental entities for transportation of students or the public, or for other noncommon school purposes—Limitations: RCW 28A.160.120.
- Second class cities*
elections, nonpartisan primaries: Chapter 29.21 RCW.
eminent domain by cities, construction of chapter as to second class cities: RCW 8.12.560.
exceeding indebtedness limitations, construction of bridge over navigable streams: RCW 39.36.040.
indebtedness, exceeding for bridge construction over navigable waters: RCW 39.36.040.
- Senior citizens programs—Authorization to establish and administer:* RCW 36.39.060.
- Service of summons on, personal service:* RCW 4.28.080(2).
- Sewer and water revenue bonds, mutual savings banks, investment in:* RCW 32.20.070, 32.20.100.
- Sewerage improvement districts:* Title 85 RCW.
- Sewerage systems*
eminent domain by cities for: RCW 8.12.030.
plans, submission to pollution control commission: RCW 90.48.110.
public nuisances concerning: RCW 7.48.140(2).
- Sexually transmitted disease, treatment and control:* Chapter 70.24 RCW.
- Shorelands*
generally: Title 79 RCW, chapter 90.58 RCW.
parks or playgrounds, application, grantor exchange: RCW 79.08.080, 79.08.090.
- Soil and water conservation districts:* Chapter 89.08 RCW.
- Solid waste collection company provisions do not apply to:* RCW 81.77.020.
- State-wide city employees' retirement:* Chapter 41.44 RCW.
- Streets and alleys*
abandoned state highways as: RCW 36.75.090.
abandonment, waters backed over: RCW 90.28.020.
aid in construction or maintenance of by state or county, procedure: RCW 47.24.050.
as extension of county road, shared maintenance: RCW 36.75.205.
as state highways, jurisdiction, maintenance and control: RCW 47.24.020.
closure or restrictions on traffic authorized: Chapter 47.48 RCW.
collection and removal of glass containers: RCW 47.40.090.
construction and maintenance aid by state or county, procedure: RCW 47.24.050.
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county may aid in construction and maintenance of: RCW 47.24.050.
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Chapter 35.01

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35.01.010 First class city. A first class city is one having at least twenty thousand inhabitants at the time of its organization or reorganization. [1965 c 7 § 35.01.010. Prior: 1955 c 319 § 2; prior: (i) 1890 p 140 § 11, part; RRS § 8932, part. (ii) 1907 c 248 § 1, part; 1890 p 140 § 12, part; RRS § 8933, part.]

35.01.020 Second class city. A second class city is one having at least ten thousand inhabitants at the time of its organization or reorganization. [1965 c 7 § 35.01.020. Prior: 1955 c 319 § 3; prior: (i) 1890 p 140 § 11, part; RRS § 8932, part. (ii) 1907 c 248 § 1, part; 1890 p 140 § 12, part; RRS § 8933, part.]

35.01.030 Third class city. A third class city is one having at least fifteen hundred inhabitants at the time of its organization or reorganization. [1965 c 7 § 35.01.030. Prior: 1955 c 319 § 4; prior: (i) 1890 p 140 § 11, part; RRS § 8932, part. (ii) 1907 c 248 § 1, part; 1890 p 140 § 12, part; RRS § 8933, part.]

35.01.040 Fourth class—Town. A municipal corporation of the fourth class, which shall be known as a town, is one having not less than three hundred inhabitants and not more than fifteen hundred inhabitants at the time of its organization. [1965 c 7 § 35.01.040. Prior: 1963 c 119 § 2; 1955 c 319 § 5; prior: (i) 1890 p 140 § 11, part; RRS § 8932, part. (ii) 1890 p 141 § 13; RRS § 8934.]

Chapter 35.02

INCORPORATION PROCEEDINGS

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Combined city and county municipal corporations: State Constitution Art. 11 § 16 (Amendment 58).

Fire protection districts, effect upon: Chapter 52.22 RCW.

Incorporation of municipalities: State Constitution Art. 11 § 10 (Amendment 40).

Incorporation proceedings exempt from State Environmental Policy Act: RCW 36.93.170, 43.21C.220.

35.02.001 Actions subject to review by boundary review board. Actions taken under chapter 35.02 RCW may be subject to potential review by a boundary review board under chapter 36.93 RCW. [1989 c 84 § 25.]

35.02.005 Purpose. The purpose of chapter 35.02 RCW is to provide a clear and uniform process for the incorporation of cities or towns operating under either Title 35 or 35A RCW. An incorporation may result in the creation of a second class city, third class city, or town operating under Title 35 RCW, or a noncharter code city operating under Title 35A RCW. [1986 c 234 § 1.]

35.02.010 Authority for incorporation—Number of inhabitants required. Any contiguous area containing not less than three hundred inhabitants lying outside the limits of an incorporated city or town may become incorporated as a city or town operating under Title 35 or 35A RCW as provided in this chapter: **PROVIDED**, That no area which lies within five air miles of the boundary of any city having a population of fifteen thousand or more shall be incorporated which contains less than three thousand inhabitants. [1986 c 234 § 2; 1969 c 48 § 1; 1965 c 7 § 35.02.010. Prior: 1963 c 57 § 1; 1890 p 131 § 1; 1888 p 221 § 1; 1877 p 173 § 1; 1871 p 51 § 1; RRS § 8883.]

Validation—1961 ex.s. c 16: Validation of certain incorporations and annexations—Municipal corporations of the fourth class: See note following RCW 35.21.010.

Validating—1899 c 61: "Any municipal corporation which has been incorporated under the existing laws of this state shall be a valid municipal corporation notwithstanding a failure to publish the notice of the election held or to be held for the purpose of determining whether such city should or shall become incorporated, for the length of time required by law governing such incorporation: **PROVIDED**, A notice fulfilling in other respects the requirements of law shall have been published for one week prior to such election in a newspaper printed and published within the boundaries of the corporation." [1899 c 61 p 103 § 1.]

Validating—1893 c 80: "The incorporation of all cities and towns in this state heretofore had or attempted under sections one, two and three of an act entitled 'An act providing for the organization, classification, incorporation and government of municipal corporations, and declaring an emergency,' approved March 24, 1890, and the re-incorporation of all cities and towns in this state heretofore had or attempted under sections one, four and five of said act, under which attempted incorporation or re-incorporation an organized government has been maintained since the date thereof, is hereby for all purposes declared legal and valid, and such cities and towns are hereby declared duly incorporated. And all contracts and obligations heretofore made, entered into or incurred by any such city or town so incorporated or re-incorporated are hereby declared legal and valid and of full force and effect." [1893 c 80 p 183 § 1.]

Validating—1890 c 7: "When so incorporated, the debts due from such town, village or city to any person, firm or corporation may be assumed and paid by the municipal authorities of such town, village or city; and all debts due to such town, village or city from any person, firm or corporation shall be deemed ratified, and may be collected in the same manner and in all respects as though such original incorporation were valid." [1890 c 7 p 136 § 7.]

35.02.020 Petition for incorporation—Signatures. A petition for incorporation must be signed by qualified voters resident within the limits of the proposed city or town equal in number to ten percent of the votes cast at the last state general election and presented to the auditor of the county in which all, or the largest portion of, the proposed city or town is located. [1986 c 234 § 3; 1965 c 7 § 35.02.020. Prior: 1957 c 173 § 2; prior: 1953 c 219 § 1;

1890 p 131 § 2, part; 1888 p 221 §§ 1, 2, part; 1877 p 173 §§ 1, 2, part; 1871 p 51 § 1, part; RRS § 8884, part.]

35.02.030 Petition for incorporation—Contents. The petition for incorporation shall: (1) Indicate whether the proposed city or town shall be a noncharter code city operating under Title 35A RCW, or a city or town operating under Title 35 RCW; (2) indicate the form or plan of government the city or town is to have; (3) set forth and particularly describe the proposed boundaries of the proposed city or town; (4) state the name of the proposed city or town; (5) state the number of inhabitants therein, as nearly as may be; and (6) pray that it may be incorporated. The petition shall conform to the requirements for form prescribed in RCW 35A.01.040. If the proposed city or town is located in more than one county, the petition shall be prepared in such a manner as to indicate the different counties within which the signators reside. A city or town operating under Title 35 RCW may have a mayor/council, council/manager, or commission form of government. A city operating under Title 35A RCW may have a mayor/council or council/manager plan of government. If the petition fails to specify the matters described in subsection (1) of this section, the proposal shall be to incorporate as a noncharter code city. If the petition fails to specify the matter described in subsection (2) of this section, the proposal shall be to incorporate with a mayor/council form or plan of government. [1986 c 234 § 4; 1965 c 7 § 35.02.030. Prior: 1957 c 173 § 3; prior: 1953 c 219 § 2; 1890 p 131 § 2, part; 1888 p 221 §§ 1, 2, part; 1877 p 173 §§ 1, 2, part; 1871 p 51 § 1, part; RRS § 8884, part.]

35.02.035 Petition—Auditor's duties. The county auditor shall within thirty days from the time of receiving said petition determine if the petition contains a sufficient number of valid signatures. If the proposed city or town is located in more than one county, the auditor shall immediately transmit a copy of the petition to the auditor of the other county or counties within which the proposed city or town is located. Each of these other county auditors shall certify the number of valid signatures thereon of voters residing in the county and transmit the certification to the auditor of the county with whom the petition was originally filed. This auditor shall determine if the petition contains a sufficient number of valid signatures. If the petition is certified as having sufficient valid signatures, the county auditor shall transmit said petition, accompanied by the certificate of sufficiency, to the county legislative authority or authorities of the county or counties within which the proposed city or town is located. [1986 c 234 § 5; 1965 c 7 § 35.02.035. Prior: 1953 c 219 § 8.]

35.02.037 Petition—Notice of certification. The county auditor who certifies the sufficiency of the petition shall notify the person or persons who submitted the petition of its sufficiency within five days of when the determination of sufficiency is made. Notice shall be by certified mail and may additionally be made by telephone. If a boundary review board or boards exists in the county or counties in which the proposed city or town is located, the petitioners

shall file notice of the proposed incorporation with the boundary review board or boards. [1986 c 234 § 6.]

35.02.039 Public hearing—Time limitations. (1) The county legislative authority of the county in which the proposed city or town is located shall hold a public hearing on the proposed incorporation if no boundary review board exists in the county, or if the boundary review board does not take jurisdiction over the proposal. The public hearing shall be held within sixty days of when the county auditor notifies the legislative authority of the sufficiency of the petition if no boundary review board exists in the county, or within ninety days of when notice of the proposal is filed with the boundary review board if the boundary review board fails to take jurisdiction over the proposal. The public hearing may be continued to other days, not extending more than sixty days beyond the initial hearing date. If the boundary review board takes jurisdiction, the county legislative authority shall not hold a public hearing on the proposal.

(2) If the proposed city or town is located in more than one county, a public hearing shall be held in each of the counties by the county legislative authority or boundary review board. Joint public hearings may be held by two or more county legislative authorities, or two or more boundary review boards. [1986 c 234 § 7.]

35.02.040 Public hearing—Publication of notice. Notice of the public hearing by the county legislative authority on the proposed incorporation shall be by one publication in not more than ten nor less than three days prior to the date set for said hearing in one or more newspapers of general circulation within the area proposed to be incorporated. Said notice shall contain the time and place of said hearing. [1986 c 234 § 8; 1965 c 7 § 35.02.040. Prior: 1957 c 173 § 4; prior: 1953 c 219 § 3; 1890 p 131 § 2, part; 1888 p 221 §§ 1, 2, part; 1877 p 173 §§ 1, 2, part; 1871 p 51 § 1, part; RRS § 8884, part.]

35.02.070 Findings by county legislative authority—Establishment of boundaries—Limitations. (1) If a county legislative authority holds a public hearing on a proposed incorporation, it shall establish and define the boundaries of the proposed city or town, being authorized to decrease but not increase the area proposed in the petition, except for adjusting the boundaries out to the right of way line of any portion of a public highway, street, or road pursuant to RCW 35.02.170. Any decrease shall not exceed twenty percent of the area proposed or that portion of the area located within the county: PROVIDED, That the area shall not be so decreased that the number of inhabitants therein shall be less than required by RCW 35.02.010 as now or hereafter amended. The county legislative authority, or the boundary review board if it takes jurisdiction, shall determine the number of inhabitants within the boundaries it has established.

(2) A county legislative authority shall disapprove the proposed incorporation if, without decreasing the area proposed in the petition, it does not conform with RCW 35.02.010. A county legislative authority may not otherwise disapprove a proposed incorporation.

(3) A county legislative authority or boundary review board has jurisdiction only over that portion of a proposed city or town located within the boundaries of the county. [1986 c 234 § 9; 1975 1st ex.s. c 220 § 3; 1965 c 7 § 35.02.070. Prior: 1963 c 57 § 2; 1957 c 173 § 7; prior: 1890 p 131 § 2, part; 1888 p 221 §§ 1, 2, part; 1877 p 173 §§ 1, 2, part; 1871 p 51 § 1, part; RRS § 8884, part.]

Legislative finding, intent—1975 1st ex.s. c 220: See note following RCW 35.02.170.

Incorporation subject to approval by boundary review board: RCW 36.93.090.

35.02.078 Elections—Question of incorporation—Nomination and election of officers. An election shall be held in the area proposed to be incorporated to determine whether the proposed city or town shall be incorporated if the boundary review board approves or modifies and approves the proposal, or if the county legislative authority does not disapprove the proposal as provided in RCW 35.02.070. Voters at this election shall determine if the area is to be incorporated.

The initial election on the question of incorporation shall be held at the next special election date specified in RCW 29.13.020 that occurs sixty or more days after the final public hearing by the county legislative authority or authorities, or the approval or modification and approval by the boundary review board or boards. The county legislative authority or authorities shall call for this election and, if the incorporation is approved, shall call for other elections to elect the elected officials as provided in this section. If the vote in favor of the incorporation receives forty percent or less of the total vote on the question of incorporation, no new election on the question of incorporation for the area or any portion of the area proposed to be incorporated may be held for a period of three years from the date of the election in which the incorporation failed.

If the incorporation is authorized as provided by RCW 35.02.120, separate elections shall be held to nominate and elect persons to fill the various elective offices prescribed by law for the population and type of city or town, and to which it will belong. The primary election to nominate candidates for these elective positions shall be held at the next special election date, as specified in RCW 29.13.020, that occurs sixty or more days after the election on the question of incorporation. The election to fill these elective positions shall be held at the next special election date, as specified in RCW 29.13.020, that occurs thirty or more days after certification of the results of the primary election. [1986 c 234 § 10.]

35.02.086 Elections—Candidates—Filing—Withdrawal—Ballot position. Each candidate for a city or town elective position shall file a declaration of candidacy with the county auditor of the county in which all or the major portion of the city or town is located, not more than forty-five nor less than thirty days prior to the primary election at which the initial elected officials are nominated. The elective positions shall be as provided in law for the type of city or town and form or plan of government specified in the petition to incorporate, and for the population of the city or town as determined by the county legisla-

tive authority or boundary review board where applicable. Any candidate may withdraw his or her declaration at any time within five days after the last day allowed for filing declaration of candidacy. All names of candidates to be voted upon shall be printed upon the ballot alphabetically in groups under the designation of the respective titles of offices for which they are candidates. Names of candidates printed upon the ballot need not be rotated. [1986 c 234 § 11; 1965 c 7 § 35.02.086. Prior: 1953 c 219 § 9.]

35.02.090 Elections—Conduct—Voters' qualifications. The elections on the proposed incorporation and for the nomination and election of the initial elected officials shall be conducted in accordance with the general election laws of the state, except as provided in this chapter. No person is entitled to vote thereat unless he or she is a qualified elector of the county, or any of the counties in which the proposed city or town is located, and has resided within the limits of the proposed city or town for at least thirty days next preceding the date of election. [1986 c 234 § 12; 1965 c 7 § 35.02.090. Prior: 1890 p 133 § 3, part; RRS § 8885, part.]

35.02.100 Election on question of incorporation—Notice—Contents. The notice of election on the question of the incorporation shall be given as provided by RCW 29.27.080 but shall further describe the boundaries of the proposed city or town, its name, and the number of inhabitants ascertained by the county legislative authority or the boundary review board to reside in it. [1986 c 234 § 13; 1965 c 7 § 35.02.100. Prior: 1957 c 173 § 9; prior: 1953 c 219 § 5; 1890 p 131 § 2, part; 1888 p 221 §§ 1, 2, part; 1877 p 173 §§ 1, 2, part; 1871 p 51 § 1, part; RRS § 8884, part.]

35.02.110 Election on question of incorporation—Ballots. The ballots in the initial election on the question of incorporation shall contain the words "for incorporation" and "against incorporation" or words equivalent thereto. [1986 c 234 § 14; 1965 c 7 § 35.02.110. Prior: 1957 c 173 § 10; prior: 1890 p 131 § 2, part; 1888 p 221 §§ 1, 2, part; 1877 p 173 §§ 1, 2, part; 1871 p 51 § 1, part; RRS § 8884, part.]

35.02.120 Election on question of incorporation—Certification of results. If the results reveal that a majority of the votes cast are for incorporation, the city or town shall become incorporated as provided in RCW 35.02.130. If the proposed city or town is located in more than one county, the auditors of the county or counties in which the smaller portion or portions of the proposed city or town is located shall forward a certified copy of the election results to the auditor of the county within which the major portion is located. This auditor shall add these totals to the totals in his or her county and certify the results to each of the county legislative authorities. [1986 c 234 § 15; 1965 c 7 § 35.02.120. Prior: 1953 c 219 § 6; 1890 p 133 § 3, part; RRS § 8885, part.]

Canvassing returns, generally: Chapter 29.62 RCW.

Conduct of elections—Canvass: RCW 29.13.040.

35.02.125 Newly incorporated city or town—Liability for costs of elections. A newly incorporated city or town shall be liable for its proportionate share of the costs of all elections, after the election on whether the area should be incorporated, at which an issue relating to the city or town is placed before the voters, as if the city or town was in existence after the election at which voters authorized the area to incorporate. [1991 c 360 § 2.]

35.02.130 Newly incorporated city or town—Effective date of incorporation—Powers during interim period—Terms of elected officers—First municipal election. The city or town officially shall become incorporated at a date from one hundred eighty days to three hundred sixty days after the date of the election on the question of incorporation. An interim period shall exist between the time the newly elected officials have been elected and qualified and this official date of incorporation. During this interim period, the newly elected officials are authorized to adopt ordinances and resolutions which shall become effective on or after the official date of incorporation, and to enter into contracts and agreements to facilitate the transition to becoming a city or town and to ensure a continuation of governmental services after the official date of incorporation. Periods of time that would be required to elapse between the enactment and effective date of such ordinances, including but not limited to times for publication or for filing referendums, shall commence upon the date of such enactment as though the city or town were officially incorporated.

During this interim period, the city or town governing body may adopt rules establishing policies and procedures under the state environmental policy act, chapter 43.21C RCW, and may use these rules and procedures in making determinations under the state environmental policy act, chapter 43.21C RCW.

During this interim period, the newly formed city or town and its governing body shall be subject to the following as though the city or town were officially incorporated: RCW 4.24.470 relating to immunity; chapter 42.17 RCW relating to open government; chapter 40.14 RCW relating to the preservation and disposition of public records; chapters 42.20, 42.22, and 42.23 RCW relating to ethics and conflicts of interest; chapters 42.30 and 42.32 RCW relating to open public meetings and minutes; RCW 35.22.288, 35.23.310, 35.24.220, 35.27.300, 35A.12.160, as appropriate, and chapter 35A.65 RCW relating to the publication of notices and ordinances; RCW 35.21.875 and 35A.21.230 relating to the designation of an official newspaper; RCW 36.16.138 relating to liability insurance; RCW 35.22.620, 35.23.352, and 35A.40.210, as appropriate, and statutes referenced therein relating to public contracts and bidding; and chapter 39.34 RCW relating to interlocal cooperation. Tax anticipation or revenue anticipation notes or warrants and other short-term obligations may be issued and funds may be borrowed on the security of these instruments during this interim period, as provided in chapter 39.50 RCW. Funds also may be borrowed from federal, state, and other governmental agencies in the same manner as if the city or town were officially incorporated.

RCW 84.52.020 and 84.52.070 shall apply to the extent that they may be applicable, and the governing body of such city or town may take appropriate action by ordinance during the interim period to adopt the property tax levy for its first full calendar year following the interim period.

The governing body of the new city or town may acquire needed facilities, supplies, equipment, insurance, and staff during this interim period as if the city or town were in existence. An interim city manager or administrator, who shall have such administrative powers and duties as are delegated by the governing body, may be appointed to serve only until the official date of incorporation. After the official date of incorporation the governing body of such a new city organized under the council manager form of government may extend the appointment of such an interim manager or administrator with such limited powers as the governing body determines, for up to ninety days. This governing body may submit ballot propositions to the voters of the city or town to authorize taxes to be collected on or after the official date of incorporation, or authorize an annexation of the city or town by a fire protection district or library district to be effective immediately upon the effective date of the incorporation as a city or town.

The boundaries of a newly incorporated city or town shall be deemed to be established for purposes of RCW 84.09.030 on the date that the results of the initial election on the question of incorporation are certified or the first day of January following the date of this election if the newly incorporated city or town does not impose property taxes in the same year that the voters approve the incorporation.

The newly elected officials shall take office immediately upon their election and qualification with limited powers during this interim period as provided in this section. They shall acquire their full powers as of the official date of incorporation and shall continue in office until their successors are elected and qualified at the next general municipal election after the official date of incorporation: **PROVIDED**, That if the date of the next general municipal election is less than twelve months after the date of the first election of councilmembers, those initially elected councilmembers shall serve until their successors are elected and qualified at the next following general municipal election as provided in RCW 29.04.170. For purposes of this section, the general municipal election shall be the date on which city and town general elections are held throughout the state of Washington, pursuant to RCW 29.13.020.

The official date of incorporation shall be on a date from one hundred eighty to three hundred sixty days after the date of the election on the question of incorporation, as specified in a resolution adopted by the governing body during this interim period. A copy of the resolution shall be filed with the county legislative authority of the county in which all or the major portion of the newly incorporated city or town is located. If the governing body fails to adopt such a resolution, the official date of incorporation shall be three hundred sixty days after the date of the election on the question of incorporation. The county legislative authority of the county in which all or the major portion of the newly incorporated city or town is located shall file a notice with the county assessor that the city or town has been authorized to be incorporated immediately after the favorable results of the election on the question of incorporation have been

certified. The county legislative authority shall file a notice with the secretary of state that the city or town is incorporated as of the official date of incorporation. [1991 c 360 § 3; 1986 c 234 § 16; 1965 c 7 § 35.02.130. Prior: 1953 c 219 § 7; 1890 p 133 § 3, part; RRS § 8885, part.]

Times for holding elections: Chapter 29.13 RCW.

35.02.132 Newly incorporated city or town—Budgets. The newly elected officials shall adopt an interim budget for the interim period or until January 1 of the following year, whichever occurs first. A second interim budget shall be adopted for any period between January 1 and the official date of incorporation. These interim budgets shall be adopted in consultation with the office of the state auditor, division of municipal corporations.

The governing body shall adopt a budget for the newly incorporated city or town for the period between the official date of incorporation and January 1 of the following year. The mayor or governing body, whichever is appropriate shall prepare or the governing body may direct the interim city manager to prepare a preliminary budget in detail to be made public at least sixty days before the official date of incorporation as a recommendation for the final budget. The mayor, governing body, or the interim city manager shall submit as a part of the preliminary budget a budget message that contains an explanation of the budget document, an outline of the recommended financial policies and programs of the city or town for the ensuing fiscal year, and a statement of the relation of the recommended appropriation to such policies and programs. Immediately following the release of the preliminary budget, the governing body shall cause to be published a notice once each week for two consecutive weeks of a public hearing to be held at least twenty days before the official date of incorporation on the fixing of the final budget. Any taxpayer may appear and be heard for or against any part of the budget. The governing body may make such adjustments and changes as it deems necessary and may adopt the final budget at the conclusion of the public hearing or at any time before the official date of incorporation. [1991 c 360 § 4.]

35.02.135 Newly incorporated city or town—May borrow from municipal sales and use tax equalization account. Upon the certification of election of officers, the governing body may by resolution borrow money from the municipal sales and use tax equalization account, up to one hundred thousand dollars or five dollars per capita based on the population estimate required by RCW 35.02.030, whichever is less.

The loan authorized by this section shall be repaid over a three-year period. The state treasurer shall withhold moneys from the funds otherwise payable to the city or town that has obtained such a loan, either from the municipal sales and use tax equalization account or from sales and use tax entitlements otherwise distributable to such city or town, so that the account is fully reimbursed over the three-year period. The state treasurer shall adopt by rule procedures to accomplish the purpose of this section on a reasonable and equitable basis over the three-year period. [1991 c 360 § 5.]

35.02.137 Newly incorporated city or town—Moratoria on development permits and approvals. During the interim period, the governing body of the newly formed city or town may adopt resolutions establishing moratoria during the interim transition period on the filing of applications with the county for development permits or approvals, including, but not limited [to], subdivision approvals, short subdivision approvals, and building permits. [1991 c 360 § 11.]

35.02.140 Disposition of uncollected road district taxes. Whenever in any territory forming a part of an incorporated city or town which is part of a road district, and road district regular property taxes are collectable on any property within such territory, the same shall, when collected by the county treasurer; be paid to such city or town and placed in the city or town street fund by the city or town: PROVIDED, That this section shall not apply to excess property tax levies securing general indebtedness or any special assessments due in behalf of such property. [1986 c 234 § 20; 1965 c 7 § 35.02.140. Prior: 1957 c 180 § 1.]

County road districts: RCW 36.75.060.

35.02.150 Pending final disposition of petition no other petition for incorporation to be acted upon—Withdrawal or substitution—Action on petition for annexation authorized. After the filing of any petition for incorporation with the county auditor, and pending its final disposition as provided for in this chapter, no other petition for incorporation which embraces any of the territory included therein shall be acted upon by the county auditor, the county legislative authority, or the boundary review board, or by any other public official or body that might otherwise be empowered to receive or act upon such a petition: PROVIDED, That any petition for incorporation may be withdrawn by a majority of the signers thereof at any time before such petition has been certified by the county auditor to the county legislative authority: PROVIDED FURTHER, That a new petition may be substituted therefor that embraces other or different boundaries, incorporation as a city or town operating under a different title of law, or for incorporation as a city or town operating under a different plan or form of government, by a majority of the signers of the original incorporation petition, at any time before the original petition has been certified by the county auditor to the county legislative authority, in which case the same proceedings shall be taken as in the case of an original petition. A boundary review board, county auditor, county legislative authority, or any other public official or body may act upon a petition for annexation before considering or acting upon a petition for incorporation which embraces some or all of the same territory, without regard to priority of filing. [1986 c 234 § 23; 1982 c 220 § 3; 1973 1st ex.s. c 164 § 1; 1965 c 7 § 35.02.150. Prior: 1961 c 200 § 1.]

Severability—1982 c 220: See note following RCW 36.93.100.

Annexation petition

action without regard to priority of filing: RCW 36.93.115.

no other annexation petition to be acted upon pending final disposition: RCW 35.13.175.

35.02.160 Cancellation, acquisition, of franchise or permit for operation of public service business in territory incorporated. The incorporation of any territory as a city or town shall cancel, as of the effective date of such incorporation, any franchise or permit theretofore granted to any person, firm or corporation by the state of Washington, or by the governing body of such incorporated territory, authorizing or otherwise permitting the operation of any public transportation, garbage collection and/or disposal or other similar public service business or facility within the limits of the incorporated territory, but the holder of any such franchise or permit canceled pursuant to this section shall be forthwith granted by the incorporating city or town a franchise to continue such business within the incorporated territory for a term of not less than the remaining term of the original franchise or permit, or five years, whichever is the shorter period, and the incorporating city or town, by franchise, permit or public operation, shall not extend similar or competing services to the incorporated territory except upon a proper showing of the inability or refusal of such person, firm or corporation to adequately service said incorporated territory at a reasonable price: PROVIDED, That the provisions of this section shall not preclude the purchase by the incorporating city or town of said franchise, business, or facilities at an agreed or negotiated price, or from acquiring the same by condemnation upon payment of damages, including a reasonable amount for the loss of the franchise or permit. In the event that any person, firm or corporation whose franchise or permit has been canceled by the terms of this section shall suffer any measurable damages as a result of any incorporation pursuant to the provisions of chapter 35.02 RCW, such person, firm or corporation shall have a right of action against any city or town causing such damages. [1986 c 234 § 24; 1965 ex.s. c 42 § 1.]

35.02.170 Use of right of way line as corporate boundary—When right of way may be included. The right of way line of any public street, road or highway, or any segment thereof, may be used to define a part of a corporate boundary in an incorporation proceeding. The boundaries of a newly incorporated city or town shall not include a portion of the right of way of any public street, road or highway except where the boundary runs from one edge of the right of way to the other edge of the right of way. [1989 c 84 § 7; 1986 c 234 § 25; 1975 1st ex.s. c 220 § 2.]

Legislative finding, intent—1975 1st ex.s. c 220: "The legislature finds that the use of centerlines of public streets, roads and highways as boundaries of incorporated cities and towns has resulted in divided jurisdiction over such public ways causing inefficiencies and waste in their construction, improvement and maintenance and impairing effective traffic law enforcement. It is the intent of this act to preclude the use of highway centerlines as corporate boundaries in the future and to encourage counties and cities and towns by agreement to revise existing highway centerline boundaries to coincide with highway right of way lines." [1975 1st ex.s. c 220 § 1.] For codification of 1975 1st ex.s. c 220, see Codification Tables, Volume 0.

Revision of corporate boundary by substituting right of way lines: RCW 35.21.790.

35.02.180 Ownership of county roads to revert to city or town—Territory within city or town to be removed from fire protection, road, and library districts.

The ownership of all county roads located within the boundaries of a newly incorporated city or town shall revert to the city or town and become streets as of the official date of incorporation. However, any special assessments attributable to these county roads shall continue to exist and be collected as if the incorporation had not occurred. Property within the newly incorporated city or town shall continue to be subject to any indebtedness attributable to these roads and any related property tax levies.

The territory included within the newly incorporated city or town shall be removed from the road district as of the official date of incorporation. The territory included within the newly incorporated city or town shall be removed from a fire protection district or districts or library district or districts in which it was located, as of the official date of incorporation, unless the fire protection district or districts have annexed the city or town during the interim period as provided in *RCW 52.04.160 through 52.04.200, or the library district or districts have annexed the city or town during the interim period as provided in **RCW 27.12.260 through 27.12.290. [1986 c 234 § 17.]

Reviser's note: *(1) RCW 52.04.160 has been decodified and RCW 52.04.170 through 52.04.200 have been recodified as RCW 52.04.061 through 52.04.101, pursuant to 1984 c 230 § 89.

** (2) The reference to "RCW 27.12.260 through 27.12.290" appears to be erroneous. RCW 27.12.360 through 27.12.395 relates to annexation of a city or town by a library district.

35.02.190 Annexation of fire protection district—Ownership of assets of fire protection district—When at least sixty percent of assessed valuation is annexed or incorporated in city or town. If a portion of a fire protection district including at least sixty percent of the assessed valuation of the real property of the district is annexed to or incorporated into a city or town, ownership of all of the assets of the district shall be vested in the city or town, or, if the city or town has been annexed by another fire protection district, in the other fire protection district, upon payment in cash, properties or contracts for fire protection services to the district within one year, of a percentage of the value of said assets equal to the percentage of the value of the real property in entire district remaining outside the incorporated or annexed area. The fire protection district may elect, by a vote of a majority of the persons residing outside the annexed or incorporated area who vote on the proposition, to require the annexing or incorporating city or town or fire protection district to assume responsibility for the provision of fire protection, and for the operation and maintenance of the district's property, facilities, and equipment throughout the district and to pay the city or town or fire protection district a reasonable fee for such fire protection, operation, and maintenance.

If all of a fire protection district is included in an area that incorporates as a city or town or is annexed to a city or town or fire protection district, all of the assets and liabilities of the fire protection district shall be transferred to the newly incorporated city or town upon its official date of incorporation or to the city or town or fire protection district upon the annexation. [1989 c 76 § 2; 1986 c 234 § 18; 1981 c 332 § 5; 1965 c 7 § 35.13.247. Prior: 1963 c 231 § 3. Formerly RCW 35.13.247.]

Severability—1981 c 332: See note following RCW 35.13.165.

35.02.200 Annexation of fire protection district—Ownership of assets of fire protection district—When less than sixty percent (as amended by 1989 c 76). (1) If a portion of a fire protection district including less than sixty percent of the assessed value of the real property of the district is annexed to or incorporated into a city or town, the ownership of all assets of the district shall remain in the district and the district shall pay to the city or town, or, if the city or town has been annexed by another fire protection district, to the other fire protection district within one year or within such period of time as the district continues to collect taxes in such incorporated or annexed areas, in cash, properties or contracts for fire protection services, a percentage of the value of said assets equal to the percentage of the value of the real property in the entire district lying within the area so incorporated or annexed: PROVIDED, That if the area annexed or incorporated includes less than five percent of the assessed value of the real property of the district, no payment shall be made to the city or town or fire protection district.

(2) As provided in RCW 35.02.210, the fire protection district from which territory is removed as a result of an incorporation or annexation shall provide fire protection to the incorporated or annexed area for such period as the district continues to collect taxes levied in such annexed or incorporated area.

(3) For the purposes of this section, the word "assets" shall mean the total assets of the fire district, reduced by its liabilities, including bonded indebtedness, the same to be determined by usual and accepted accounting methods. The amount of said liability shall be determined by reference to the fire district's balance sheet, produced in the regular course of business, which is nearest in time to the certification of the annexation of fire district territory by the city or town. [1989 c 76 § 3; 1986 c 234 § 19; 1967 c 146 § 1; 1965 c 7 § 35.13.248. Prior: 1963 c 231 § 4. Formerly RCW 35.13.248.]

35.02.200 Annexation of fire protection district—Ownership of assets of fire protection district—When less than sixty percent (as amended by 1989 c 267). (1) If a portion of a fire protection district including less than sixty percent of the assessed value of the real property of the district is annexed to or incorporated into a city or town, the ownership of all assets of the district shall remain in the district and the district shall pay to the city or town within one year or within such period of time as the district continues to collect taxes in such incorporated or annexed areas, in cash, properties or contracts for fire protection services, a percentage of the value of said assets equal to the percentage of the value of the real property in the entire district lying within the area so incorporated or annexed: PROVIDED, That if the area annexed or incorporated includes less than five percent of the ~~((assessed value of the real property))~~ area of the district, no payment shall be made to the city or town except as provided in RCW 35.02.205.

(2) As provided in RCW 35.02.210, the fire protection district from which territory is removed as a result of an incorporation or annexation shall provide fire protection to the incorporated or annexed area for such period as the district continues to collect taxes levied in such annexed or incorporated area.

(3) For the purposes of this section, the word "assets" shall mean the total assets of the fire district, reduced by its liabilities, including bonded indebtedness, the same to be determined by usual and accepted accounting methods. The amount of said liability shall be determined by reference to the fire district's balance sheet, produced in the regular course of business, which is nearest in time to the certification of the annexation of fire district territory by the city or town. [1989 c 267 § 1; 1986 c 234 § 19; 1967 c 146 § 1; 1965 c 7 § 35.13.248. Prior: 1963 c 231 § 4. Formerly RCW 35.13.248.]

Reviser's note: RCW 35.02.200 was amended twice during the 1989 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.

35.02.202 Annexation of fire protection district—Delay of transfer. During the interim period, the governing body of the newly formed city or town and the board of fire commissioners may by written agreement delay the transfer of the district's assets and liabilities, and the city's or town's responsibility for the provision of fire protection, that would otherwise occur under RCW 35.02.190 or 35.02.200 for up to one year after the official date of incorporation. During

the one-year period, the fire protection district may annex the city or town pursuant to chapter 52.04 RCW and retain the responsibility for fire protection. [1991 c 360 § 7.]

35.02.205 Annexation of fire protection district—Distribution of assets of district when less than five percent of district annexed—Distribution agreement—Arbitration. (1) A distribution of assets from the fire protection district to the city or town shall occur as provided in this section upon the annexation or incorporation of an area by the city or town that constitutes less than five percent of the area of the fire protection district upon the adoption of a resolution by the city or town finding that the annexation or incorporation will impose a significant increase in the fire suppression responsibilities of the city or town with a corresponding reduction in fire suppression responsibilities by the fire protection district. Such a resolution must be adopted within sixty days of the effective date of the annexation, or within sixty days of the official date of incorporation of the city. If the fire protection district does not concur in the finding within sixty days of when a copy of the resolution is submitted to the board of commissioners, arbitration shall proceed under subsection (3) of this section over this issue.

(2) An agreement on the distribution of assets from the fire protection district to the city or town shall be entered into by the city or town and the fire protection district within ninety days of the concurrence by the fire protection district under subsection (1) of this section, or within ninety days of a decision by the arbitrators under subsection (3) of this section that a significant increase in the fire protection responsibilities will be imposed upon the city or town as a result of the incorporation or annexation. A distribution shall be based upon the extent of the increased fire suppression responsibilities with a corresponding reduction in fire suppression responsibilities by the fire protection district, and shall consider the impact of any debt obligation that may exist on the property that is so annexed or incorporated. If an agreement is not entered into after this ninety-day period, arbitration shall proceed under subsection (3) of this section concerning this issue unless both parties have agreed to an extension of this period.

(3) Arbitration shall proceed under this subsection over the issue of whether a significant increase in the fire protection responsibilities will be imposed upon the city or town as a result of the annexation or incorporation with a corresponding reduction in fire suppression responsibilities by the fire protection district, or over the distribution of assets from the fire protection district to the city or town if such a significant increase in fire protection responsibilities will be imposed. A board of arbitrators shall be established for an arbitration that is required under this section. The board of arbitrators shall consist of three persons, one of whom is appointed by the city or town within sixty days of the date when arbitration is required, one of whom is appointed by the fire protection district within sixty days of the date when arbitration is required, and one of whom is appointed by agreement of the other two arbitrators within thirty days of the appointment of the last of these other two arbitrators who is so appointed. If the two are unable to agree on the appointment of the third arbitrator within this thirty-day

period, then the third arbitrator shall be appointed by a judge in the superior court of the county within which all or the greatest portion of the area that was so annexed or incorporated lies. The determination by the board of arbitrators shall be binding on both the city or town and the fire protection district. [1989 c 267 § 3.]

35.02.210 Fire protection district and library district—Continuation of services at option of city or town. At the option of the governing body of a newly incorporated city or town, any fire protection district or library district serving any part of the area so incorporated shall continue to provide services to such area until the city or town receives its own property tax receipts. [1991 c 360 § 8; 1986 c 234 § 21; 1967 ex.s. c 119 § 35A.03.160. Formerly RCW 35A.03.160.]

35.02.220 Duty of county and road, library, and fire districts to continue services during transition period—Road maintenance and law enforcement services. The approval of an incorporation by the voters of a proposed city or town, and the existence of a transition period to become a city or town, shall not remove the responsibility of any county, road district, library district, or fire district, within which the area is located, to continue providing services to the area until the official date of the incorporation.

A county shall continue to provide the following services to a newly incorporated city or town, or that portion of the county within which the newly incorporated city or town is located, at the preincorporation level as follows:

(1) Law enforcement services shall be provided for a period not to exceed sixty days from the official date of the incorporation or until the city or town is receiving or could have begun receiving sales tax distributions under RCW 82.14.030(1), whichever is the shortest time period.

(2) Road maintenance shall be for a period not to exceed sixty days from the official date of the incorporation or until forty percent of the anticipated annual tax distribution from the road district tax levy is made to the newly incorporated city or town pursuant to RCW 35.02.140, whichever is the shorter time period. [1991 c 360 § 9; 1986 c 234 § 22; 1985 c 143 § 1. Formerly RCW 35.21.763.]

35.02.225 County may contract to provide essential services. It is the desire of the legislature that the citizens of newly incorporated cities or towns receive uninterrupted and adequate services in the period prior to the city or town government attaining the ability to provide such service levels. In addition to the services provided under RCW 35.02.220, it is the purpose of this section to permit the county or counties in which a newly incorporated city or town is located to contract with the newly incorporated city or town for the continuation of essential services until the newly incorporated city or town has attained the ability to provide such services at least at the levels provided by the county before the incorporation. These essential services may include but are not limited to, law enforcement, road and street maintenance, drainage, and other utility services previously provided by the county before incorporation. The contract should be negotiated on the basis of the county's cost to provide services without consideration of capital

assets which do not continue to be amortized for principal and interest or depreciated by the county. The exception for not considering capital assets which are no longer amortized for principal and interest or depreciated is recognition of the preexisting financial investment of citizens of the newly incorporated city or town have made in county capital assets.

Nothing in this section limits the ability of the county and the newly incorporated city or town to contract for higher service levels or for other time periods than those imposed by this section. [1985 c 332 § 7. Formerly RCW 35.21.764.]

35.02.230 Incorporation of city or town located in more than one county—Powers and duties of county after incorporation—Costs. After incorporation of a city or town located in more than one county, all purposes essential to the maintenance, operation, and administration of the city or town whenever any action is required or may be performed by the county, county legislative authority, or any county officer or board, such action shall be performed by the respective county, county legislative authority, officer, or board of the county of that part of the city or town in which the largest number of inhabitants reside as of the date of the incorporation of the proposed city or town except as provided in RCW 35.02.240, and all costs incurred shall be borne proportionately by each county in that ratio which the number of inhabitants residing in that part of each county forming a part of the proposed city or town bears to the total number of inhabitants residing within the whole of the city or town. [1986 c 234 § 26; 1965 c 7 § 35.04.150. Prior: 1955 c 345 § 15. Formerly RCW 35.04.150.]

35.02.240 Incorporation of city or town located in more than one county—Taxes—Powers and duties of county after incorporation—Costs. In the case of evaluation, assessment, collection, apportionment, and any other allied power or duty relating to taxes in connection with the city or town, the action shall be performed by the county, county legislative authority, or county officer or board of the county for that area of the city or town which is located within the respective county, and all materials, information, and other data and all moneys collected shall be submitted to the proper officer of the county of that part of the city or town in which the largest number of inhabitants reside. Any power which may be or duty which shall be performed in connection therewith shall be performed by the county, county legislative authority, officer, or board receiving such as though only a city or town in a single county were concerned. All moneys collected from such area constituting a part of such city or town that should be paid to such city or town shall be delivered to the treasurer thereof, and all other materials, information, or data relating to the city or town shall be submitted to the appropriate city or town officials.

Any costs or expenses incurred under this section shall be borne proportionately by each county involved. [1986 c 234 § 27; 1965 c 7 § 35.04.160. Prior: 1955 c 345 § 16. Formerly RCW 35.04.160.]

35.02.250 Corporate powers in dealings with federal government. Any city or town incorporated as provided in

this chapter shall, in addition to all other powers, duties and benefits of a city or town of the same type or class, be authorized to purchase, acquire, lease, or administer any property, real or personal, or property rights and improvements thereon owned by the federal government on such terms and conditions as may be mutually agreed upon, when authorized to do so by the United States government, and thereafter to sell, transfer, exchange, lease, or otherwise dispose of any such property, and to execute contracts with the federal government with respect to supplying water and for other utility services. [1986 c 234 § 28; 1965 c 7 § 35.04.170. Prior: 1955 c 345 § 17. Formerly RCW 35.04.170.]

35.02.260 Duty of department of community development to assist newly incorporated cities and towns. The department of community development shall identify federal, state, and local agencies that should receive notification that a new city or town is about to incorporate and shall assist newly formed cities and towns during the interim period before the official date of incorporation in providing such notification to the identified agencies. [1991 c 360 § 6.]

35.02.270 Other local governments and state agencies—May assist newly incorporated cities and towns. Cities, towns, counties, and other local government agencies and state agencies may make loans of staff and equipment, and technical and financial assistance to the newly formed city or town during the interim period to facilitate the transition to an incorporated city or town. Such loans and assistance may be without compensation. [1991 c 360 § 12.]

Chapter 35.06

ADVANCEMENT OF CLASSIFICATION

Sections

35.06.010	Population requirements for advance in classification.
35.06.020	Petition—Local census.
35.06.030	Procedure if census is favorable—Election.
35.06.040	Certifying of returns.
35.06.050	Effect of adverse vote.
35.06.060	Effect of favorable vote.
35.06.070	Transcript of record to secretary of state.
35.06.080	Election of new officers.

Municipal corporations classified: Chapter 35.01 RCW.

Population determinations: Chapter 43.62 RCW.

35.06.010 Population requirements for advance in classification. A city or town which has, as ascertained by a local census, or which has on the first day of January in any year according to an official report or abstract of the then next preceding federal or state census, at least twenty thousand inhabitants may become a city of the first class; a city or town which has, when ascertained in the same way, at least ten thousand inhabitants may become a city of the second class; a city or town which has, when ascertained in the same way, at least fifteen hundred inhabitants may become a city of the third class. [1965 c 7 § 35.06.010. Prior: 1955 c 319 § 6; prior: (i) 1907 c 248 § 1, part; 1890

p 140 § 12, part; RRS § 8933, part. (ii) 1890 p 141 § 14; RRS § 8936.]

Cities of twenty thousand or more, alternative procedure to become city of first class: RCW 35.21.610.

35.06.020 Petition—Local census. When a petition is filed signed by electors of a city or town, in number equal to not less than one-fifth of the votes cast at the last municipal election, seeking reorganization thereof as a city of a higher class than that indicated by the last preceding federal or state census, the city or town council to which the petition is presented shall forthwith cause a census to be taken by one or more suitable persons of all the inhabitants of such town or city in which census the full name of each person shall be plainly written, and the names alphabetically arranged and regularly numbered in complete series. The census shall be verified before an officer authorized to administer oaths and filed with the city or town clerk.

If the census shows such city or town qualified for the class named in the petition, the same proceedings shall be had as if the census were a federal or state census.

If the census shows such city or town not qualified for the class named in the petition, no further proceedings shall be had: PROVIDED, That the city or town may be reorganized as a city or town of the class indicated by the census, upon a proper petition filed within six months from the filing of such census with the clerk, without other or further census. [1965 c 7 § 35.06.020. Prior: 1955 c 319 § 7; prior: 1907 c 248 § 1, part; 1890 p 140 § 12, part; RRS § 8933, part.]

Allocation of state funds to cities and towns based upon census: RCW 43.62.020, 43.62.030.

35.06.030 Procedure if census is favorable—Election. If the census prescribed in RCW 35.06.020 shows that the city or town belongs to the class named in the petition, the city or town council shall cause notice to be given as in other cases, that at the the next general election of the city or town, or at a special election to be called for that purpose, the electors may vote for or against the advancement, their ballots to contain the words "for advancement" and the words "against advancement." [1965 c 7 § 35.06.030. Prior: 1899 p 60 § 1; 1890 p 141 § 16; RRS § 8937.]

Notice of election: RCW 29.27.080.

Times for holding elections: Chapter 29.13 RCW.

35.06.040 Certifying of returns. The canvassing authority of such election shall forthwith certify in duplicate to the city or town clerk the whole number of votes given at the election, the number in favor of advancement, and the number against it. [1965 c 7 § 35.06.040. Prior: 1890 p 142 § 17; RRS § 8938.]

Canvassing returns, generally: Chapter 29.62 RCW.

Conduct of elections—Canvass: RCW 29.13.040.

35.06.050 Effect of adverse vote. The clerk shall lay the certificate of election and census before the council at its next regular meeting after the same has been filed in his office, and if it appear that all the votes cast for the advancement are not a majority of the votes cast at the election, no

further proceedings shall be had on that petition; but this shall not bar any new proceedings for such purpose. [1965 c 7 § 35.06.050. Prior: 1890 p 142 § 19; RRS § 8940.]

35.06.060 Effect of favorable vote. If a majority of votes is in favor of such advancement, and the corporation, according to the federal or state census, or the census taken by order of the council, contains the requisite number of inhabitants, the council shall thereupon, by resolution, declare that the inhabitants of the corporation have decided on such advancement, and direct the clerk to certify the resolution to the clerk of the board of county commissioners. [1965 c 7 § 35.06.060. Prior: 1890 p 142 § 20; RRS § 8941.]

35.06.070 Transcript of record to secretary of state. It shall be the duty of said board to cause a record of such action to be made, and when the clerk of the board has made the record, he shall certify and forward to the secretary of state a transcript thereof, whereupon the corporation shall be a city of the third, second, or first class, as the case may be, to be organized and governed under the provisions of this title, and when the corporation is actually organized by the election and qualification of its officers, notice of its existence as such shall be taken in all judicial proceedings. [1965 c 7 § 35.06.070. Prior: 1890 p 142 § 21; RRS § 8942.]

35.06.080 Election of new officers. The first election of officers of the new corporation after such proceedings shall be at the next general municipal election or at a special election to be called for that purpose, and the officers of the old corporation shall remain in office until the officers of the new corporation are elected and qualified; and the ordinances, bylaws, and resolutions adopted by the old corporation shall, as far as consistent with the provisions of this title, continue in force until repealed by the council of the new corporation; and the council and officers of the old corporation shall, upon demand, deliver to the proper officers of the new corporation all books of record, documents, and papers in their possession belonging to the old corporation. [1965 c 106 § 1; 1965 c 7 § 35.06.080. Prior: 1890 p 143 § 22; RRS § 8942.]

Chapter 35.07 DISINCORPORATION

Sections

35.07.001	Actions subject to review by boundary review board.
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35.07.080	Canvass of returns.
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35.07.230	Involuntary dissolution of towns—Authorized.
35.07.240	Involuntary dissolution of towns—Notice of hearing.
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35.07.260	Involuntary dissolution of towns—Alternative forms of order.

Census to be made in decennial periods: State Constitution Art. 2 § 3.

Obligations of contract: State Constitution Art. 1 § 23.

Population determinations: Chapter 43.62 RCW.

35.07.001 Actions subject to review by boundary review board. Actions taken under chapter 35.07 RCW may be subject to potential review by a boundary review board under chapter 36.93 RCW. [1989 c 84 § 26.]

35.07.010 Authority for disincorporation. Cities of the third class and towns having a population of less than four thousand inhabitants may disincorporate. [1965 c 7 § 35.07.010. Prior: 1897 c 69 § 1; RRS § 8914.]

35.07.020 Petition—Requisites. The petition for disincorporation must be signed by a majority of the registered voters thereof and filed with the city or town council. [1965 c 7 § 35.07.020. Prior: 1897 c 69 § 2, part; RRS § 8915, part.]

35.07.030 Census. Upon the filing of the petition, the council shall appoint a suitable person to make an enumeration of the inhabitants of the municipality unless an enumeration has been made for the city or town, county, state, or the United States within six months next preceding the filing of the petition showing the city's or town's population to be less than four thousand. An enumeration made hereunder, unless impeached for fraud, shall be conclusive. [1965 c 7 § 35.07.030. Prior: 1897 c 69 § 16; RRS § 8929.]

Effect of disincorporation on allocation of state funds to a city or town: RCW 43.62.030.

35.07.040 Calling election—Receiver. If the applicable census shows a population of less than four thousand, the council shall cause an election to be called upon the proposition of disincorporation. If the city or town has any indebtedness or outstanding liabilities, it shall order the election of a receiver at the same time. [1965 c 7 § 35.07.040. Prior: 1897 c 69 § 2, part; RRS § 8915, part.]

35.07.050 Notice of election. Notice of such election shall be given as provided in RCW 29.27.080. [1965 c 7 § 35.07.050. Prior: 1897 c 69 § 3; RRS § 8916.]

35.07.060 Ballots. The ballots for the election shall be printed at the expense of the municipality and there shall be printed thereon the words "for dissolution" in one line and the words "against dissolution" in another line and in other and separate lines, the names of each of the lawfully

nominated candidates for receiver. In all other respects the ballots shall be in conformity with the law regulating elections in such cities and towns. [1965 c 7 § 35.07.060. Prior: 1897 c 69 § 4; RRS § 8917.]

35.07.070 Conduct of election. The election shall be conducted as other elections are required by law to be conducted in the city or town except as in this chapter otherwise provided. [1965 c 7 § 35.07.070. Prior: 1897 c 69 § 5; RRS § 8918.]

Conduct of elections—Canvass: RCW 29.13.040.

35.07.080 Canvass of returns. The result of the election, together with the ballots cast, shall be certified by the canvassing authority to the council which shall meet within one week thereafter and shall declare the result which shall be made a matter of record in the journal of the council proceedings. If the vote "For dissolution" be a majority of the registered voters of such city or town voting at such election, such corporation shall be deemed dissolved. [1965 c 7 § 35.07.080. Prior: 1933 c 128 § 1, part; 1897 c 69 § 6, part; Rem. Supp. § 8919, part.]

Canvassing returns, generally: Chapter 29.62 RCW.

35.07.090 Effect of disincorporation—Powers—Officers. Upon disincorporation of a city or town, its powers and privileges as such, are surrendered to the state and it is absolved from any further duty to the state or its own inhabitants and all the offices appertaining thereto shall cease to exist immediately upon the entry of the result: PROVIDED, That if a receiver is required, the officers shall continue in the exercise of all their powers until a receiver has qualified as such, and thereupon shall surrender to him all property, money, vouchers, records and books of the city or town including those in any manner pertaining to its business. [1965 c 7 § 35.07.090. Prior: 1933 c 128 § 1, part; 1897 c 69 § 6, part; RRS § 8919, part.]

35.07.100 Effect of disincorporation—Existing contracts. Disincorporation shall not impair the obligation of any contract. If any franchise lawfully granted has not expired at the time of disincorporation, the disincorporation does not impair any right thereunder and does not imply any authority to interfere therewith to any greater extent than the city or town might have, if it had remained incorporated. [1965 c 7 § 35.07.100. Prior: 1897 c 69 § 18; RRS § 8931.]

Obligations of contract shall not be impaired: State Constitution Art. 1 § 23.

35.07.110 Effect of disincorporation—Streets. Upon disincorporation of a city or town, its streets and highways pass to the control of the state and shall remain public highways until closed in pursuance of law; and the territory embraced therein shall be made into a new road district or annexed to adjoining districts as may be ordered by the board of county commissioners of the county embracing such city or town. [1965 c 7 § 35.07.110. Prior: 1897 c 69 § 17; RRS § 8930.]

35.07.120 Receiver—Qualification—Bond. The receiver must qualify within ten days after he has been declared elected, by filing with the county auditor a bond equal in penalty to the audited indebtedness and the established liabilities of the city or town with sureties approved by the board of county commissioners, or if the board is not in session, by the judge of the superior court of the county. The bond shall run to the state and shall be conditioned for the faithful performance of his duties as receiver and the prompt payment in the order of their priority of all lawful claims finally established as the funds come into his hands to discharge them. The bond shall be filed with the county auditor and shall be a public record and shall be for the benefit of every person who may be injured by the receiver's failure to discharge his duty. [1965 c 7 § 35.07.120. Prior: 1897 c 69 § 7; RRS § 8920.]

35.07.130 Elected receiver—Failure to qualify—Court to appoint. If the person elected receiver fails to qualify as such within the prescribed time, the council shall file in the superior court of the county a petition setting forth the fact of the election, its result and the failure of the person elected receiver to qualify within the prescribed time and praying for the appointment of another person as receiver. Notice of the filing of the petition and of the time fixed for hearing thereon must be served upon the person elected receiver at least three days before the time fixed for the hearing. If he cannot be found within the county, no notice need be served, and the court may proceed with full jurisdiction to determine the matter upon the hearing. Unless good cause to the contrary is shown, the court shall appoint some suitable person to act as receiver, who shall qualify as required by RCW 35.07.120 within ten days from the date of his appointment.

If the council fails to procure the appointment of a receiver, any person qualified to vote in the city or town may file such a petition and make such application. [1965 c 7 § 35.07.130. Prior: 1897 c 69 § 8; RRS § 8921.]

35.07.140 No receiver elected though indebtedness exists—Procedure. If no receiver is elected upon the supposition that no indebtedness existed and it transpires that the municipality does have indebtedness or an outstanding liability, any interested person may file a petition in the superior court asking for the appointment of a receiver, and unless the indebtedness or liability is discharged, the court shall appoint some suitable person to act as receiver who shall qualify as required of any other receiver hereunder, within ten days from the date of his appointment. [1965 c 7 § 35.07.140. Prior: 1897 c 69 § 15; RRS § 8928.]

35.07.150 Duties of receiver—Claims—Priority. The receiver, upon qualifying, shall take possession of all the property, money, vouchers, records and books of the former municipality including those in any manner pertaining to its business and proceed to wind up its affairs. He shall have authority to pay:

(1) All outstanding warrants and bonds in the order of their maturity with due regard to the fund on which they are properly a charge;

(2) All lawful claims against the corporation which have been audited and allowed by the council;

(3) All lawful claims which may be presented to him within the time limited by law for the presentation of such claims, but no claim shall be allowed or paid which is not presented within six months from the date of the disincorporation election;

(4) All claims that by final adjudication may come to be established as lawful claims against the corporation.

As between warrants, bonds and other claims, their priority shall be determined with regard to the fund on which they are properly a charge. [1965 c 7 § 35.07.150. Prior: 1897 c 69 § 9; RRS § 8922.]

Accident claims, audits: Chapter 35.31 RCW, RCW 35.24.260.

35.07.160 Receiver may sue and be sued. The receiver shall have the right to sue and be sued in all cases necessary or proper for the purpose of winding up the affairs of the former city or town and shall be subject to suit in all cases wherein the city or town might have been sued, subject to the limitations provided in this chapter. [1965 c 7 § 35.07.160. Prior: 1897 c 69 § 12; RRS § 8925.]

35.07.170 Receiver—Power to sell property. The receiver shall be authorized to sell at public auction after such public notice as the sheriff is required to give of like property sold on execution, all the property of the former municipality except such as is necessary for his use in winding up its affairs, and excepting also such as has been dedicated to public use.

Personal property shall be sold for cash.

Real property may be sold for all cash, or for one-half cash and the remainder in deferred payments, the last payment not to be later than one year from date of sale. Title shall not pass until all deferred payments have been fully paid. [1965 c 7 § 35.07.170. Prior: 1897 c 69 § 10, part; RRS § 8923.]

35.07.180 Receiver—Power to levy taxes. In the same manner and to the same extent as the proper authorities of the former city or town could have done had it not been disincorporated, the receiver shall be authorized to levy taxes on all taxable property, to receive the taxes when collected and to apply them together with the proceeds arising from sales to the extinguishment of the obligations of the former city or town.

After all the lawful claims against the former city or town have been paid excepting bonds not yet due, no levy greater than fifty cents per thousand dollars of assessed value shall be made; nor shall the levy be greater than sufficient to meet the accruing interest until the bonds mature. [1973 1st ex.s. c 195 § 11; 1965 c 7 § 35.07.180. Prior: 1897 c 69 § 10, part; RRS § 8923, part.]

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

35.07.190 Receiver's compensation. The receiver shall be entitled to deduct from any funds coming into his hands a commission of six percent on the first thousand dollars, five percent on the second thousand and four percent on any amount over two thousand dollars as his full compen-

sation exclusive of necessary traveling expenses and necessary disbursements, but not exclusive of attorney's fees. [1965 c 7 § 35.07.190. Prior: 1897 c 69 § 11; RRS § 8924.]

35.07.200 Receiver—Removal for cause. The receiver shall proceed to wind up the affairs of the corporation with diligence and for negligence or misconduct in the discharge of his duties may be removed by the superior court upon a proper showing made by a taxpayer of the former city or town or by an unsatisfied creditor thereof. [1965 c 7 § 35.07.200. Prior: 1897 c 69 § 13, part; RRS § 8926, part.]

35.07.210 Receiver—Successive appointments. In the case of removal, death, or resignation of a receiver, the court may appoint a new receiver to take charge of the affairs of the former city or town. [1965 c 7 § 35.07.210. Prior: 1897 c 69 § 13, part; RRS § 8926, part.]

35.07.220 Receiver—Final account and discharge. Upon the final payment of all lawful demands against the former city or town, the receiver shall file a final account, together with all vouchers, with the clerk of the superior court. Any funds remaining in his hands shall be paid to the county treasurer for the use of the school district in which the former city or town was situated; and thereupon the receivership shall be at an end. [1965 c 7 § 35.07.220. Prior: 1897 c 69 § 14; RRS § 8927.]

35.07.230 Involuntary dissolution of towns—Authorized. If any town fails for two successive years to hold its regular municipal election, or if the officers elected at the regular election of any town fail for two successive years to qualify and the government of the town ceases to function by reason thereof, the state auditor through the division of municipal corporations may petition the superior court of the county for an order, dissolving the town. In addition to stating the facts which would justify the entry of such an order, the petition shall set forth a detailed statement of the assets and liabilities of the town insofar as they can be ascertained. [1965 c 7 § 35.07.230. Prior: 1925 ex.s. c 76 § 1; RRS § 8931-1.]

35.07.240 Involuntary dissolution of towns—Notice of hearing. Upon the filing of a petition for the involuntary dissolution of a town, the superior court shall enter an order fixing the time for hearing thereon at a date not less than thirty days from date of filing. The state auditor shall give notice of the hearing by publication in a newspaper of general circulation in the county, once a week for three successive weeks, and by posting in three public places in the town, stating therein the purpose of the petition and the date and place of hearing thereon. [1985 c 469 § 18; 1965 c 7 § 35.07.240. Prior: 1925 ex.s. c 76 § 2; RRS § 8931-2.]

35.07.250 Involuntary dissolution of towns—Hearing. Any person owning property in or qualified to vote in the town may appear at the hearing and file written

objections to the granting of the petition. If the court finds that the town has failed for two successive years to hold its regular municipal election or that its officers elected at a regular election have failed to qualify for two successive years thereby causing the government of the town to cease to function, it shall enter an order for disincorporation of the town. [1965 c 7 § 35.07.250. Prior: 1925 ex.s. c 76 § 3, part; RRS § 8931-3, part.]

35.07.260 Involuntary dissolution of towns—Alternative forms of order. (1) If the court finds that the town has no indebtedness and no assets, the order of dissolution shall be effective forthwith.

(2) If the court finds that the town has assets, but no indebtedness or liabilities, it shall order a sale of the assets other than cash by the sheriff in the manner provided by law for the sale of property on execution. The proceeds of the sale together with any money on hand in the treasury of the town, after deducting the costs of the proceeding and sale, shall be paid into the county treasury and placed to the credit of the school district in which the town is located.

(3) If the court finds that the town has indebtedness or liabilities and assets other than cash, it shall order the sale of the assets as provided in subsection (2) hereof and that the proceeds thereof and the cash on hand shall be applied to the payment of the indebtedness and liabilities.

(4) If the court finds that the town has indebtedness or liabilities, but no assets or that the assets are insufficient to pay the indebtedness and liabilities, it shall order the board of county commissioners to levy from year to year a tax on the taxable property within the boundaries of the former town until the indebtedness and liabilities are paid. All taxes delinquent at the date of dissolution when collected shall be applied to the payment of the indebtedness and liabilities. Any balance remaining from the collection of delinquent taxes and taxes levied under order of the court, after payment of the indebtedness and liabilities shall be placed to the credit of the school district in which the town is located. [1965 c 7 § 35.07.260. Prior: 1925 ex.s. c 76 § 3, part; RRS § 8931-3, part.]

Chapter 35.10

CONSOLIDATION AND ANNEXATION OF CITIES AND TOWNS

Sections

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Census to be conducted in decennial periods: State Constitution Art. 2 § 3.

Consolidation and annexation exempt from state environmental policy act: RCW 43.21C.225.

Population determinations: Chapter 43.62 RCW.

Procedure to attack consolidation or annexation affecting a city of the third class: RCW 35.24.440.

35.10.001 Actions subject to review by boundary review board. Actions taken under chapter 35.10 RCW may be subject to potential review by a boundary review board under chapter 36.93 RCW. [1989 c 84 § 27.]

35.10.203 Purpose. The purpose of this chapter is to establish clear and uniform provisions of law governing the consolidation of all types and classes of cities. [1985 c 281 § 1.]

35.10.207 "City" defined. As used in this chapter, the term "city" means any city or town. [1985 c 281 § 2.]

35.10.217 Methods for annexation. The following methods are available for the annexation of all or a part of a city or town to another city or town:

(1) A petition for an election to vote upon the annexation, which proposed annexation is approved by the legislative body of the city or town from which the territory will be taken, may be submitted to the legislative body of the city or town to which annexation is proposed. An annexation under this subsection shall otherwise conform with the requirements for and procedures of a petition and election method of annexing unincorporated territory under chapter 35.13 RCW, except for the requirement for the approval of the annexation by the city or town from which the territory would be taken.

(2) The legislative body of a city or town may on its own initiative by resolution indicate its desire to be annexed to a city or town either in whole or in part, or the legislative body of a city or town proposing to annex all or part of

another city or town may initiate the annexation by adopting a resolution indicating that desire. In case such resolution is passed, such resolution shall be transmitted to the other affected city or town. The annexation is effective if the other city or town adopts a resolution concurring in the annexation, unless the owners of property in the area proposed to be annexed, equal in value to sixty percent or more of the assessed valuation of the property in the area, protest the proposed annexation in writing to the legislative body of the city or town proposing to annex the area, within thirty days of the adoption of the second resolution accepting the annexation. Notices of the public hearing at which the second resolution is adopted shall be mailed to the owners of the property within the area proposed to be annexed in the same manner that notices of a hearing on a proposed local improvement district are required to be mailed by a city or town as provided in chapter 35.43 RCW. An annexation under this subsection shall be potentially subject to review by a boundary review board or other annexation review board after the adoption of the initial resolution, and the second resolution may not be adopted until the proposed annexation has been approved by the board.

(3) The owners of property located in a city or town may petition for annexation to another city or town. An annexation under this subsection shall conform with the requirements for and procedures of a direct petition method of annexing unincorporated territory, except that the legislative body of the city or town from which the territory would be taken must approve the annexation before it may proceed.

(4) All annexations under this section are subject to potential review by the local boundary review board or annexation review board. [1986 c 253 § 1; 1985 c 281 § 15; 1969 ex.s. c 89 § 4.]

35.10.240 Annexation—Canvass of votes. In all cases of annexation, the county canvassing board or boards shall canvass the votes cast thereat.

In an election on the question of the annexation of all or a part of a city to another city, the votes cast in the city or portion thereof to be annexed shall be canvassed, and if a majority of the votes cast be in favor of annexation, the results shall be included in a statement indicating the total number of votes cast.

A proposition for the assumption of indebtedness outside the constitutional and/or statutory limits by the other city or cities in which the indebtedness did not originate shall be deemed approved if a majority of at least three-fifths of the voters of each city in which the indebtedness did not originate votes in favor thereof, and the number of persons voting on such proposition constitutes not less than forty percent of the total number of votes cast in such cities in which indebtedness did not originate at the last preceding general election: PROVIDED, HOWEVER, That if general obligation bond indebtedness was incurred by action by the city legislative body, a proposition for the assumption of such indebtedness by the other city or cities in which such indebtedness did not originate shall be deemed approved if a majority of the voters of each city in which such indebtedness did not originate votes in favor thereof.

A duly certified copy of such statement of an annexation election shall be filed with the legislative body of each

of the cities affected and recorded upon its minutes, and it shall be the duty of the clerk, or other officer performing the duties of clerk, of each of such legislative bodies, to transmit to the secretary of state and the office of financial management a duly certified copy of the record of such statement. [1985 c 281 § 16; 1981 c 157 § 1; 1973 1st ex.s. c 195 § 12; 1969 ex.s. c 89 § 7; 1967 c 73 § 17; 1965 c 7 § 35.10.240. Prior: 1929 c 64 § 5; RRS § 8909-5. Formerly RCW 35.10.070.]

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

Validating—1929 c 64: "That the attempted consolidation of two or more contiguous municipal corporations pursuant to the provisions of either chapter 167 of the Laws of 1927 or chapter 293 of the Laws of 1927 be, and any such consolidation of any such cities or towns, is hereby in all respects validated." [1929 c 64 § 16.]

Canvassing returns, generally: Chapter 29.62 RCW.

Conduct of elections—Canvass: RCW 29.13.040.

35.10.265 Annexation—When effective—Ordinance. Immediately after the filing of the statement of an annexation election, the legislative body of the annexing city may, if it deems it wise or expedient, adopt an ordinance providing for the annexation. Upon the date fixed in the ordinance of annexation, the area annexed shall become a part of the annexing city. The clerk of the annexing city shall transmit a certified copy of this ordinance to the secretary of state and the office of financial management. [1985 c 281 § 17; 1981 c 157 § 3; 1969 ex.s. c 89 § 10.]

35.10.300 Disposition of property and assets following consolidation or annexation. Upon the consolidation of two or more cities, or the annexation of any city to another city, as provided in this chapter, the title to all property and assets owned by, or held in trust for, such former city shall vest in such consolidated city, or annexing city, as the case may be: PROVIDED, That if any such former city, shall be indebted, the proceeds of the sale of any such property and assets not required for the use of such consolidated city, or annexing city, shall be applied to the payment of such indebtedness, if any exist at the time of such sale. [1985 c 281 § 18; 1969 ex.s. c 89 § 12; 1965 c 7 § 35.10.300. Prior: 1929 c 64 § 11; RRS § 8909-11. Formerly RCW 35.10.100 and 35.11.080, part.]

35.10.310 Assets and liabilities of component cities—Taxation to pay claims. Such consolidation, or annexation, shall in no wise affect or impair the validity of claim or chose in action existing in favor of or against, any such former city so consolidated or annexed, or any proceeding pending in relation thereto, but such consolidated or annexing city shall collect such claims in favor of such former cities, and shall apply the proceeds to the payment of any just claims against them respectively, and shall when necessary levy and collect taxes against the taxable property within any such former city sufficient to pay all just claims against it. [1985 c 281 § 19; 1969 ex.s. c 89 § 13; 1965 c 7 § 35.10.310. Prior: 1929 c 64 § 12; RRS § 8909-12. Formerly RCW 35.10.110, 35.10.130, part, and 35.11.080, part.]

35.10.315 Adoption of final budget and levy of property taxes. Upon the consolidation of two or more cities, or the annexation of any city after March 1st and prior to the date of adopting the final budget and levying the property tax dollar rate in that year for the next calendar year, the legislative body of the consolidated city or the annexing city is authorized to adopt the final budget and to levy the property tax dollar rate for the consolidated cities and any city annexed. [1985 c 281 § 20; 1973 1st ex.s. c 195 § 13; 1969 ex.s. c 89 § 14.]

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

35.10.317 Receipt of state funds. Upon the consolidation of two or more cities, or the annexation of any city, the consolidated or annexing city shall receive all state funds to which the component cities would have been entitled to receive during the year when such consolidation or annexation became effective. [1985 c 281 § 21; 1969 ex.s. c 89 § 15.]

35.10.320 Continuation of ordinances. All ordinances in force within any such former city or cities, at the time of consolidation or annexation, not in conflict with the laws governing the consolidated city, or with the ordinances of the former city having the largest population, as shown by the last determination of the office of financial management shall remain in full force and effect until superseded or repealed by the legislative body of the consolidated or annexing city, and shall be enforced by such city, but all ordinances of such former cities, in conflict with such ordinances shall be deemed repealed by, and from and after, such consolidation or annexation, but nothing in this section shall be construed to discharge any person from any liability, civil or criminal, for any violation of any ordinance of such former city or cities incurred prior to such consolidation or annexation. [1985 c 281 § 22; 1981 c 157 § 4; 1969 ex.s. c 89 § 16; 1965 c 7 § 35.10.320. Prior: 1929 c 64 § 13; RRS § 8909-13. Formerly RCW 35.10.120 and 35.11.080, part.]

35.10.331 Unassumed indebtedness. Unless indebtedness approved by the voters, contracted, or incurred prior to the date of consolidation or annexation as provided herein has been assumed by the voters in the other city or cities in which such indebtedness did not originate, such indebtedness continues to be the obligation of the city in which it originated, and the legislative body of the consolidated or annexing city shall continue to levy the necessary taxes within the former city that incurred this indebtedness to amortize such indebtedness. [1985 c 281 § 23; 1969 ex.s. c 89 § 17.]

35.10.350 Cancellation, acquisition, of franchise or permit for operation of public service business in territory annexed. See RCW 35.13.280.

35.10.360 Annexation—Transfer of fire department employees. Upon the annexation of two or more cities or code cities, any employee of the fire department of the former city or cities who (1) was at the time of annexation employed exclusively or principally in performing the

powers, duties, and functions which are to be performed by the fire department of the annexed city or code city, as the case may be, (2) will, as a direct consequence of annexation, be separated from the employ of the former city, code city or town, and (3) can perform the duties and meet the minimum requirements of the position to be filled, then such employee may transfer employment to the fire department of the annexing city, as provided in this section and RCW 35.10.365 and 35.10.370.

For purposes of this section and RCW 35.10.365 and 35.10.370, employee means an individual whose employment has been terminated because of annexation by a city, code city or town. [1986 c 254 § 4.]

35.10.365 Annexation—Transfer of fire department employees—Rights and benefits. (1) An eligible employee may transfer into the civil service system of the annexing city, code city or town by filing a written request with the city, code city or town civil service commission. Upon receipt of such request by the civil service commission the transfer of employment shall be made. The employee so transferring will (a) be on probation for the same period as are new employees in the position filled, (b) be eligible for promotion after completion of the probationary period as completed, (c) receive a salary at least equal to that of other new employees in the position filled, and (d) in all other matters, such as retirement, sick leave, and vacation, have, within the city, code city or town civil service system, all the rights, benefits, and privileges to which he or she would have been entitled as a member of the annexed city, code city or town fire department from the beginning of his or her employment with the former city or code city fire department: PROVIDED, That for purposes of layoffs by the annexing city or code city, only the time of service accrued with the annexing city or code city shall apply unless an agreement is reached between the collective bargaining representatives of the employees of the annexing and annexed fire agencies and the annexing and annexed fire agencies. A record of the employee's service with the former city or code city fire department shall be transmitted to the applicable civil service commission which shall be credited to such employee as a part of the period of employment in the annexed city, code city or town fire department. All accrued benefits are transferable provided that the recipient agency provides comparable benefits. All benefits shall then accrue based on the combined seniority of each employee in the recipient agency.

(2) As many of the transferring employees shall be placed upon the payroll of the annexing city, code city or town fire department as the department determines are needed to provide services. These needed employees shall be taken in order of seniority and the remaining employees who transfer as provided in this section and RCW 35.10.360 and 35.10.370 shall head the list for employment in the civil service system in order of their seniority, to the end that they shall be the first to be reemployed in the city, code city or town fire department when appropriate positions become available: PROVIDED, That employees who are not immediately hired by the city, code city or town shall be placed on a reemployment list for a period not to exceed thirty-six months unless a longer period is authorized by an

agreement reached between the collective bargaining representatives of the employees of the annexing and annexed fire agencies and the annexing and annexed fire agencies. [1986 c 254 § 5.]

35.10.370 Annexation—Transfer of fire department employees—Notice—Time limitation. If, as a result of annexation of two or more cities, or code cities any employee is laid off who is eligible to transfer to the city, code city or town fire department under this section and RCW 35.10.360 and 35.10.365 the fire department shall notify the employee of the right to transfer and the employee shall have ninety days to transfer employment to the annexing city or code city fire department. [1986 c 254 § 6.]

35.10.400 Consolidation. Two or more contiguous cities located in the same or different counties may consolidate into one city by proceedings in conformity with the provisions of this chapter. When cities are separated by water and/or tide or shore lands they shall be deemed contiguous for all the purposes of this chapter and, upon a consolidation of such cities under the provisions of this chapter, any such intervening water and/or tide or shore lands shall become a part of the consolidated city. The consolidated city shall become a noncharter code city operating under Title 35A RCW. [1985 c 281 § 3.]

35.10.410 Consolidation—Submission of ballot proposal—Initiation by resolution of legislative body. The submission of a ballot proposal to the voters of two or more contiguous cities for the consolidation of these contiguous cities may be caused by the adoption of a joint resolution, by a majority vote of each city legislative body, seeking consolidation of such contiguous cities. The joint resolution shall provide for submission of the question to the voters at the next general municipal election, if one is to be held more than ninety days but not more than one hundred eighty days after the passage of the joint resolution, or shall call for a special election to be held for that purpose at the next special election date, as specified in RCW 29.13.020, that occurs ninety or more days after the passage of the joint resolution. The legislative bodies of the cities also shall notify the county legislative authority of each county in which the cities are located of the proposed consolidation. [1985 c 281 § 4.]

35.10.420 Consolidation—Submission of ballot proposal—Initiation by petition. The submission of a ballot proposal to the voters of two or more contiguous cities for the consolidation of these contiguous cities may also be caused by the filing of a petition with the legislative body of each such city, signed by the voters of each city in number equal to not less than ten percent of the votes cast at the last general municipal election therein, seeking consolidation of such contiguous cities. A copy of the petition shall be forwarded immediately by each city to the auditor of the county or counties within which that city is located.

The county auditor or auditors shall determine the sufficiency of the signatures in each petition within ten days of receipt of the copies and immediately notify the cities proposed to be consolidated of the sufficiency. If each of

the petitions is found to have sufficient valid signatures, the auditor or auditors shall call a special election at which the question of whether such cities shall consolidate shall be submitted to the voters of each of such cities. If a general election is to be held more than ninety days but not more than one hundred eighty days after the filing of the last petition, the question shall be submitted at that election. Otherwise the question shall be submitted at a special election to be called for that purpose at the next special election date, as specified in RCW 29.13.020, that occurs ninety or more days after the date when the last petition was filed.

If each of the petitions is found to have sufficient valid signatures, the auditor or auditors also shall notify the county legislative authority of each county in which the cities are located of the proposed consolidation.

Petitions shall conform with the requirements for form prescribed in RCW 35A.01.040, except different colored paper may be used on petitions circulated in the different cities. A legal description of the cities need not be included in the petitions. [1985 c 281 § 5.]

35.10.430 Consolidation—Form of government. A joint resolution or petition shall prescribe the form or plan of government of the proposed consolidated city, or shall provide that a ballot proposition to determine the form or plan of government shall be submitted to the voters of the cities proposed to be consolidated. The plans or forms of government include: Mayor/council, council/manager, and commission. If a commission form or plan of government is prescribed or chosen by the voters, the commission shall be subject to chapter 35.17 RCW and the noncharter code city shall be assumed to have had a commission plan or form of government prior to its becoming a noncharter code city, as provided in RCW 35A.02.130. However, three commissioners would be elected at the election provided in RCW 35.10.480. [1985 c 281 § 6.]

35.10.440 Consolidation—Assumption of general obligation indebtedness. A joint resolution or a petition may contain a proposal that a general obligation indebtedness of one or more of the cities proposed to be consolidated shall be assumed by the proposed consolidated city, in which event, the joint resolution or petition shall specify the improvement or service for which such general obligation indebtedness was incurred and state the amount of any such indebtedness then outstanding and the rate of interest payable thereon. [1985 c 281 § 7.]

35.10.450 Consolidation—Public meetings on proposal—Role of boundary review board. The county legislative authority, or the county legislative authorities jointly, shall set the date, time, and place for one or more public meetings on the proposed consolidation, and name a person or persons to chair the meetings. There shall be at least one public meeting in each county in which one or more of the cities proposed to be consolidated is located. A county legislative authority may name the members of the boundary review board, if one exists in the county, to chair one or more of the public meetings held in that county. In addition to any meeting held by the county, a boundary

review board, if requested by a majority of the county legislative authority, may hold a public meeting on proposed consolidation of cities. The meeting shall be limited to receiving comments and written materials from citizens and city officials on the proposed consolidation of that portion of cities located in the county which the boundary review board serves. The record and proceedings of the boundary review board are supplemental and advisory to the consolidation of cities. If a boundary review board meets pursuant to this section, the boundary review board may include, as part of its record, comments pertaining to the probable environmental impact of the proposed consolidation. The record of the meeting and advisory comments of the board, if any, must be filed with the county legislative authority no later than twenty days before the date of the election at which the question of consolidating the cities is presented to the voters. The boundary review board shall not have any authority or jurisdiction on city consolidations under chapter 36.93 RCW. A public meeting shall be held at each specified date, time, and place. The public meetings of the county or the boundary review board shall be held at least twenty but not more than forty-five days before the date of the election at which the question of consolidating the cities is presented to the voters.

At each public meeting, each city proposed to be consolidated shall present testimony and written materials concerning the following topics: (1) The rate or rates of property taxes imposed by the city, and the purposes of these levies; (2) the excise taxes imposed by the city, including the tax bases and rates; and (3) the indebtedness of the city, including general indebtedness, both voter-approved and nonvoter-approved, as well as the city's special indebtedness, such as revenue bond indebtedness. Any interested person, including the officials of the cities proposed to be consolidated, may present information concerning the proposed consolidation and testify for or against the proposed consolidations.

Notice of each public meeting shall be published by the county within whose boundaries the public meeting is held in the normal manner notices of county hearings are published. [1985 c 281 § 8.]

35.10.460 Consolidation—Ballot titles. Ballot titles on the questions shall be prepared as provided in RCW 35A.29.120. If a proposal for assumption of indebtedness is to be submitted to the voters of a city in which the indebtedness did not originate, the proposal shall be separately stated and the ballots shall contain, as a separate proposition to be voted on, the words "For Assumption of Indebtedness" and "Against Assumption of Indebtedness" or words equivalent thereto. If the question of the form or plan of government is to be submitted to the voters, the question shall be separately stated and the ballots shall contain, as a separate proposition to be voted on, the option of a voter to select one of the three forms or plans of government. [1985 c 281 § 9.]

35.10.470 Consolidation—Canvass of votes. The county canvassing board in each county involved shall canvass the returns in each election. The votes cast in each of such cities shall be canvassed separately, and the state-

ment shall show the whole number of votes cast, the number of votes cast in each city for consolidation, and the number of votes cast in each city against such consolidation. If a proposal for assumption or indebtedness was voted upon in a city in which the indebtedness did not originate, the statement shall show the number of votes cast in such a city for assumption of indebtedness and the number of votes cast against assumption of indebtedness. If a question of the form or plan of government was voted upon, the statement shall show the number of votes cast in each city for each of the optional forms or plans of government. A certified copy of such statement shall be filed with the legislative body of each of the cities proposed to be consolidated.

If it appears from such statement of canvass that a majority of the votes cast in each of the cities were in favor of consolidation, the consolidation shall be authorized and shall be effective when the newly elected legislative body members assume office, as provided in RCW 35.10.480.

If a question of the form or plan of government was voted upon, that form or plan receiving the greatest combined number of votes shall become the form or plan of government for the consolidated city. If two or three of the forms or plans of government received the same highest number of votes, the form or plan of government shall be chosen by lot between those receiving the same highest number, where the mayor of the largest of the cities proposed to be consolidated draws the lot at a public meeting.

If a proposition to assume indebtedness was submitted to voters of a city in which the indebtedness did not originate, the proposition shall be deemed approved if approved by a majority of at least three-fifths of the voters of the city, and the number of persons voting on the proposition constitutes not less than forty percent of the number of votes cast in the city at the last preceding general election. However, if the general indebtedness in question was incurred by action of a city legislative body, a proposition for assuming the indebtedness need only be approved by a simple majority vote of the voters of the city in which such indebtedness did not originate. [1985 c 281 § 10.]

35.10.480 Consolidation—Elections of officials—Effective date of consolidation. If the voters of each of the cities proposed to consolidate approve the consolidation, elections to nominate and elect the elected officials of the consolidated city shall be held at times specified in RCW 35A.02.050. Terms shall be established as if the city is initially incorporating.

The newly elected officials shall take office immediately upon their qualification. The effective date of the consolidation shall be when a majority of the newly elected members of the legislative body assume office. The clerk of the newly consolidated city shall transmit a duly certified copy of an abstract of the votes to authorize the consolidation and of the election of the newly elected city officials to the secretary of state and the office of financial management. [1985 c 281 § 11.]

35.10.490 Consolidation—Name of city. A newly consolidated city shall be known as the city of (listing the names of the cities that were consolidated in alphabetical order). The legislative body of the newly

consolidated city may present another name or two names for the newly consolidated city to the city voters for their approval or rejection at the next municipal general election held after the effective date of the consolidation. If only one alternative name is submitted, this alternative name shall become the name of the consolidated city if approved by a simple majority vote of the voters voting on the question. If two alternative names are submitted, the name receiving the simple majority vote of the voters voting on the question shall become the name of the consolidated city. [1985 c 281 § 12.]

35.10.500 Consolidation—Costs of election and public meetings. If consolidation is authorized, the costs of such election and the public meetings shall be borne by the city formed by such consolidation. If the consolidation is not authorized, the costs of election and the public meetings shall be borne proportionately by each city affected, in that ratio in which the number of inhabitants residing in the total area in which the election was held, as shown by the figures released at the most recent state or federal census or by a determination of the office of financial management. [1985 c 281 § 13.]

35.10.510 Consolidation—Transfer of fire department employees. Upon the consolidation of two or more cities or code cities, any employee of the fire department of the former city or cities who (1) was at the time of consolidation employed exclusively or principally in performing the powers, duties, and functions which are to be performed by the fire department of the consolidated city or code city, as the case may be, (2) will, as a direct consequence of consolidation, be separated from the employ of the former city, code city or town, and (3) can perform the duties and meet the minimum requirements of the position to be filled, then such employee may transfer employment to the fire department of the consolidated city, as provided in this section and RCW 35.10.520 and 35.10.530.

For purposes of this section and RCW 35.10.520 and 35.10.530, employee means an individual whose employment has been terminated because of a consolidation of two or more cities, code cities or towns. [1986 c 254 § 1.]

Effective date—Legislative study—1986 c 254 §§ 1-3: "Sections 1 through 3 of this act shall take effect July 1, 1987. The appropriate committees of the senate and house of representatives shall conduct a study of the transfer rights of employees during the consolidation of cities and code cities and make recommendations to the legislature at the start of the 1987 legislative session." [1986 c 254 § 16.]

35.10.520 Consolidation—Transfer of fire department employees—Rights and benefits. (1) An eligible employee may transfer into the civil service system of the consolidated city or code city by filing a written request with the civil service commission of the consolidated city. Upon receipt of such request by the civil service commission the transfer of employment shall be made. The employee so transferring will (a) be on probation for the same period as are new employees in the position filled, (b) be eligible for promotion after completion of the probationary period as completed, (c) receive a salary at least equal to that of other new employees in the position filled, and (d) in all other matters, such as retirement, sick leave, and vacation, have,

within the city or code city civil service system, all the rights, benefits, and privileges to which he or she would have been entitled as a member of the consolidated city fire department from the beginning of his or her employment with the former city or code city fire department: **PROVIDED,** That for purposes of layoffs by the consolidated city or code city, only the time of service accrued with the consolidated city or code city shall apply unless an agreement is reached between the collective bargaining representatives of the employees of the consolidating fire agencies and consolidated agencies and the consolidating and consolidated fire agencies. A record of the employee's service with the former city or code city fire department shall be transmitted to the applicable civil service commission and shall be credited to such employee as a part of the period of employment in the consolidated city fire department. All accrued benefits are transferable provided that the recipient agency provides comparable benefits. All benefits shall then accrue based on the combined seniority of each employee in the recipient agency.

(2) As many of the transferring employees shall be placed upon the payroll of the consolidated city or code city fire department as the department determines are needed to provide services. These needed employees shall be taken in order of greatest seniority from any of the seniority lists of the consolidating city or code city and the remaining employees who transfer as provided in this section and RCW 35.10.510 and 35.10.530 shall head the list for employment in the civil service system in order of their seniority, to the end that they shall be the first to be reemployed in the fire department when appropriate positions become available: **PROVIDED,** That employees who are not immediately hired by the city, code city or town shall be placed on a reemployment list for a period not to exceed thirty-six months unless a longer period is authorized by an agreement reached between the collective bargaining representatives of the employees of the consolidating fire agencies and consolidated fire agency and the consolidating and consolidated fire agencies.

(3) The consolidated city or code city shall retain the right to select the fire chief and assistant fire chiefs regardless of seniority. [1986 c 254 § 2.]

Effective date—Legislative study—1986 c 254 §§ 1-3: See note following RCW 35.10.510.

35.10.530 Consolidation—Transfer of fire department employees—Notice—Time limitation. If, as a result of consolidation of two or more cities, or code cities, any employee is laid off who is eligible to transfer to the city fire department pursuant to this section and RCW 35.10.510 and 35.10.520, the city fire department shall notify the employee of the right to so transfer and the employee shall have ninety days to transfer employment to the consolidating city, or code city fire department. [1986 c 254 § 3.]

Effective date—Legislative study—1986 c 254 §§ 1-3: See note following RCW 35.10.510.

35.10.900 Severability—1969 ex.s. c 89. If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the

application of the provision to other persons or circumstances is not affected. [1969 ex.s. c 89 § 19.]

35.10.905 Severability—1985 c 281. 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 281 § 31.]

Chapter 35.13

ANNEXATION OF UNINCORPORATED AREAS

Sections

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- 35.13.010 Authority for annexation—Consent of county commissioners for certain property.
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- 35.13.320 Boundary line adjustment—When adjustment required—Limitation—Not subject to review.
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Annexation of fire protection district territory: RCW 35.02.190 through 35.02.205.

Consolidation and annexation of cities and towns: Chapter 35.10 RCW.

Local governmental or organizations, actions affecting boundaries, review by boundary review board: Chapter 36.93 RCW.

Population determinations: Chapter 43.62 RCW.

Provisions relating to city annexation review boards not applicable where boundary review board created: RCW 36.93.220.

35.13.001 Actions subject to review by boundary review board. Actions taken under chapter 35.13 RCW may be subject to potential review by a boundary review board under chapter 36.93 RCW. [1989 c 84 § 28.]

35.13.005 Annexations beyond urban growth areas prohibited. No city or town located in a county in which urban growth areas have been designated under RCW 36.70A.110 may annex territory beyond an urban growth area. [1990 1st ex.s. c 17 § 30.]

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

35.13.010 Authority for annexation—Consent of county commissioners for certain property. Any portion of a county not incorporated as part of a city or town but lying contiguous thereto may become a part of the city or town by annexation: PROVIDED, That property owned by a county, and used for the purpose of an agricultural fair as provided in chapter 15.76 RCW or chapter 36.37 RCW shall not be subject to annexation without the consent of the

majority of the board of county commissioners. An area proposed to be annexed to a city or town shall be deemed contiguous thereto even though separated by water or tide or shore lands on which no bona fide residence is maintained by any person. [1965 c 7 § 35.13.010. Prior: 1959 c 311 § 1; prior: (i) 1937 c 110 § 1; 1907 c 245 § 1; RRS § 8896. (ii) 1945 c 128 § 1; Rem. Supp. 1945 § 8909-10.]

Validation—1961 ex.s. c 16: Validation of certain incorporations and annexations—Municipal corporations of the fourth class: See note following RCW 35.21.010.

35.13.015 Election method—Resolution for election—Contents of resolution. In addition to the method prescribed by RCW 35.13.020 for the commencement of annexation proceedings, the legislative body of any city or town may, whenever it shall determine by resolution that the best interests and general welfare of such city or town would be served by the annexation of unincorporated territory contiguous to such city or town, file a certified copy of the resolution with the board of county commissioners of the county in which said territory is located. The resolution of the city or town initiating such election shall, subject to RCW 35.02.170, describe the boundaries of the area to be annexed, as nearly as may be state the number of voters residing therein, pray for the calling of an election to be held among the qualified voters therein upon the question of annexation, and provide that said city or town will pay the cost of the annexation election. The resolution may require that there also be submitted to the electorate of the territory sought to be annexed a proposition that all property within the area annexed shall, upon annexation, be assessed and taxed at the same rate and on the same basis as the property of such annexing city or town is assessed and taxed to pay for all or any portion of the then outstanding indebtedness of the city or town to which said area is annexed, approved by the voters, contracted, or incurred prior to, or existing at, the date of annexation. Whenever a city or town has prepared and filed a comprehensive plan for the area to be annexed as provided for in RCW 35.13.177 and 35.13.178, the resolution initiating the election may also provide for the simultaneous adoption of the comprehensive plan upon approval of annexation by the electorate of the area to be annexed. The resolution initiating the election may also provide for the simultaneous creation of a community municipal corporation and election of community council members as provided for in RCW 35.14.010 through 35.14.060 upon approval of annexation by the electorate of the area to be annexed. In cities under the optional municipal code the resolution initiating the election may also provide for the simultaneous inclusion of the annexed area into a named existing community municipal corporation. The proposition for the creation of a community municipal corporation may be submitted as part of the annexation proposition or may be submitted as a separate proposition. The proposition for inclusion within a named existing community municipal corporation shall be submitted as part of the annexation proposition. [1975 1st ex.s. c 220 § 6; 1973 1st ex.s. c 164 § 2; 1970 ex.s. c 52 § 6; 1967 c 73 § 7; 1965 ex.s. c 88 § 3; 1965 c 7 § 35.13.015. Prior: 1961 c 282 § 1.]

Legislative finding, intent—1975 1st ex.s. c 220: See note following RCW 35.02.170.

Community municipal corporations: Chapter 35.14 RCW.

35.13.020 Election method—Petition for election—Signers—Rate of assessment in annexed area—Comprehensive plan—Community municipal corporation—Filing and approval—Costs. A petition for an election to vote upon the annexation of a portion of a county to a contiguous city or town signed by qualified voters resident in the area equal in number to twenty percent of the votes cast at the last election may be filed in the office of the board of county commissioners: PROVIDED, That any such petition shall first be submitted to the prosecuting attorney who shall, within twenty-one days after submission, certify or refuse to certify the petition as set forth in *RCW 35.13.025. If the prosecuting attorney certifies the petition, it shall be filed with the legislative body of the city or town to which the annexation is proposed, and such legislative body shall, by resolution entered within sixty days from the date of presentation, notify the petitioners, either by mail or by publication in the same manner notice of hearing is required by RCW 35.13.040 to be published, of its approval or rejection of the proposed action. The petition may also provide for the simultaneous creation of a community municipal corporation and election of community council members as provided for in RCW 35.14.010 through 35.14.060. In approving the proposed action, the legislative body may require that there also be submitted to the electorate of the territory to be annexed, a proposition that all property within the area to be annexed shall, upon annexation be assessed and taxed at the same rate and on the same basis as the property of such annexing city or town is assessed and taxed to pay for all or any portion of the then outstanding indebtedness of the city or town to which said area is annexed, approved by the voters, contracted, or incurred prior to, or existing at, the date of annexation. Only after the legislative body has completed preparation and filing of a comprehensive plan for the area to be annexed as provided for in RCW 35.13.177 and 35.13.178, the legislative body in approving the proposed action, may require that the comprehensive plan be simultaneously adopted upon approval of annexation by the electorate of the area to be annexed. The approval of the legislative body shall be a condition precedent to the filing of such petition with the board of county commissioners as hereinafter provided. The costs of conducting such election shall be a charge against the city or town concerned. The proposition or questions provided for in this section may be submitted to the voters either separately or as a single proposition. [1981 c 332 § 3; 1973 1st ex.s. c 164 § 3; 1967 c 73 § 8; 1965 ex.s. c 88 § 4; 1965 c 7 § 35.13.020. Prior: 1961 c 282 § 7; prior: 1951 c 248 § 6; 1907 c 245 § 2, part; RRS § 8897, part.]

*Reviser's note: RCW 35.13.025 was repealed by 1989 c 351 § 10.
Severability—1981 c 332: See note following RCW 35.13.165.

35.13.030 Election method—Petition for election—Content. A petition filed with the county commissioners to call an annexation election shall, subject to RCW 35.02.170, particularly describe the boundaries of the area proposed to be annexed, state the number of voters residing therein as nearly as may be, state the provisions, if any there be, relating to assumption of debt by the owners of property of the area proposed to be annexed, and/or the simultaneous

adoption of a comprehensive plan for the area proposed to be annexed, and shall pray for the calling of an election to be held among the qualified voters therein upon the question of annexation. If the petition also provides for the creation of a community municipal corporation and election of community council members, the petition shall also describe the boundaries of the proposed service area, state the number of voters residing therein as nearly as may be, and pray for the election of community council members by the qualified voters residing in the service area. [1975 1st ex.s. c 220 § 7; 1967 c 73 § 9; 1965 ex.s. c 88 § 5; 1965 c 7 § 35.13.030. Prior: 1961 c 282 § 8; prior: 1907 c 245 § 2, part; RRS § 8897, part.]

Legislative finding, intent—1975 1st ex.s. c 220: See note following RCW 35.02.170.

35.13.040 Election method—Hearing—Notice.

Upon the filing of approval by the review board of a twenty percent annexation petition under the election method to call an annexation election, the board of county commissioners at its next meeting shall fix a date for hearing thereon to be held not less than two weeks nor more than four weeks thereafter, of which hearing the petitioners must give notice by publication once each week at least two weeks prior thereto in some newspaper of general circulation in the area proposed to be annexed. Upon the day fixed, the board shall hear the petition, and if it complies with the requirements of law and has been approved by the review board, shall grant it. The hearing may be continued from time to time for an aggregate period not exceeding two weeks. [1973 1st ex.s. c 164 § 4; 1965 c 7 § 35.13.040. Prior: 1961 c 282 § 9; prior: 1907 c 245 § 2, part; RRS § 8897, part.]

35.13.050 Election method—Petition or resolution for election—Others covering same area barred from consideration, withdrawal. After the filing with the board of county commissioners of a petition or resolution pursuant to RCW 35.13.015 to call an annexation election, pending the hearing under the twenty percent annexation petition under the election method and pending the election to be called thereunder, the board of county commissioners shall not consider any other petition or resolution involving any portion of the territory embraced therein: PROVIDED, That the petition or resolution may be withdrawn or a new petition or resolution embracing other or different boundaries substituted therefor by a majority of the signers thereof, or in the case of a resolution, by the legislative body of the city or town, and the same proceeding shall be taken as in the case of an original petition or resolution. [1973 1st ex.s. c 164 § 5; 1965 c 7 § 35.13.050. Prior: 1961 c 282 § 10; prior: 1907 c 245 § 2, part; RRS § 8897, part.]

35.13.060 Election method—Fixing date of election.

Upon granting the petition under the twenty percent annexation petition under the election method, and after the auditor has certified the petition as being sufficient, the legislative body of the city or town shall indicate to the county auditor its preference for the date of the election on the annexation to be held, which shall be one of the dates for special elections provided under RCW 29.13.020 that is sixty or more days after the date the preference is indicated. The

county auditor shall call the special election at the special election date indicated by the city or town. [1989 c 351 § 2; 1973 1st ex.s. c 164 § 6; 1965 c 7 § 35.13.060. Prior: 1961 c 282 § 12; prior: 1907 c 245 § 3, part; RRS § 8898, part.]

Election method, date for annexation election if review board's determination favorable: RCW 35.13.174.

35.13.070 Election method—Conduct of election.

An annexation election shall be held in accordance with the general election laws of the state, and only registered voters who have resided in the area proposed to be annexed for ninety days immediately preceding the election shall be allowed to vote therein. [1965 c 7 § 35.13.070. Prior: 1961 c 282 § 15; prior: 1907 c 245 § 4, part; RRS § 8899, part.]

Conduct of elections: RCW 29.13.040.

35.13.080 Election method—Notice of election.

Notice of an annexation election shall particularly describe the boundaries of the area proposed to be annexed, describe the boundaries of the proposed service area if the simultaneous creation of a community municipal corporation is provided for, state the objects of the election as prayed in the petition or as stated in the resolution and require the voters to cast ballots which shall contain the words "For annexation" and "Against annexation" or words equivalent thereto, or contain the words "For annexation and adoption of comprehensive plan" and "Against annexation and adoption of comprehensive plan" or words equivalent thereto in case the simultaneous adoption of a comprehensive plan is proposed, and, if appropriate, the words "For creation of community municipal corporation" and "Against creation of community municipal corporation" or words equivalent thereto, or contain the words "For annexation and creation of community municipal corporation" and "Against annexation and creation of community municipal corporation" or words equivalent thereto in case the simultaneous creation of a community municipal corporation is proposed, and which in case the assumption of indebtedness is proposed, shall contain as a separate proposition, the words "For assumption of indebtedness" and "Against assumption of indebtedness" or words equivalent thereto and if only a portion of the indebtedness of the annexing city or town is to be assumed, an appropriate separate proposition for and against the assumption of such portion of the indebtedness shall be submitted to the voters. If the creation of a community municipal corporation and election of community council members is provided for, the notice shall also require the voters within the service area to cast ballots for candidates for positions on such council. The notice shall be posted for at least two weeks prior to the date of election in four public places within the area proposed to be annexed and published in accordance with the notice required by RCW 29.27.080 prior to the date of election in a newspaper of general circulation in the area proposed to be annexed. [1973 1st ex.s. c 164 § 7; 1967 c 73 § 10; 1965 ex.s. c 88 § 6; 1965 c 7 § 35.13.080. Prior: 1961 c 282 § 13; prior: 1907 c 245 § 3, part; RRS § 8898, part.]

35.13.090 Election method—Canvass—Vote required for annexation or annexation and comprehensive plan or for or against creation of community municipal corporation—Proposition for assumption of indebtedness—Certification. On the Monday next succeeding the annexation election, the county canvassing board shall proceed to canvass the returns thereof and shall submit the statement of canvass to the board of county commissioners.

The proposition for or against annexation or for or against annexation and adoption of the comprehensive plan, or for or against creation of a community municipal corporation, or any combination thereof, as the case may be, shall be deemed approved if a majority of the votes cast on that proposition are cast in favor of annexation or in favor of annexation and adoption of the comprehensive plan, or for creation of the community municipal corporation, or any combination thereof, as the case may be. If a proposition for or against assumption of all or any portion of indebtedness was submitted to the electorate, it shall be deemed approved if a majority of at least three-fifths of the electors of the territory proposed to be annexed voting on such proposition vote in favor thereof, and the number of persons voting on such proposition constitutes not less than forty percent of the total number of votes cast in such territory at the last preceding general election. If either or both propositions were approved by the electors, the board shall enter a finding to that effect on its minutes, a certified copy of which shall be forthwith transmitted to and filed with the clerk of the city or town to which annexation is proposed, together with a certified abstract of the vote showing the whole number who voted at the election, the number of votes cast for annexation and the number cast against annexation or for annexation and adoption of the comprehensive plan and the number cast against annexation and adoption of the comprehensive plan or for creation of a community municipal corporation and the number cast against creation of a community municipal corporation, or any combination thereof, as the case may be, and if a proposition for assumption of all or of any portion of indebtedness was submitted to the electorate, the abstract shall include the number of votes cast for assumption of indebtedness and the number of votes cast against assumption of indebtedness, together with a statement of the total number of votes cast in such territory at the last preceding general election. If the proposition for creation of a community municipal corporation was submitted and approved, the abstract shall include the number of votes cast for the candidates for community council positions and certificates of election shall be issued to the successful candidates who shall assume office within ten days after the election. [1973 1st ex.s. c 164 § 8; 1967 c 73 § 11; 1965 ex.s. c 88 § 7; 1965 c 7 § 35.13.090. Prior: 1961 c 282 § 16; prior: 1907 c 245 § 4, part; RRS § 8899, part.]

35.13.095 Election method—Vote required for annexation with assumption of indebtedness—Without assumption of indebtedness. A city or town may cause a proposition authorizing an area to be annexed to the city or town to be submitted to the qualified voters of the area proposed to be annexed in the same ballot proposition as the question to authorize an assumption of indebtedness. If the

measures are combined, the annexation and the assumption of indebtedness shall be authorized only if the proposition is approved by at least three-fifths of the voters of the area proposed to be annexed voting on the proposition, and the number of persons voting on the proposition constitutes not less than forty percent of the total number of votes cast in the area at the last preceding general election.

However, the city or town council may adopt a resolution accepting the annexation, without the assumption of indebtedness, where the combined ballot proposition is approved by a simple majority vote of the voters voting on the proposition. [1989 c 84 § 22.]

35.13.100 Election method—Ordinance providing for annexation or annexation and adoption of comprehensive plan or annexation and creation of community municipal corporation—Assumption of indebtedness. Upon filing of the certified copy of the finding of the board of county commissioners, the clerk shall transmit it to the legislative body of the city or town at the next regular meeting or as soon thereafter as practicable. If a proposition relating to annexation or annexation and adoption of the comprehensive plan or creation of a community municipal corporation, or both, as the case may be was submitted to the voters and such proposition was approved, the legislative body shall adopt an ordinance providing for the annexation or adopt ordinances providing for the annexation and adoption of the comprehensive plan, or adopt an ordinance providing for the annexation and creation of a community municipal corporation, as the case may be. If a proposition for annexation or annexation and adoption of the comprehensive plan or creation of a community municipal corporation, as the case may be, and a proposition for assumption of all or of any portion of indebtedness were both submitted, and were approved, the legislative body shall adopt an ordinance providing for the annexation or annexation and adoption of the comprehensive plan or annexation and creation of a community municipal corporation including the assumption of all or of any portion of indebtedness. If the propositions were submitted and only the annexation or annexation and adoption of the comprehensive plan or annexation and creation of a community municipal corporation proposition was approved, the legislative body may, if it deems it wise or expedient, adopt an ordinance providing for the annexation or adopt ordinances providing for the annexation and adoption of the comprehensive plan, or adopt ordinances providing for the annexation and creation of a community municipal corporation, as the case may be. [1973 1st ex.s. c 164 § 9; 1967 c 73 § 12; 1965 ex.s. c 88 § 8; 1965 c 7 § 35.13.100. Prior: 1961 c 282 § 17; 1957 c 239 § 2; prior: 1907 c 245 § 5, part; RRS § 8900, part.]

35.13.110 Election method—Effective date of annexation or annexation and comprehensive plan or annexation and creation of community municipal corporation, taxation of area annexed. Upon the date fixed in the ordinance of annexation, the area annexed shall become a part of the city or town. Upon the date fixed in the ordinances of annexation and adoption of the comprehensive plan, the area annexed shall become a part of the city or town and property in the annexed area shall be subject to

and a part of the comprehensive plan, as prepared and filed as provided for in RCW 35.13.177 and 35.13.178. Upon the date fixed in the ordinances of annexation and creation of a community municipal corporation, the area annexed shall become a part of the city or town, the community municipal corporation shall be deemed organized, and property in the service area shall be deemed subject to the powers granted to such corporation as provided for in *this 1967 amendatory act. All property within the territory hereafter annexed shall, if the proposition approved by the people so provides after June 12, 1957, be assessed and taxed at the same rate and on the same basis as the property of such annexing city is assessed and taxed to pay for all or any portion of the then outstanding indebtedness of the city or town to which said area is annexed, approved by the voters, contracted, or incurred prior to, or existing at, the date of annexation. [1973 1st ex.s. c 164 § 10; 1967 c 73 § 13; 1965 ex.s. c 88 § 9; 1965 c 7 § 35.13.110. Prior: 1957 c 239 § 3; prior: 1907 c 245 § 5, part; RRS § 8900, part.]

***Reviser's note:** The language "this 1967 amendatory act" first appeared in the amendment to this section by section 13, chapter 73, Laws of 1967. For the codification of chapter 73, Laws of 1967, see note following RCW 35.14.010.

35.13.120 Election method is alternative. The method of annexation provided for in RCW 35.13.020 to 35.13.110 shall be an alternative method, not superseding any other. [1965 c 7 § 35.13.120. Prior: 1937 c 110 § 2; 1907 c 245 § 6; RRS § 8901.]

35.13.125 Petition method—Commencement of proceedings—Notice to legislative body—Meeting—Assumption of indebtedness—Comprehensive plan. Proceedings for the annexation of territory pursuant to RCW 35.13.130, 35.13.140, 35.13.150, 35.13.160 and 35.13.170 shall be commenced as provided in this section. Prior to the circulation of a petition for annexation, the initiating party or parties who, except as provided in RCW 28A.335.110, shall be either not less than ten percent of the residents of the area to be annexed or the owners of not less than ten percent in value, according to the assessed valuation for general taxation of the property for which annexation is petitioned, shall notify the legislative body of the city or town in writing of their intention to commence annexation proceedings. The legislative body shall set a date, not later than sixty days after the filing of the request, for a meeting with the initiating parties to determine whether the city or town will accept, reject, or geographically modify the proposed annexation, whether it shall require the simultaneous adoption of the comprehensive plan if such plan has been prepared and filed for the area to be annexed as provided for in RCW 35.13.177 and 35.13.178, and whether it shall require the assumption of all or of any portion of existing city or town indebtedness by the area to be annexed. If the legislative body requires the assumption of all or of any portion of indebtedness and/or the adoption of a comprehensive plan, it shall record this action in its minutes and the petition for annexation shall be so drawn as to clearly indicate this fact. There shall be no appeal from the decision of the legislative body. [1990 c 33 § 565; 1989 c 351 § 3; 1973 1st ex.s. c 164 § 11; 1971 c 69 § 1; 1965

ex.s. c 88 § 10; 1965 c 7 § 35.13.125. Prior: 1961 c 282 § 18.]

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

Severability—1971 c 69: "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 c 69 § 5.]

35.13.130 Petition method—Petition—Signers—Content. A petition for annexation of an area contiguous to a city or town may be made in writing addressed to and filed with the legislative body of the municipality to which annexation is desired. Except where all the property sought to be annexed is property of a school district, and the school directors thereof file the petition for annexation as in RCW 28A.335.110 authorized, the petition must be signed by the owners of not less than seventy-five percent in value according to the assessed valuation for general taxation of the property for which annexation is petitioned: PROVIDED, That in cities and towns with populations greater than one hundred sixty thousand located east of the Cascade mountains, the owner of tax exempt property may sign an annexation petition and have the tax exempt property annexed into the city or town, but the value of the tax exempt property shall not be used in calculating the sufficiency of the required property owner signatures unless only tax exempt property is proposed to be annexed into the city or town. The petition shall set forth a description of the property according to government legal subdivisions or legal plats which is in compliance with RCW 35.02.170, and shall be accompanied by a plat which outlines the boundaries of the property sought to be annexed. If the legislative body has required the assumption of all or of any portion of city or town indebtedness by the area annexed, and/or the adoption of a comprehensive plan for the area to be annexed, these facts, together with a quotation of the minute entry of such requirement or requirements shall be set forth in the petition. [1990 c 33 § 566; 1981 c 66 § 1; 1975 1st ex.s. c 220 § 8; 1973 1st ex.s. c 164 § 12; 1971 c 69 § 2; 1965 ex.s. c 88 § 11; 1965 c 7 § 35.13.130. Prior: 1961 c 282 § 19; 1945 c 128 § 3; Rem. Supp. 1945 § 8908-12.]

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

Severability—1981 c 66: "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 66 § 2.]

Legislative finding, intent—1975 1st ex.s. c 220: See note following RCW 35.02.170.

Severability—1971 c 69: See note following RCW 35.13.125.

35.13.140 Petition method—Notice of hearing. Whenever a petition for annexation is filed with the city or town council, or commission in those cities having a commission form of government, which meets the requirements herein specified, of which fact satisfactory proof may be required by the council or commission, the council or commission may entertain the same, fix a date for a public hearing thereon and cause notice of the hearing to be published in one issue of a newspaper of general circulation in the city or town. The notice shall also be posted in three public places within the territory proposed for annexation,

and shall specify the time and place of hearing and invite interested persons to appear and voice approval or disapproval of the annexation. The expense of publication and posting of the notice shall be borne by the signers of the petition. [1965 c 7 § 35.13.140. Prior: 1945 c 128 § 2; Rem. Supp. 1945 § 8908-11.] [SLC-RO-8.]

35.13.150 Petition method—Ordinance providing for annexation. Following the hearing, the council or commission shall determine by ordinance whether annexation shall be made. Subject to RCW 35.02.170, they may annex all or any portion of the proposed area but may not include in the annexation any property not described in the petition. Upon passage of the ordinance a certified copy shall be filed with the board of county commissioners of the county in which the annexed property is located. [1975 1st ex.s. c 220 § 9; 1965 c 7 § 35.13.150. Prior: 1957 c 239 § 5; prior: 1945 c 128 § 4, part; Rem. Supp. 1945 § 8908-13, part.]

Legislative finding, intent—1975 1st ex.s. c 220: See note following RCW 35.02.170.

35.13.160 Petition method—Effective date of annexation or annexation and comprehensive plan—Assessment, taxation of territory annexed. Upon the date fixed in the ordinance of annexation the area annexed shall become part of the city or town. All property within the territory hereafter annexed shall, if the annexation petition so provided, be assessed and taxed at the same rate and on the same basis as the property of such annexing city or town is assessed and taxed to pay for all or of any portion of the then outstanding indebtedness of the city or town to which said area is annexed, approved by the voters, contracted, or incurred prior to, or existing at, the date of annexation. If the annexation petition so provided, all property in the annexed area shall be subject to and a part of the comprehensive plan as prepared and filed as provided for in RCW 35.13.177 and 35.13.178. [1973 1st ex.s. c 164 § 13; 1965 ex.s. c 88 § 12; 1965 c 7 § 35.13.160. Prior: 1961 c 282 § 20; 1957 c 239 § 6; prior: (i) 1945 c 128 § 4, part; Rem. Supp. 1945 § 8908-13, part. (ii) 1945 c 128 § 5; Rem. Supp. 1945 § 8908-14.]

35.13.165 Termination of annexation proceedings in cities over four hundred thousand—Declarations of termination filed by property owners. At any time before the date is set for an annexation election under RCW 35.13.060 or 35.13.174, all further proceedings to annex shall be terminated upon the filing of verified declarations of termination signed by:

(1) Owners of real property consisting of at least sixty percent of the assessed valuation in the area proposed to be annexed; or

(2) Sixty percent of the owners of real property in the area proposed to be annexed.

As used in this subsection, the term "owner" shall include individuals and corporate owners. In determining who is a real property owner for purposes of this section, all owners of a single parcel shall be considered as one owner. No owner may be entitled to sign more than one declaration of termination.

Following the termination of such proceedings, no other petition for annexation affecting any portion of the same property may be considered by any government body for a period of five years from the date of filing.

The provisions of this section shall apply only to cities with a population greater than four hundred thousand. [1989 c 351 § 7; 1981 c 332 § 2.]

Severability—1981 c 332: "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 332 § 11.]

35.13.170 Petition method is alternative. The method of annexation provided for in RCW 35.13.130 to 35.13.160 shall be an alternative method, not superseding any other. [1965 c 7 § 35.13.170. Prior: 1945 c 128 § 6; Rem. Supp. 1945 § 8908-15.]

35.13.171 Review board—Convening—Composition. Within thirty days after the filing of a city's or town's annexation resolution pursuant to RCW 35.13.015 with the board of county commissioners or within thirty days after filing with the county commissioners a petition calling for an election on annexation, as provided in RCW 35.13.020, or within thirty days after approval by the legislative body of a city or town of a petition of property owners calling for annexation, as provided in RCW 35.13.130, the mayor of the city or town concerned that is not subject to the jurisdiction of a boundary review board under chapter 36.93 RCW, shall convene a review board composed of the following persons:

(1) The mayor of the city or town initiating the annexation by resolution, or the mayor in the event of a twenty percent annexation petition pursuant to RCW 35.13.020, or an alternate designated by him;

(2) The chairman of the board of county commissioners of the county wherein the property to be annexed is situated, or an alternate designated by him;

(3) The director of community development, or an alternate designated by him;

Two additional members to be designated, one by the mayor of the annexing city, which member shall be a resident property owner of the city, and one by the chairman of the county legislative authority, which member shall be a resident of and a property owner or a resident or a property owner if there be no resident property owner in the area proposed to be annexed, shall be added to the original membership and the full board thereafter convened upon call of the mayor: PROVIDED FURTHER, That three members of the board shall constitute a quorum. [1985 c 6 § 2; 1973 1st ex.s. c 164 § 14; 1965 c 7 § 35.13.171. Prior: 1961 c 282 § 2.]

35.13.172 When review procedure may be dispensed with. Whenever a petition is filed as provided in RCW 35.13.020 or a resolution is adopted by the city or town council, as provided in RCW 35.13.015, and the area proposed for annexation is less than ten acres and less than eight hundred thousand dollars in assessed valuation, such review procedures shall be dispensed with. [1981 c 260 § 6. Prior: 1973 1st ex.s. c 195 § 14; 1973 1st ex.s. c 164 § 15; 1965 c 7 § 35.13.172; prior: 1961 c 282 § 3.]

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

35.13.173 Determination by review board—Factors considered—Filing of findings. The review board shall by majority action, within three months, determine whether the property proposed to be annexed is of such character that such annexation would be in the public interest and for the public welfare, and in the best interest of the city, county, and other political subdivisions affected. The governing officials of the city, county, and other political subdivisions of the state shall assist the review board insofar as their offices can, and all relevant information and records shall be furnished by such offices to the review board. In making their determination the review board shall be guided, but not limited, by their findings with respect to the following factors:

- (1) The immediate and prospective populations of the area to be annexed;
- (2) The assessed valuation of the area to be annexed, and its relationship to population;
- (3) The history of and prospects for construction of improvements in the area to be annexed;
- (4) The needs and possibilities for geographical expansion of the city;
- (5) The present and anticipated need for governmental services in the area proposed to be annexed, including but not limited to water supply, sewage and garbage disposal, zoning, streets and alleys, curbs, sidewalks, police and fire protection, playgrounds, parks, and other municipal services, and transportation and drainage;
- (6) The relative capabilities of the city, county, and other political subdivisions to provide governmental services when the need arises;
- (7) The existence of special districts except school districts within the area proposed to be annexed, and the impact of annexation upon such districts;
- (8) The elimination of isolated unincorporated areas existing without adequate economical governmental services;
- (9) The immediate and potential revenues that would be derived by the city as a result of annexation, and their relation to the cost of providing service to the area.

Whether the review board determines for or against annexation, its reasons therefor, along with its findings on the specified factors and other material considerations shall:

- (1) In the case of a petition signed by registered voters calling for an election on annexation, be filed with the board of county commissioners;
- (2) In the case of a resolution of a city or town initiating annexation proceedings pursuant to RCW 35.13.015, be filed with the board of county commissioners.

Such findings need not include specific data on every point listed, but shall indicate that all factors were considered.

A favorable determination by the review board is an essential condition precedent to the annexation of territory to a city or town under either the resolution method pursuant to RCW 35.13.015, or under the twenty percent annexation petition under the election method. [1973 1st ex.s. c 164 § 16; 1965 c 7 § 35.13.173. Prior: 1961 c 282 § 4.]

35.13.174 Date for annexation election if review board's determination favorable. Upon receipt by the board of county commissioners of a determination by a majority of the review board favoring annexation of the proposed area that has been initiated by resolution pursuant to RCW 35.13.015 by the city or town legislative body, the board of county commissioners shall fix a date on which an annexation election shall be held, which date will be not less than thirty days nor more than sixty days thereafter. [1973 1st ex.s. c 164 § 17; 1965 c 7 § 35.13.174. Prior: 1961 c 282 § 5.]

Petition method—Fixing date of annexation election: RCW 35.13.060.

Times for holding elections: Chapter 29.13 RCW.

35.13.175 Pending final disposition of petition no other petition or resolution for annexation or petition for incorporation shall be acted upon. After the filing of any petition or resolution for annexation with the board of county commissioners, or city or town council, and pending its final disposition as provided for in this chapter, no other petition or resolution for annexation or petition for incorporation which embraces any of the territory included therein shall be acted upon by the county auditor or the board of county commissioners, or by any city or town clerk, city or town council, or by any other public official or body that might otherwise be empowered to receive or act upon such a petition. [1973 1st ex.s. c 164 § 18; 1965 c 7 § 35.13.175. Prior: 1961 c 200 § 2.]

35.13.177 Comprehensive land use plan for area to be annexed—Contents—Purpose. The legislative body of any city or town acting through a planning commission created pursuant to chapter 35.63 RCW, or pursuant to its granted powers, may prepare a comprehensive land use plan to become effective upon the annexation of any area which might reasonably be expected to be annexed by the city or town at any future time. Such comprehensive plan, to the extent deemed reasonably necessary by the legislative body to be in the interest of health, safety, morals and the general welfare may provide, among other things, for:

- (1) The regulation and restriction within the area to be annexed of the location and the use of buildings, structures and land for residence, trade, industrial and other purposes; the height, number of stories, size, construction and design of buildings and other structures; the size of yards, courts and other open spaces on the lot or tract; the density of population; the set-back of buildings along highways, parks or public water frontages; and the subdivision and development of land;
- (2) The division of the area to be annexed into districts or zones of any size or shape, and within such districts or zones regulate and restrict the erection, construction, reconstruction, alteration, repair or use of buildings, structures or land;
- (3) The appointment of a board of adjustment, to make, in appropriate cases and subject to appropriate conditions and safeguards established by ordinance, special exceptions in harmony with the general purposes and intent of the comprehensive plan; and
- (4) The time interval following an annexation during which the ordinance or resolution adopting any such plan or

regulations, or any part thereof must remain in effect before it may be amended, supplemented or modified by subsequent ordinance or resolution adopted by the annexing city or town.

All such regulations and restrictions shall be designed, among other things, to encourage the most appropriate use of land throughout the area to be annexed; to lessen traffic congestion and accidents; to secure safety from fire; to provide adequate light and air; to prevent overcrowding of land; to avoid undue concentration of population; to promote a coordinated development of the unbuilt areas; to encourage the formation of neighborhood or community units; to secure an appropriate allotment of land area in new developments for all the requirements of community life; to conserve and restore natural beauty and other natural resources; to facilitate the adequate provision of transportation, water, sewerage and other public uses and requirements. [1965 ex.s. c 88 § 1.]

35.13.178 Comprehensive land use plan for area to be annexed—Hearings on proposed plan—Notice—Filing. The legislative body of the city or town shall hold two or more public hearings, to be held at least thirty days apart, upon the proposed comprehensive plan, giving notice of the time and place thereof by publication in a newspaper of general circulation in the annexing city or town and the area to be annexed. A copy of the ordinance or resolution adopting or embodying such proposed plan or any part thereof or any amendment thereto, duly certified as a true copy by the clerk of the annexing city or town, shall be filed with the county auditor. A like certified copy of any map or plat referred to or adopted by the ordinance or resolution shall likewise be filed with the county auditor. The auditor shall record the ordinance or resolution and keep on file the map or plat. [1965 ex.s. c 88 § 2.]

35.13.180 Annexation for municipal purposes. City and town councils of second and third class cities and towns may by a majority vote annex new territory outside the city or town limits, whether contiguous or noncontiguous for park, cemetery, or other municipal purposes when such territory is owned by the city or town or all of the owners of the real property in the territory give their written consent to the annexation. [1983 1st ex.s. c 68 § 1; 1981 c 332 § 4; 1965 c 7 § 35.13.180. Prior: 1907 c 228 § 4; RRS § 9202.]

Severability—1981 c 332: See note following RCW 35.13.165.

35.13.185 Annexation of federal areas by first class city. Any unincorporated area contiguous to a first class city may be annexed thereto by an ordinance accepting a gift, grant, lease or cession of jurisdiction from the government of the United States of the right to occupy or control it. [1965 c 7 § 35.13.185. Prior: 1957 c 239 § 7.]

35.13.190 Annexation of federal areas by second and third class cities and towns. Any unincorporated area contiguous to a second or third class city or town may be annexed thereto by an ordinance accepting a gift, grant, or lease from the government of the United States of the right to occupy, control, improve it or sublet it for commercial, manufacturing, or industrial purposes: PROVIDED, That

this shall not apply to any territory more than four miles from the corporate limits existing before such annexation. [1965 c 7 § 35.13.190. Prior: 1915 c 13 § 1, part; RRS § 8906, part.]

Validating—1915 c 13: "All ordinances heretofore passed by the legislative authority of any such incorporated city for the purpose of accepting any gift, grant or lease of or annexing any territory as hereinabove provided are hereby validated." [1915 c 13 § 3.]

35.13.200 Annexation of federal areas by second and third class cities and towns—Annexation ordinance—Provisions. In the ordinance annexing territory pursuant to a gift, grant, or lease from the government of the United States, a second or third class city or town may include such tide and shore lands as may be necessary or convenient for the use thereof, may include in the ordinance an acceptance of the terms and conditions attached to the gift, grant, or lease and may provide in the ordinance for the annexed territory to become a separate ward of the city or town or part or parts of adjacent wards. [1965 c 7 § 35.13.200. Prior: (i) 1915 c 13 § 1, part; RRS § 8906, part. (ii) 1915 c 13 § 2, part; RRS § 8907, part.]

35.13.210 Annexation of federal areas by second and third class cities and towns—Authority over annexed territory. A second or third class city or town may cause territory annexed pursuant to a gift, grant, or lease of the government of the United States to be surveyed, subdivided and platted into lots, blocks, or tracts and lay out, reserve for public use, and improve streets, roads, alleys, slips, and other public places. It may grant or sublet any lot, block, or tract therein for commercial, manufacturing, or industrial purposes and reserve, receive and collect rents therefrom. It may expend the rents received therefrom in making and maintaining public improvements therein, and if any surplus remains at the end of any fiscal year, may transfer it to the city's or town's current expense fund. [1965 c 7 § 35.13.210. Prior: 1915 c 13 § 2, part; RRS § 8907, part.]

35.13.215 Annexation of fire districts—Transfer of employees. If any portion of a fire protection district is annexed to or incorporated into a city, code city or town, any employee of the fire protection district who (1) was at the time of such annexation or incorporation employed exclusively or principally in performing the powers, duties, and functions which are to be performed by the city, code city or town fire department (2) will, as a direct consequence of annexation or incorporation, be separated from the employ of the fire protection district, and (3) can perform the duties and meet the minimum requirements of the position to be filled, then such employee may transfer employment to the civil service system of the city, code city or town fire department as provided for in this section and RCW 35.13.225 and 35.13.235.

For purposes of this section and RCW 35.13.225 and 35.13.235, employee means an individual whose employment with a fire protection district has been terminated because the fire protection district was annexed by a city, code city or town for purposes of fire protection. [1986 c 254 § 7.]

35.13.225 Annexation of fire districts—Transfer of employees—Rights and benefits. (1) An eligible employee may transfer into the civil service system of the city, code city or town fire department by filing a written request with the city, code city or town civil service commission and by giving written notice thereof to the board of commissioners of the fire protection district. Upon receipt of such request by the civil service commission the transfer of employment shall be made. The employee so transferring will (a) be on probation for the same period as are new employees of the city, code city or town fire department in the position filled, (b) be eligible for promotion after completion of the probationary period as completed, (c) receive a salary at least equal to that of other new employees of the city, code city or town fire department in the position filled, and (d) in all other matters, such as retirement, sick leave, and vacation, have, within the city, code city or town civil service system, all the rights, benefits, and privileges to which he or she would have been entitled as a member of the city, code city or town fire department from the beginning of employment with the fire protection district: **PROVIDED**, That for purposes of layoffs by the annexing fire agency, only the time of service accrued with the annexing agency shall apply unless an agreement is reached between the collective bargaining representatives of the employees of the annexing and annexed fire agencies and the annexing and annexed fire agencies. The board of commissioners of the fire protection district shall, upon receipt of such notice, transmit to any applicable civil service commission a record of the employee's service with the fire protection district which shall be credited to such employee as a part of the period of employment in the city, code city or town fire department. All accrued benefits are transferable provided that the recipient agency provides comparable benefits. All benefits shall then accrue based on the combined seniority of each employee in the recipient agency.

(2) As many of the transferring employees shall be placed upon the payroll of the city, code city or town fire department as the department determines are needed to provide services. These needed employees shall be taken in order of seniority and the remaining employees who transfer as provided in this section and RCW 35.13.215 and 35.13.235 shall head the list for employment in the civil service system in order of their seniority, to the end that they shall be the first to be reemployed in the city, code city or town fire department when appropriate positions become available: **PROVIDED**, That employees who are not immediately hired by the city, code city or town shall be placed on a reemployment list for a period not to exceed thirty-six months unless a longer period is authorized by an agreement reached between the collective bargaining representatives of the employees of the annexing and annexed fire agencies and the annexing and annexed fire agencies. [1986 c 254 § 8.]

35.13.235 Annexation of fire districts—Transfer of employees—Notice—Time limitation. If any portion of a fire protection district is annexed to or incorporated into a city, code city or town, and as a result any employee is laid off who is eligible to transfer to the city, code city or town fire department under this section and RCW 35.13.215 and

35.13.225 the fire protection district shall notify the employee of the right to transfer and the employee shall have ninety days to transfer employment to the city, code city or town fire department. [1986 c 254 § 9.]

35.13.249 Annexation of fire districts—Ownership of assets of fire protection district—Outstanding indebtedness not affected. When any portion of a fire protection district is annexed by or incorporated into a city or town, any outstanding indebtedness, bonded or otherwise, shall remain an obligation of the taxable property annexed or incorporated as if the annexation or incorporation had not occurred. [1965 c 7 § 35.13.249. Prior: 1963 c 231 § 5.]

35.13.260 Determining population of annexed territory—Certificate—As basis for allocation of state funds—Revised certificate. Whenever any territory is annexed to a city or town, a certificate as hereinafter provided shall be submitted in triplicate to the office of financial management, hereinafter in this section referred to as "the office", within thirty days of the effective date of annexation specified in the relevant ordinance. After approval of the certificate, the office shall retain the original copy in its files, and transmit the second copy to the department of transportation and return the third copy to the city or town. Such certificates shall be in such form and contain such information as shall be prescribed by the office. A copy of the complete ordinance containing a legal description and a map showing specifically the boundaries of the annexed territory shall be attached to each of the three copies of the certificate. The certificate shall be signed by the mayor and attested by the city clerk. Upon request, the office shall furnish certification forms to any city or town.

The resident population of the annexed territory shall be determined by, or under the direction of, the mayor of the city or town. Such population determination shall consist of an actual enumeration of the population which shall be made in accordance with practices and policies, and subject to the approval of, the office. The population shall be determined as of the effective date of annexation as specified in the relevant ordinance.

Until an annexation certificate is filed and approved as provided herein, such annexed territory shall not be considered by the office in determining the population of such city or town.

Upon approval of the annexation certificate, the office shall forward to each state official or department responsible for making allocations or payments to cities or towns, a revised certificate reflecting the increase in population due to such annexation. Upon and after the date of the commencement of the next quarterly period, the population determination indicated in such revised certificate shall be used as the basis for the allocation and payment of state funds to such city or town.

For the purposes of this section, each quarterly period shall commence on the first day of the months of January, April, July, and October. Whenever a revised certificate is forwarded by the office thirty days or less prior to the commencement of the next quarterly period, the population of the annexed territory shall not be considered until the commencement of the following quarterly period. [1979 c

151 § 25; 1975 1st ex.s. c 31 § 1; 1969 ex.s. c 50 § 1; 1967 ex.s. c 42 § 2; 1965 c 7 § 35.13.260. Prior: 1961 c 51 § 1; 1957 c 175 § 14; prior: 1951 c 248 § 5, part.]

Effective date—1967 ex.s. c 42: See note following RCW 3.30.010.

Savings—1967 ex.s. c 42: See note following RCW 3.30.010.

Allocations to cities and towns from motor vehicle fund: RCW 46.68.100, 46.68.110.

Census to be conducted in decennial periods: State Constitution Art. 2 § 3.

Population determinations, office of financial management: Chapter 43.62 RCW.

35.13.270 Road district taxes collected in annexed territory—Disposition. Whenever any territory is annexed to a city which is part of a road district of the county and road district taxes have been levied but not collected on any property within the annexed territory, the same shall when collected by the county treasurer be paid to the city and by the city placed in the city street fund. [1965 c 7 § 35.13.270. Prior: 1957 c 175 § 15; prior: 1951 c 248 § 5, part.]

35.13.280 Cancellation, acquisition, of franchise or permit for operation of public service business in territory annexed. The annexation by any city of any territory pursuant to those provisions of chapter 35.10 RCW which relate to the annexation of a third class city or town to a first class city, or pursuant to the provisions of chapter 35.13 RCW shall cancel, as of the effective date of such annexation, any franchise or permit theretofore granted to any person, firm or corporation by the state of Washington, or by the governing body of such annexed territory, authorizing or otherwise permitting the operation of any public transportation, garbage collection and/or disposal or other similar public service business or facility within the limits of the annexed territory, but the holder of any such franchise or permit canceled pursuant to this section shall be forthwith granted by the annexing city a franchise to continue such business within the annexed territory for a term of not less than five years from the date of issuance thereof, and the annexing city, by franchise, permit or public operation, shall not extend similar or competing services to the annexed territory except upon a proper showing of the inability or refusal of such person, firm or corporation to adequately service said annexed territory at a reasonable price: **PROVIDED,** That the provisions of this section shall not preclude the purchase by the annexing city of said franchise, business, or facilities at an agreed or negotiated price, or from acquiring the same by condemnation upon payment of damages, including a reasonable amount for the loss of the franchise or permit. In the event that any person, firm or corporation whose franchise or permit has been canceled by the terms of this section shall suffer any measurable damages as a result of any annexation pursuant to the provisions of the laws above-mentioned, such person, firm or corporation shall have a right of action against any city causing such damages. [1983 c 3 § 54; 1965 c 7 § 35.13.280. Prior: 1957 c 282 § 1.]

35.13.290 When right of way may be included—Use of right of way line as corporate boundary. The bound-

aries of a city or town arising from an annexation of territory shall not include a portion of the right of way of any public street, road, or highway except where the boundary runs from one edge of the right of way to the other edge of the right of way. However, the right of way line of any public street, road, or highway, or any segment thereof, may be used to define a part of a corporate boundary in an annexation proceeding. [1989 c 84 § 8.]

35.13.300 Boundary line adjustment—Purpose—Definition. The purpose of RCW 35.13.300 through 35.13.330 is to establish a process for the adjustment of existing or proposed city boundary lines to avoid a situation where a common boundary line is or would be located within a right of way of a public street, road, or highway, or a situation where two cities are separated or would be separated by only the right of way of a public street, road, or highway, other than situations where a boundary line runs from one edge of the right of way to the other edge of the right of way.

As used in RCW 35.13.300 through 35.13.330, "city" includes every city or town in the state, including a code city operating under Title 35A RCW. [1989 c 84 § 12.]

35.13.310 Boundary line adjustment—Agreement—Not subject to review. (1) This section provides a method to adjust the boundary lines between two cities where the two cities share a common boundary within a right of way of a public street, road, or highway, or the two cities have a portion of their boundaries separated only by all or part of the right of way of a public street, road, or highway. However, this section does not apply to situations where a boundary line runs from one edge of the right of way to the other edge of the right of way.

(2) The councils of any two cities in a situation described in subsection (1) of this section may enter into an agreement to alter those portions of their boundaries that are necessary to eliminate this situation and create a partial common boundary on either edge of the right of way of the public street, road, or highway. An agreement made under this section shall include only boundary line adjustments between the two cities that are necessary to eliminate the situation described in subsection (1) of this section.

A boundary line adjustment under this section is not subject to potential review by a boundary review board. [1989 c 84 § 13.]

35.13.320 Boundary line adjustment—When adjustment required—Limitation—Not subject to review. The councils of any two cities that will be in a situation described in RCW 35.13.310(1) as the result of a proposed annexation by one of the cities may enter into an agreement to adjust those portions of the annexation proposal and the boundaries of the city that is not proposing the annexation. Such an agreement shall not be effective unless the annexation is made.

The annexation proposal shall proceed if such an agreement were not made, but any resulting boundaries between the two cities that meet the descriptions of RCW 35.13.310(1) shall be adjusted by agreement between the two cities within one hundred eighty days of the effective date of

the annexation, or the county legislative authority of the county within which the right of way is located shall adjust the boundaries within a sixty-day period immediately following the one hundred eightieth day.

An agreement or adjustment made by a county under this section shall include only boundary line adjustments between the two cities that are necessary to eliminate the situation described in RCW 35.13.310(1).

A boundary line adjustment under this section is not subject to potential review by a boundary review board. [1989 c 84 § 14.]

35.13.330 Boundary line adjustment—Agreement pending incorporation—Limitation—Not subject to review. (1) The purpose of this section is to avoid situations arising where the boundaries of an existing city and a newly incorporated city would create a situation described in RCW 35.13.310(1).

(2) A boundary review board that reviews the boundaries of a proposed incorporation may enter into an agreement with the council of a city, that would be in a situation described in subsection (1) of this section as the result of a proposed incorporation of a city, to adjust the boundary line of the city and those of the city proposed to be incorporated to avoid this situation described in subsection (1) of this section if the incorporation were to be approved by the voters. Such an agreement shall not be effective unless the incorporation occurs.

The incorporation proposal shall proceed if such an agreement were not made, but any resulting boundaries between the two cities that meet create a situation described in RCW 35.13.310(1) shall be adjusted by agreement between the two cities within one hundred eighty days of the official date of the incorporation, or the county legislative authority of the county within which the right of way is located shall adjust the boundaries within a sixty-day period immediately following the one hundred eightieth day.

An agreement or adjustment made by a county under this section shall include only boundary line adjustments between the two cities that are necessary to eliminate the situation described in RCW 35.13.310(1).

A boundary line adjustment under this section is not subject to potential review by a boundary review board. [1989 c 84 § 15.]

35.13.340 Boundary line adjustment—Inclusion or exclusion of remaining portion of parcel—When subject to review—Definition. The boundaries of a city shall be adjusted to include or exclude the remaining portion of a parcel of land located partially within and partially without *of the boundaries of that city upon the governing body of the city adopting a resolution approving such an adjustment that was requested in a petition signed by the owner of the parcel. A boundary adjustment made pursuant to this section shall not be subject to potential review by the boundary review board of the county within which the parcel is located if the remaining portion of the parcel to be included or excluded from the city is located in the unincorporated area of the county and the adjustment is approved by resolution of the county legislative authority or in writing by

a county official or employee of the county who is designated by ordinance of the county to make such approvals.

Where part of a single parcel of land is located within the boundaries of one city, and the remainder of the parcel is located within the boundaries of a second city that is located immediately adjacent to the first city, the boundaries of the two cities may be adjusted so that all of the parcel is located within either of the cities, if the adjustment was requested in a petition signed by the property owner and is approved by both cities. Approval by a city may be through either resolution of its city council, or in writing by an official or employee of the city who has been designated by ordinance of the city to make such approvals. Such an adjustment is not subject to potential review by the boundary review board of the county in which the parcel is located.

Whenever a portion of a public right of way is located on such a parcel, the boundary adjustment shall be made in such a manner as to include all or none of that portion of the public right of way within the boundaries of the city.

As used in this section, "city" shall include any city or town, including a code city. [1989 c 84 § 24.]

*Reviser's note: The word "of" appears to be unnecessary.

35.13.350 Providing annexation information to public. A city or town can provide factual public information on the effects of a pending annexation proposed for the city or town. [1989 c 351 § 8.]

Chapter 35.13A

WATER OR SEWER DISTRICTS—ASSUMPTION OF JURISDICTION

Sections

35.13A.010 Definitions.

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35.13A.030 Assumption of control if sixty percent or more of area or valuation within city.

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35.13A.050 Territory containing facilities within or without city—Duties of city or district—Rates and charges—Assumption of responsibility—Outstanding indebtedness—Properties and rights.

35.13A.060 District in more than one city—Assumption of responsibilities—Duties of cities.

35.13A.070 Contracts.

35.13A.080 Dissolution of water district or sewer district.

35.13A.090 Employment and rights of district employees.

35.13A.900 Severability—1971 ex.s. c 95.

35.13A.010 Definitions. Whenever used in this chapter, the following words shall have the following meanings:

(1) The word "district" shall mean a water district or sewer district as indicated by the context of the section in which used.

(2) The word "city" shall mean a city or town of any class and shall also include any code city as defined in chapter 35A.01 RCW.

(3) The words "included with" shall mean the inclusion of all or part of the territory of a district, as indicated by the context, within the corporate limits of a city either by

incorporation of a city, annexation to a city, consolidation of cities or any combination thereof.

(4) The word "indebtedness" shall include general obligation, revenue, and special indebtedness and temporary, emergency, and interim loans. [1971 ex.s. c 95 § 1.]

35.13A.020 Assumption authorized—Disposition of properties and rights—Outstanding indebtedness—Management and control. Whenever all of the territory of a water district or sewer district is included within the corporate boundaries of a city, and the city legislative body has elected by resolution or ordinance to assume jurisdiction thereof, all real and personal property, franchises, rights, assets, taxes levied but not collected for the district for other than indebtedness, water and sewer lines, and all other facilities and equipment of the district shall become the property of such city subject to all financial, statutory, or contractual obligations of the district for the security or performance of which such property may have been pledged. Such city, in addition to its other powers, shall have the power to manage, control, maintain and operate such property, facilities and equipment and to fix and collect service and other charges from owners and occupants of properties so served by the city, subject, however, to any outstanding indebtedness, bonded or otherwise, of the district payable from taxes, assessments or revenues of any kind or nature and to any other contractual obligations of the district.

Such city may by resolution of its legislative body, assume the obligation of paying such district indebtedness and of levying and of collecting or causing to be collected such district taxes, assessments and utility rates and charges of any kind or nature to pay and secure the payment of such indebtedness, according to all of the terms, conditions and covenants incident to such indebtedness, and shall assume and perform all other outstanding contractual obligation of the district in accordance with all of its terms, conditions and covenants. No such assumption shall be deemed to impair the obligation of any indebtedness or other contractual obligation entered into after August 9, 1971. During the period until the outstanding indebtedness of the district has been discharged, the territory of the district and the owners and occupants of property therein, shall continue to be liable for its and their proportionate share of such indebtedness, including any outstanding assessments levied within any local improvement district or utility local improvement district thereof. The city shall assume the obligation of causing the payment of such indebtedness, collecting such taxes, assessments and charges and observing and performing the other district contractual obligations. The legislative body of the city shall act as the officers of the district for the purpose of certifying the amount of any property tax to be levied and collected therein, and causing service and other charges and assessments to be collected from such property or owners or occupants thereof, enforcing such collection and performing all other acts necessary to insure performance of the district's contractual obligations in the same manner and by the same means as if the territory of the district had not been included within the boundaries of a city.

When a city assumes the obligation of paying the outstanding indebtedness, and if property taxes or assess-

ments have been levied and service and other charges have accrued for such purpose but have not been collected by the district prior to such election, the same when collected shall belong and be paid to the city and be used by such city so far as necessary for payment of the indebtedness of the district existing and unpaid on the date such city elects to assume the indebtedness. Any funds received by the city which have been collected for the purpose of paying any bonded or other indebtedness of the district, shall be used for the purpose for which they were collected and for no other purpose. Any outstanding indebtedness shall be paid as provided in the bond covenants. All funds of the district on deposit with the county treasurer at the time of title transfer shall be used by the city solely for the benefit of the utility and shall not be transferred to or used for the benefit of the city's general fund. [1971 ex.s. c 95 § 2.]

35.13A.030 Assumption of control if sixty percent or more of area or valuation within city. Whenever a portion of a water district or sewer district equal to at least sixty percent of the area or sixty percent of the assessed valuation of the real property lying within such district, is included within the corporate boundaries of a city, the city may assume by ordinance the full and complete management and control of that portion of the entire district not included within another city, whereupon the provisions of RCW 35.13A.020 shall be operative; or the city may proceed directly under the provisions of RCW 35.13A.050. [1971 ex.s. c 95 § 3.]

35.13A.040 Assumption of control if less than sixty percent of area or valuation within city. Whenever the portion of a water or sewer district included within the corporate boundaries of a city is less than sixty percent of the area of the district and less than sixty percent of the assessed valuation of the real property within the district, the city may elect to proceed under the provisions of RCW 35.13A.050. [1971 ex.s. c 95 § 4.]

35.13A.050 Territory containing facilities within or without city—Duties of city or district—Rates and charges—Assumption of responsibility—Outstanding indebtedness—Properties and rights. When electing under RCW 35.13A.030 or 35.13A.040 to proceed under this section, the city may assume, by ordinance, jurisdiction of the district's responsibilities, property, facilities and equipment within the corporate limits of the city: PROVIDED, That if on the effective date of such an ordinance the territory of the district included within the city contains any facilities serving or designed to serve any portion of the district outside the corporate limits of the city or if the territory lying within the district and outside the city contains any facilities serving or designed to serve territory included within the city (which facilities are hereafter in this section called the "serving facilities"), the city or district shall for the economically useful life of any such serving facilities make available sufficient capacity therein to serve the sewage or water requirements of such territory, to the extent that such facilities were designed to serve such territory at a rate charged to the municipality being served which is reasonable to all parties.

In the event a city proceeds under this section, the district may elect upon a favorable vote of a majority of all voters within the district voting upon such propositions to require the city to assume responsibility for the operation and maintenance of the district's property, facilities and equipment throughout the entire district and to pay the city a charge for such operation and maintenance which is reasonable under all of the circumstances.

A city acquiring property, facilities and equipment under the provisions of this section shall acquire such property, facilities and equipment, and fix and collect service and other charges from owners and occupants of properties served by the city, subject, to any contractual obligations of the district which relate to the property, facilities, or equipment so acquired by the city or which are secured by taxes, assessments or revenues from the territory of the district included within the city. In such cases, the property included within the city and the owners and occupants thereof shall continue to be liable for payment of its and their proportionate share of any outstanding district indebtedness. The district and its officers shall continue to levy taxes and assessments on and to collect service and other charges from such property, or owners or occupants thereof, to enforce such collections, and to perform all other acts necessary to insure performance of the district's contractual obligations in the same manner and by the same means as if the territory of the district had not been included within the boundaries of a city. [1971 ex.s. c 95 § 5.]

35.13A.060 District in more than one city—Assumption of responsibilities—Duties of cities. Whenever more than one city, in whole or in part, is included within a water district or sewer district, the city which has within its boundaries sixty percent or more of the area of the assessed valuation of the district (in this section referred to as the "principal city") may, with the approval of any other city containing part of such district, assume responsibility for operation and maintenance of the district's property, facilities and equipment within such other city and make and enforce such charges for operation, maintenance and retirement of indebtedness as may be reasonable under all the circumstances.

Any other city having less than sixty percent in area or assessed valuation of such district, within its boundaries may install facilities and create local improvement districts or otherwise finance the cost of installation of such facilities and if such facilities have been installed in accordance with reasonable standards fixed by the principal city, such other city may connect such facilities to the utility system of such district operated by the principal city upon providing for payment by the owners or occupants of properties served thereby, of such charges established by the principal city as may be reasonable under the circumstances. [1971 ex.s. c 95 § 6.]

35.13A.070 Contracts. Notwithstanding any provision of this chapter to the contrary, one or more cities and one or more water districts or sewer districts may, through their legislative authorities, authorize a contract with respect to the rights, powers, duties and obligation of such cities, or districts with regard to the use and ownership of property,

the providing of services, the maintenance and operation of facilities, allocation of cost, financing and construction of new facilities, application and use of assets, disposition of liabilities and debts, the performance of contractual obligations and any other matters arising out of the inclusion, in whole or in part, of the district or districts within any city or cities. The contract may provide for the furnishing of services by any party thereto and the use of city or district facilities or real estate for such purpose, and may also provide for the time during which such district or districts may continue to exercise any rights, privileges, powers and functions provided by law for such district or districts as if the district or districts or portions thereof were not included within a city, including but not by way of limitation, the right to promulgate rules and regulations, to levy and collect special assessments, rates, charges, service charges and connection fees, and to adopt and carry out the provisions of a comprehensive plan, and amendments thereto, for a system of improvements and to issue general obligation bonds or revenue bonds in the manner provided by law. The contract may provide for the transfer to a city of district facilities, property, rights and powers as provided in RCW 35.13A.030 and 35.13A.050, whether or not sixty percent of the area or assessed valuation of real estate lying within the district or districts is included within such city. The contract may provide that any party thereto may authorize, issue and sell revenue bonds to provide funds for new water or sewer improvements or to refund any water revenue, sewer revenue or combined water and sewer revenue bonds outstanding of any city, or district which is a party to such contract if such refunding is deemed necessary, providing such refunding will not increase interest costs. The contract may provide that any party thereto may authorize and issue, in the manner provided by law, general obligation or revenue bonds of like amounts, terms, conditions and covenants as the outstanding bonds of any other party to the contract, and such new bonds may be substituted or exchanged for such outstanding bonds: PROVIDED, That no such exchange or substitution shall be effected in such a manner as to impair the obligation or security of any such outstanding bonds. [1971 ex.s. c 95 § 7.]

35.13A.080 Dissolution of water district or sewer district. In any of the cases provided for in RCW 35.13A.020, 35.13A.030, and 35.13A.050, and notwithstanding any other method of dissolution provided by law, dissolution proceedings may be initiated by either the city or the district, or both, when the legislative body of the city and the governing body of the district agree to, and petition for, dissolution of the district.

The petition for dissolution shall be signed by the chief administrative officer of the city and the district, upon authorization of the legislative body of the city and the governing body of the district, respectively and such petition shall be presented to the superior court of the county in which the city is situated.

If the petition is thus authorized by both the city and district, and title to the property, facilities and equipment of the district has passed to the city pursuant to action taken under this chapter, all indebtedness and local improvement district or utility local improvement district assessments of

the district have been discharged or assumed by and transferred to the city, and the petition contains a statement of the distribution of assets and liabilities mutually agreed upon by the city and the district and a copy of the agreement between such city and the district is attached thereto, a hearing shall not be required and the court shall, if the interests of all interested parties have been protected, enter an order dissolving the district.

In any of the cases provided for in RCW 35.13A.020 and 35.13A.030, if the petition for an order of dissolution is signed on behalf of the city alone or the district alone, or there is no mutual agreement on the distribution of assets and liabilities, the superior court shall enter an order fixing a hearing date not less than sixty days from the day the petition is filed, and the clerk of the court of the county shall give notice of such hearing by publication in a newspaper of general circulation in the district once a week for three successive weeks and by posting in three public places in the district at least twenty-one days before the hearing. The notice shall set forth the filing of the petition, its purposes, and the date and place of hearing thereon.

After the hearing the court shall enter its order with respect to the dissolution of the district. If the court finds that such district should be dissolved and the functions performed by the city, the court shall provide for the transfer of assets and liabilities to the city. The court may provide for the dissolution of the district upon such conditions as the court may deem appropriate. A certified copy of the court order dissolving the district shall be filed with the county auditor. If the court does not dissolve the district, it shall state the reasons for declining to do so. [1971 ex.s. c 95 § 8.]

35.13A.090 Employment and rights of district employees. Whenever a city acquires all of the facilities of a water district or sewer district, pursuant to this chapter, such a city shall offer to employ every full time employee of the district who is engaged in the operation of such a district's facilities on the date on which such city acquires the district facilities. When a city acquires any portion of the facilities of such a district, such a city shall offer to employ full time employees of the district as of the date of the acquisition of the facilities of the district who are not longer needed by the district.

Whenever a city employs a person who was employed immediately prior thereto by the district, arrangements shall be made:

(1) For the retention of service credits under the pension plan of the district pursuant to *RCW 41.04.070 through 41.04.110.

(2) For the retention of all sick leave standing to the employee's credit in the plan of such district.

(3) For a vacation with pay during the first year of employment equivalent to that to which he would have been entitled if he had remained in the employment of the district. [1971 ex.s. c 95 § 9.]

*Reviser's note: RCW 41.04.070, 41.04.080, 41.04.090, and 41.04.100 were repealed by 1980 c 29 § 3.

35.13A.900 Severability—1971 ex.s. c 95. If any provision of this act, or its application to any person or

circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected. [1971 ex.s. c 95 § 12.]

Chapter 35.14

COMMUNITY MUNICIPAL CORPORATIONS

Sections

- 35.14.010 When community municipal corporation may be organized—Service areas—Territory.
- 35.14.020 Community council—Membership—Election—Terms.
- 35.14.030 Community council—Employees—Office—Officers—Quorum—Meetings—Compensation and expenses.
- 35.14.040 Ordinances or resolutions of city applying to land, buildings or structures within corporation, effectiveness—Zoning ordinances, resolutions or land use controls to remain in effect upon annexation or consolidation—Comprehensive plan.
- 35.14.050 Powers and duties of community municipal corporation.
- 35.14.060 Original term of existence of community municipal corporation—Continuation of existence—Procedure.

35.14.010 When community municipal corporation may be organized—Service areas—Territory. Whenever unincorporated territory is annexed by a city pursuant to the provisions of chapter 35.13 RCW, community municipal corporations may be organized in the manner provided for in *this 1967 amendatory act for the territory comprised of all or a part of an unincorporated area annexed to a city pursuant to chapter 35.13 RCW, if (1) the service area is such as would be eligible for incorporation as a city or town or (2) the service area has a minimum population of not less than three hundred inhabitants and ten percent of the population of the annexing city or (3) the service area has a minimum population of not less than one thousand inhabitants.

No territory shall be included in the service area of more than one community municipal corporation. Whenever a new community municipal corporation is formed embracing all of the territory of an existing community municipal corporation, the prior existing community municipal corporation shall be deemed to be dissolved on the effective date of the new corporation. [1985 c 281 § 24; 1967 c 73 § 1.]

*Reviser's note: "this 1967 amendatory act" [1967 c 73] is codified as RCW 35.14.010 through 35.14.060, 35.13.015, 35.13.020, 35.13.030, 35.13.080, 35.13.090, 35.13.100, 35.13.110, 35.10.210, 35.10.220, 35.10.230, 35.10.240, 35.10.260, 35.10.270, 35.10.280, and 35.10.290.

Severability—1985 c 281: See RCW 35.10.905.

35.14.020 Community council—Membership—Election—Terms. A community municipal corporation shall be governed by a community council composed of five members. Initial council members shall be elected concurrently with the annexation election to consecutively numbered positions from qualified electors residing within the service area. Declarations of candidacy and withdrawals shall be in the same manner as is provided for members of the city council or other legislative body of the city to which annexation is proposed. Subsequent council membership shall be the same in number as the initial council and such members shall be elected to consecutively numbered positions at the continuation election pursuant to RCW 35.14.060 from qualified electors residing within the service area.

Terms of original council members shall be coexistent with the original term of existence of the community municipal corporation and until their successors are elected and qualified. Vacancies in any council shall be filled for the remainder of the unexpired term by a majority vote of the remaining members. [1985 c 281 § 25; 1967 c 73 § 2.]

Severability—1985 c 281: See RCW 35.10.905.

35.14.030 Community council—Employees—Office—Officers—Quorum—Meetings—Compensation and expenses. Each community council shall be staffed by a deputy to the city clerk of the city with which the service area is consolidated or annexed and shall be provided with such other clerical and technical assistance and a properly equipped office as may be necessary to carry out its functions.

Each community council shall elect a chairman and vice chairman from its membership. A majority of the council shall constitute a quorum. Each action of the community municipal corporation shall be by resolution approved by vote of the majority of all the members of the community council. Meetings shall be held at such times and places as provided in the rules of the community council. Members of the community council shall receive no compensation.

The necessary expenses of the community council shall be budgeted and paid by the city. [1967 c 73 § 3.]

35.14.040 Ordinances or resolutions of city applying to land, buildings or structures within corporation, effectiveness—Zoning ordinances, resolutions or land use controls to remain in effect upon annexation or consolidation—Comprehensive plan. The adoption, approval, enactment, amendment, granting or authorization by the city council or commission of any ordinance or resolution applying to land, buildings or structures within any community municipal corporation shall become effective within such community municipal corporation either on approval by the community council, or by failure of the community council to disapprove within sixty days of final enactment, with respect to the following:

- (1) Comprehensive plan;
- (2) Zoning ordinance;
- (3) Conditional use permit, special exception or variance;
- (4) Subdivision ordinance;
- (5) Subdivision plat;
- (6) Planned unit development.

Disapproval by the community council shall not affect the application of any ordinance or resolution affecting areas outside the community municipal corporation.

Upon annexation or consolidation, pending the effective enactment or amendment of a zoning or land use control ordinance, without disapproval of the community municipal corporation, affecting land, buildings, or structures within a community municipal corporation, the zoning ordinance, resolution or land use controls applicable to the annexed or consolidated area, prior to the annexation or consolidation, shall remain in effect within the community municipal corporation and be enforced by the city to which the area is annexed or consolidated.

Whenever the comprehensive plan of the city, insofar as it affects the area of the community municipal corporation has been submitted as part of an annexation proposition and approved by the voters of the area proposed for annexation pursuant to *chapter 88, Laws of 1965 extraordinary session, such action shall have the same force and effect as approval by the community council of the comprehensive plan, zoning ordinance and subdivision ordinance. [1967 c 73 § 4.]

***Reviser's note:** Chapter 88, Laws of 1965 ex. sess. is codified as RCW 35.13.015, 35.13.020, 35.13.030, 35.13.080, 35.13.090, 35.13.100, 35.13.110, 35.13.125, 35.13.130, 35.13.160, 35.13.177, and 35.13.178.

35.14.050 Powers and duties of community municipal corporation. In addition to powers and duties relating to approval of zoning regulations and restrictions as set forth in RCW 35.14.040, a community municipal corporation acting through its community council may:

- (1) Make recommendations concerning any proposed comprehensive plan or other proposal which directly or indirectly affects the use of property or land within the service area;
- (2) Provide a forum for consideration of the conservation, improvement or development of property or land within the service area; and
- (3) Advise, consult, and cooperate with the legislative authority of the city on any local matters directly or indirectly affecting the service area. [1967 c 73 § 5.]

35.14.060 Original term of existence of community municipal corporation—Continuation of existence—Procedure. The original terms of existence of any community municipal corporation shall be for at least four years and until the first Monday in January next following a regular municipal election held in the city.

Any such community municipal corporation may be continued thereafter for additional periods of four years' duration with the approval of the voters at an election held and conducted in the manner provided for in this section.

Authorization for a community municipal corporation to continue its term of existence for each additional period of four years may be initiated pursuant to a resolution or a petition in the following manner:

- (1) A resolution praying for such continuation may be adopted by the community council and shall be filed not less than seven months prior to the end of the term of existence of such corporation with the city council or other legislative body of the city in which the service area is located.
- (2) A petition for continuation shall be signed by at least ten percent of the registered voters residing within the service area and shall be filed not less than six months prior to the end of the term of existence of such corporation with the city council or other legislative body of the city in which the service area is located.

At the same election at which a proposition is submitted to the voters of the service area for the continuation of the community municipal corporation for an additional period of four years, the community council members of such municipal corporation shall be elected. The positions on such council shall be the same in number as the original or initial council and shall be numbered consecutively and elected at large. Declarations of candidacy and withdrawals shall be

in the same manner as is provided for members of the city council or other legislative body of the city.

Upon receipt of a petition, the city clerk shall examine the signatures thereon and certify to the sufficiency thereof. No person may withdraw his name from a petition after it has been filed.

Upon receipt of a valid resolution or upon duly certifying a petition for continuation of a community municipal corporation, the city clerk with whom the resolution or petition was filed shall cause a proposition on continuation of the term of existence of the community municipal corporation to be placed on the ballot at the next city general election. No person shall be eligible to vote on such proposition at such election unless he is a qualified voter and resident of the service area.

The ballots shall contain the words "For continuation of community municipal corporation" and "Against continuation of community municipal corporation" or words equivalent thereto, and shall also contain the names of the candidates to be voted for to fill the positions on the community council. The names of all candidates to be voted upon shall be printed on the ballot alphabetically in groups under the numbered position on the council for which they are candidates.

If the results of the election as certified by the county canvassing board reveal that a majority of the votes cast are for continuation, the municipal corporation shall continue in existence for an additional period of four years, and certificates of election shall be issued to the successful candidates who shall assume office at the same time as members of the city council or other legislative body of the city. [1967 c 73 § 6.]

Chapter 35.16

REDUCTION OF CITY LIMITS

Sections

- 35.16.001 Actions subject to review by boundary review board.
- 35.16.010 Petition for election.
- 35.16.020 Notice of election.
- 35.16.030 Canvassing the returns—Abstract of vote.
- 35.16.040 Effective date of reduction.
- 35.16.050 Recording of ordinance and plat on effective date of reduction.
- 35.16.060 Effect of exclusion as to liability for indebtedness.

35.16.001 Actions subject to review by boundary review board. Actions taken under chapter 35.16 RCW may be subject to potential review by a boundary review board under chapter 36.93 RCW. [1989 c 84 § 29.]

35.16.010 Petition for election. Upon the filing of a petition praying for an election to submit the question of excluding an area described by metes and bounds or by reference to a recorded plat or government survey from the boundaries of a city or town signed by qualified voters thereof equal in number to not less than one-fifth of the number of votes cast at the last municipal election, the city or town council shall cause to be submitted the question to the voters by a special election held for that purpose. Such special election shall not be held within ninety days next preceding any general election. The petition shall set out

and describe the territory to be excluded from the corporation, together with the boundaries of the said corporation as it will exist after such change is made. [1965 c 7 § 35.16.010. Prior: (i) 1895 c 93 § 1, part; RRS § 8902, part. (ii) 1895 c 93 § 4, part; RRS § 8905, part.]

Times for holding elections: Chapter 29.13 RCW.

35.16.020 Notice of election. Notice of a special corporate limit reduction election shall be published for at least four weeks prior to the election in the official newspaper of the city or town. The notice shall distinctly state the proposition to be submitted, shall designate specifically the area proposed to be excluded and the boundaries of the city or town as they would be after the proposed exclusion of territory therefrom and shall require the voters to cast ballots which contain the words "For reduction of corporate limits" and "Against reduction of corporate limits" or words equivalent thereto. This notice shall be in addition to the notice required by chapter 29.27 RCW. [1985 c 469 § 19; 1965 c 7 § 35.16.020. Prior: 1895 c 92 § 1, part; RRS § 8902, part.]

35.16.030 Canvassing the returns—Abstract of vote. On the Monday next succeeding a special corporate limit reduction election, the canvassing authority shall proceed to canvass the returns thereof and if three-fifths of the votes cast favor the reduction of the corporate limits, the council by an order entered on its minutes shall cause the clerk to make and transmit to the secretary of state a certified abstract of the vote. The abstract shall show the whole number of electors voting, the number of votes cast for reduction and the number of votes cast against reduction. [1965 c 7 § 35.16.030. Prior: 1895 c 93 § 1, part; RRS § 8902, part.]

Canvassing returns, generally: Chapter 29.62 RCW.

Conduct of election—Canvass: RCW 29.13.040.

35.16.040 Effective date of reduction. Immediately after the filing of the abstract of votes with the secretary of state, the city or town council shall adopt an ordinance defining and fixing the corporate limits after excluding the area as determined by the election. The ordinance shall also describe the excluded territory by metes and bounds or by reference to a recorded plat or government survey and declare it no longer a part of the city or town. [1965 c 7 § 35.16.040. Prior: 1895 c 93 § 2; RRS § 8903.]

35.16.050 Recording of ordinance and plat on effective date of reduction. Immediately upon the ordinance defining the reduced city or town limits going into effect, a certified copy thereof together with a map showing the corporate limits as altered shall be filed and recorded in the office of the county auditor of the county in which the city or town is situated, and thereupon the boundaries shall be as set forth therein. [1965 c 7 § 35.16.050. Prior: 1895 c 93 § 3; RRS § 8904.]

35.16.060 Effect of exclusion as to liability for indebtedness. The exclusion of an area from the boundaries of a city or town shall not exempt any real property therein

from taxation for the purpose of paying any indebtedness of the city or town existing at the time of its exclusion, and the interest thereon. [1965 c 7 § 35.16.060. Prior: 1895 c 93 § 4, part; RRS § 8905, part.]

Chapter 35.17

COMMISSION FORM OF GOVERNMENT

Sections

- 35.17.010 Definition of commission form.
- 35.17.020 Elections—Terms of commissioners—Vacancies.
- 35.17.030 Laws applicable.
- 35.17.035 Third class cities, parking meter revenue for revenue bonds.
- 35.17.040 Offices.
- 35.17.050 Meetings.
- 35.17.060 President.
- 35.17.070 Vice president.
- 35.17.080 Employees of commission.
- 35.17.090 Distribution of powers—Assignment of duties.
- 35.17.100 Bonds of commissioners and employees.
- 35.17.105 Clerk may take acknowledgments.
- 35.17.108 Salaries of mayor and commissioners.
- 35.17.120 Officers and employees—Salaries and wages.
- 35.17.130 Officers and employees—Creation—Removal—Changes in compensation.
- 35.17.150 Officers and employees—Passes, free services prohibited, exceptions—Penalty.
- 35.17.160 Officers and employees—Political activity forbidden.
- 35.17.170 Financial statements—Monthly—Annual.
- 35.17.180 Legislative power—How exercised.
- 35.17.190 Legislative ordinances and resolutions.
- 35.17.200 Legislative—Appropriations of money.
- 35.17.210 Legislative—Street improvements.
- 35.17.220 Legislative—Franchises—Referendum.
- 35.17.230 Legislative—Ordinances—Time of going into effect.
- 35.17.240 Legislative—Referendum—Filing suspends ordinance.
- 35.17.250 Legislative—Referendum—Petitions and conduct of elections.
- 35.17.260 Legislative—Ordinances by initiative petition.
- 35.17.270 Legislative—Initiative petition—Requirements.
- 35.17.280 Legislative—Initiative petition—Checking by clerk.
- 35.17.290 Legislative—Initiative petition—Appeal to court.
- 35.17.300 Legislative—Initiative—Conduct of election.
- 35.17.310 Legislative—Initiative—Notice of election.
- 35.17.320 Legislative—Initiative—Ballots.
- 35.17.330 Legislative—Initiative—Effective date—Record.
- 35.17.340 Legislative—Initiative—Repeal or amendment.
- 35.17.350 Legislative—Initiative—Repeal or amendment—Method.
- 35.17.360 Legislative—Initiative—Repeal or amendment—Record.
- 35.17.370 Organization on commission form—Eligibility—Census.
- 35.17.380 Organization—Petition.
- 35.17.390 Organization—Ballots.
- 35.17.400 Organization—Election of officers—Term.
- 35.17.410 Organization—Effect on ordinances—Boundaries—Property.
- 35.17.420 Organization—Revision of appropriations.
- 35.17.430 Abandonment of commission form.
- 35.17.440 Abandonment—Method.
- 35.17.450 Abandonment—Conduct of election—Canvass.
- 35.17.460 Abandonment—Effect.

Imposition or increase of business and occupation tax—Referendum procedure required—Exclusive procedure: RCW 35.21.706.

Population determinations: Chapter 43.62 RCW.

35.17.010 Definition of commission form. The commission form of city government means a city government in which the legislative powers and duties are exercised by a commission of three, consisting of a mayor, a commissioner of finance and accounting, and a commissioner of streets and public improvements, and in which the executive

and administrative powers and duties are distributed among the three departments as follows:

(1) Department of public safety of which the mayor shall be the superintendent;

(2) Department of finance and accounting of which the commissioner of finance and accounting shall be the superintendent;

(3) Department of streets and public improvements of which the commissioner of streets and public improvement shall be the superintendent. [1965 c 7 § 35.17.010. Prior: (i) 1911 c 116 § 11, part; RRS § 9100, part. (ii) 1943 c 25 § 3, part; 1911 c 116 § 12, part; Rem. Supp. 1943 § 9101, part.]

35.17.020 Elections—Terms of commissioners—Vacancies. All regular elections in cities organized under the statutory commission form of government shall be held quadrennially in the odd-numbered years on the dates provided in RCW 29.13.020. The commissioners shall be nominated and elected at large. Their terms shall be for four years and until their successors are elected and qualified and assume office in accordance with RCW 29.04.170. If a vacancy occurs in the commission the remaining members shall appoint a person to fill it for the unexpired term. [1979 ex.s. c 126 § 17; 1965 c 7 § 35.17.020. Prior: 1963 c 200 § 12; 1959 c 86 § 2; 1955 c 55 § 9; prior: (i) 1911 c 116 § 5; RRS § 9094. (ii) 1943 c 25 § 1, part; 1911 c 116 § 3, part; Rem. Supp. 1943 § 9092, part.]

Purpose—1979 ex.s. c 126: See RCW 29.04.170(1).

35.17.030 Laws applicable. Cities organized under the commission form have all the powers of cities of the second class and shall be governed by the statutes applicable to cities of that class to the extent to which they are appropriate and not in conflict with provisions specifically applicable to cities organized under the commission form. [1965 c 7 § 35.17.030. Prior: (i) 1911 c 116 § 11, part; RRS § 9100, part. (ii) 1911 c 116 § 4, part; RRS § 9093, part.]

Second class cities: Chapter 35.23 RCW.

35.17.035 Third class cities, parking meter revenue for revenue bonds. See RCW 35.24.305.

35.17.040 Offices. The commission shall have and maintain an office at the city hall, or such other place as the city may provide. [1965 c 7 § 35.17.040. Prior: 1955 c 309 § 3; prior: 1943 c 25 § 4, part; 1911 c 116 § 14, part; Rem. Supp. 1943 § 9103, part.]

35.17.050 Meetings. Regular meetings of the commission shall be held on the second Monday after the election of the commissioners and thereafter at least once each week on a day to be fixed by ordinance. Special meetings may be called by the mayor or two commissioners. All meetings of the commission shall be open to the public. [1965 c 7 § 35.17.050. Prior: 1911 c 116 § 15, part; RRS § 9104, part.]

35.17.060 President. The mayor shall be president of the commission. He shall preside at its meetings when present and shall oversee all departments and recommend to the commission, action on all matters requiring attention in any department. [1965 c 7 § 35.17.060. Prior: 1911 c 116 § 15, part; RRS § 9104, part.]

35.17.070 Vice president. The commissioner of finance and accounting shall be vice president of the commission. In the absence or inability of the mayor, he shall perform the duties of president. [1965 c 7 § 35.17.070. Prior: 1911 c 116 § 15, part; RRS § 9104, part.]

35.17.080 Employees of commission. The commission shall appoint by a majority vote a city clerk and such other officers and employees as the commission may by ordinance provide. Any officer or employee appointed by the commission may be discharged at any time by vote of a majority of the members of the commission. Any commissioner may perform any duties pertaining to his department but without additional compensation therefor. [1965 c 7 § 35.17.080. Prior: 1943 c 25 § 3, part; 1911 c 116 § 12, part; Rem. Supp. 1943 § 9101, part.]

35.17.090 Distribution of powers—Assignment of duties. The commission by ordinance shall determine what powers and duties are to be performed in each department, shall prescribe the powers and duties of the various officers and employees and make such rules and regulations for the efficient and economical conduct of the business of the city as it may deem necessary and proper. The commission may assign particular officers and employees to one or more departments and may require an officer or employee to perform duties in two or more departments. [1965 c 7 § 35.17.090. Prior: 1911 c 116 § 11, part; RRS § 9100, part.]

35.17.100 Bonds of commissioners and employees. Every member of the city commission, before qualifying, shall give a good and sufficient bond to the city in a sum equivalent to five times the amount of his annual salary, conditioned for the faithful performance of the duties of his office. The bonds must be approved by a judge of the superior court for the county in which the city is located and filed with the clerk thereof. The commission, by resolution, may require any of its appointees to give bond to be fixed and approved by the commission and filed with the mayor. [1965 c 7 § 35.17.100. Prior: 1911 c 116 § 6; RRS § 9095.]

35.17.105 Clerk may take acknowledgments. The clerk or deputy clerk of any city having a commission form of government shall, without charge, take acknowledgments and administer oaths required by law on all claims and demands against the city. [1965 c 7 § 35.17.105.]

35.17.108 Salaries of mayor and commissioners. The annual salaries of the mayor and the commissioners of any city operating under a commission form of government shall be as fixed by charter or ordinance of said city. The power and authority conferred by this section shall be

construed as in addition and supplemental to powers or authority conferred by any other law, and nothing contained herein shall be construed as limiting any other powers or authority of any such city. [1967 c 100 § 1.]

35.17.120 Officers and employees—Salaries and wages. All appointive officers and employees shall receive such compensation as the commission shall fix by ordinance, payable monthly or at such shorter periods as the commission may determine. [1965 c 7 § 35.17.120. Prior: 1943 c 25 § 4, part; 1911 c 116 § 14, part; Rem. Supp. 1943 § 9103, part.]

35.17.130 Officers and employees—Creation—Removal—Changes in compensation. The commission shall have power from time to time to create, fill and discontinue offices and employments other than those herein prescribed, according to their judgment of the needs of the city; and may, by majority vote of all the members, remove any such officer or employees, except as otherwise provided for in this chapter; and may by resolution, or otherwise, prescribe, limit or change the compensation of such officers or employees. [1965 c 7 § 35.17.130. Prior: 1911 c 116 § 13; RRS § 9102.]

35.17.150 Officers and employees—Passes, free services prohibited, exceptions—Penalty. No officer or employee, elected or appointed, shall receive from any enterprise operating under a public franchise any frank, free ticket, or free service or receive any service upon terms more favorable than are granted to the public generally: PROVIDED, That the provisions of this section shall not apply to free transportation furnished to policemen and firemen in uniform nor to free service to city officials provided for in the franchise itself.

Any violation of the provisions of this section shall be a misdemeanor. [1965 c 7 § 35.17.150. Prior: 1961 c 268 § 11; prior: 1911 c 116 § 17, part; RRS § 9106, part.]

35.17.160 Officers and employees—Political activity forbidden. Any appointive officer or employee of the city who in any manner exerts his influence to induce other officers or employees of the city to favor any particular candidate for any city office or who contributes anything in any way to any person for election purposes shall be discharged by the commission. [1965 c 7 § 35.17.160. Prior: 1961 c 268 § 12; prior: 1911 c 116 § 17, part; RRS § 9106, part.]

Code of ethics for public officers and employees: Chapters 42.22, 42.23 RCW.

Political activities of public employees: RCW 41.06.250.

35.17.170 Financial statements—Monthly—Annual. The commission shall each month print in pamphlet form a detailed itemized statement of all receipts and expenses of the city and a summary of its proceedings during the preceding month and furnish copies thereof to the state library, the city library, the newspapers of the city, and to persons who apply therefor at the office of the city clerk. At the end of each year the commission shall cause a complete examination of all the books and accounts of the city to be

made by competent accountants and shall publish the result of such examination to be made in the manner above provided for publication of statements of monthly expenditures. [1965 c 7 § 35.17.170. Prior: 1911 c 116 § 18; RRS § 9107.]

35.17.180 Legislative power—How exercised. Each member of the commission shall have the right to vote on all questions coming before the commission. Two members of the commission shall constitute a quorum and the affirmative vote of at least two members shall be necessary to adopt any motion, resolution, ordinance, or course of action.

Every measure shall be reduced to writing and read before the vote is taken and upon every vote the yeas and nays shall be called and recorded. [1965 c 7 § 35.17.180. Prior: 1911 c 116 § 10, part; RRS § 9099, part.]

35.17.190 Legislative ordinances and resolutions. Every resolution and ordinance adopted by the commission shall be signed by the mayor or by two members of the commission and filed and recorded within five days of its passage. The mayor shall have no veto power. [1965 c 7 § 35.17.190. Prior: 1911 c 116 § 10, part; RRS § 9099, part.]

35.17.200 Legislative—Appropriations of money. No money shall be appropriated except by ordinance and every such ordinance complete in the form in which it is finally passed shall remain on file with the city clerk for public inspection at least one week before final passage. [1965 c 7 § 35.17.200. Prior: 1911 c 116 § 16, part; RRS § 9105, part.]

35.17.210 Legislative—Street improvements. Every ordinance or resolution ordering any street improvement or sewer complete in the form in which it is finally passed shall remain on file with the city clerk for public inspection at least one week before final passage. [1965 c 7 § 35.17.210. Prior: 1911 c 116 § 16, part; RRS § 9105, part.]

35.17.220 Legislative—Franchises—Referendum. No franchise or right to occupy or use the streets, highways, bridges or other public places shall be granted, renewed, or extended except by ordinance and every such ordinance complete in the form in which it is finally passed shall remain on file with the city clerk for at least one week before final passage and if the franchise or grant is for interurban or street railways, gas or water works, electric light or power plants, heating plants, telegraph or telephone systems or other public service utilities, the ordinance must be submitted to a vote of the people at a general or special election and approved by a majority of those voting thereon. [1965 c 7 § 35.17.220. Prior: 1911 c 116 § 16, part; RRS § 9105, part.]

Times for holding elections: Chapter 29.13 RCW.

35.17.230 Legislative—Ordinances—Time of going into effect. Ordinances shall not go into effect before thirty days from the time of final passage and are subject to referendum during the interim except:

- (1) Ordinances initiated by petition;

- (2) Ordinances necessary for immediate preservation of public peace, health, and safety which contain a statement of urgency and are passed by unanimous vote of all the commissioners;

- (3) Ordinances providing for local improvement districts. [1965 c 7 § 35.17.230. Prior: (i) 1911 c 116 § 22, part; RRS § 9111, part. (ii) 1911 c 116 § 21, part; RRS § 9110, part.]

35.17.240 Legislative—Referendum—Filing suspends ordinance. Upon the filing of a referendum petition praying therefor, the commission shall reconsider an ordinance subject to referendum and upon reconsideration shall defeat it in its entirety or shall submit it to a vote of the people. The operation of an ordinance so protested against shall be suspended until the referendum petition is finally found insufficient or until the ordinance protested against has received a majority of the votes cast thereon at the election. [1965 c 7 § 35.17.240. Prior: 1911 c 116 § 22, part; RRS § 9111, part.]

35.17.250 Legislative—Referendum—Petitions and conduct of elections. All provisions applicable to the character, form, and number of signatures required for an initiative petition, to the examination and certification thereof, and to the submission to the vote of the people of the ordinance proposed thereby, shall apply to a referendum petition and to the ordinance sought to be defeated thereby. [1965 c 7 § 35.17.250. Prior: 1911 c 116 § 22, part; RRS § 9111, part.]

35.17.260 Legislative—Ordinances by initiative petition. Ordinances may be initiated by petition of electors of the city filed with the commission. If the petition accompanying the proposed ordinance is signed by the registered voters in the city equal in number to twenty-five percent of the votes cast for all candidates for mayor at the last preceding city election, and if it contains a request that, unless passed by the commission, the ordinance be submitted to a vote of the people, the commission shall either:

- (1) Pass the proposed ordinance without alteration within twenty days after the city clerk's certificate that the number of signatures on the petition are sufficient; or

- (2) Immediately after the clerk's certificate of sufficiency is attached to the petition, cause to be called a special election to be held not less than thirty nor more than sixty days thereafter, for submission of the proposed ordinance without alteration, to a vote of the people unless a general election will occur within ninety days, in which event submission must be made thereat. [1965 c 7 § 35.17.260. Prior: 1911 c 116 § 21, part; RRS § 9110, part.]

35.17.270 Legislative—Initiative petition—Requirements. Every signer to a petition submitting a proposed ordinance to the commission shall add to his signature his place of residence giving street and number. The signatures need not all be appended to one paper, but one of the signers on each paper must attach thereto an affidavit stating the number of signatures thereon, that each signature thereon is a genuine signature of the person whose name it purports to be and that the statements therein made

are true as he believes. [1965 c 7 § 35.17.270. Prior: (i) 1911 c 116 § 21, part; RRS § 9110, part. (ii) 1911 c 116 § 20, part; RRS § 9109, part. (iii) 1911 c 116 § 24; RRS § 9113.]

35.17.280 Legislative—Initiative petition—Checking by clerk. Within ten days from the filing of a petition submitting a proposed ordinance the city clerk shall ascertain and append to the petition his certificate stating whether or not it is signed by a sufficient number of registered voters, using the registration records and returns of the preceding municipal election for his sources of information, and the commission shall allow him extra help for that purpose, if necessary. If the signatures are found by the clerk to be insufficient the petition may be amended in that respect within ten days from the date of the certificate. Within ten days after submission of the amended petition the clerk shall make an examination thereof and append his certificate thereto in the same manner as before. If the second certificate shall also show the number of signatures to be insufficient, the petition shall be returned to the person filing it. [1965 c 7 § 35.17.280. Prior: (i) 1911 c 116 § 20, part; RRS § 9109, part. (ii) 1911 c 116 § 21, part; RRS § 9110, part.]

35.17.290 Legislative—Initiative petition—Appeal to court. If the clerk finds the petition insufficient or if the commission refuses either to pass an initiative ordinance or order an election thereon, any taxpayer may commence an action in the superior court against the city and procure a decree ordering an election to be held in the city for the purpose of voting upon the proposed ordinance if the court finds the petition to be sufficient. [1965 c 7 § 35.17.290. Prior: (i) 1911 c 116 § 20, part; RRS § 9109, part. (ii) 1911 c 116 § 21, part; RRS § 9110, part.]

35.17.300 Legislative—Initiative—Conduct of election. Publication of notice, the election, the canvass of the returns and declaration of the results, shall be conducted in all respects as are other city elections. Any number of proposed ordinances may be voted on at the same election, but there shall not be more than one special election for that purpose during any one six-month period. [1965 c 7 § 35.17.300. Prior: (i) 1911 c 116 § 20, part; RRS § 9109, part. (ii) 1911 c 116 § 21, part; RRS § 9110, part.]

Canvassing returns, generally: Chapter 29.62 RCW.
Conduct of elections—Canvass: RCW 29.13.040.

35.17.310 Legislative—Initiative—Notice of election. The city clerk shall cause any ordinance or proposition required to be submitted to the voters at an election to be published once in each of the daily newspapers in the city not less than five nor more than twenty days before the election, or if no daily newspaper is published in the city, publication shall be made in each of the weekly newspapers published therein. This publication shall be in addition to the notice required in chapter 29.27 RCW. [1965 c 7 § 35.17.310. Prior: 1911 c 116 § 21, part; RRS § 9110, part.]

35.17.320 Legislative—Initiative—Ballots. The ballots used for voting upon a proposed ordinance shall be similar to those used at a general municipal election in that city and shall contain the words "for the ordinance" (stating the nature of the proposed ordinance) and "against the ordinance" (stating the nature of the proposed ordinance). [1965 c 7 § 35.17.320. Prior: 1911 c 116 § 21, part; RRS § 9110, part.]

35.17.330 Legislative—Initiative—Effective date—Record. If the number of votes cast thereon favor the proposed ordinance, it shall become effective immediately and shall be made a part of the record of ordinances of the city. [1965 c 7 § 35.17.330. Prior: 1911 c 116 § 21, part; RRS § 9110, part.]

35.17.340 Legislative—Initiative—Repeal or amendment. Upon the adoption of an ordinance initiated by petition, the city clerk shall write on the margin of the record thereof "ordinance by petition No. . . .," or "ordinance by vote of the people," and it cannot be repealed or amended except by a vote of the people. [1965 c 7 § 35.17.340. Prior: 1911 c 116 § 21, part; RRS § 9110, part.]

35.17.350 Legislative—Initiative—Repeal or amendment—Method. The commission may by means of an ordinance submit a proposition for the repeal or amendment of an ordinance, initiated by petition, by submitting it to a vote of the people at any general election and if a majority of the votes cast upon the proposition favor it, the ordinance shall be repealed or amended accordingly.

A proposition of repeal or amendment must be published before the election thereon as is an ordinance initiated by petition when submitted to election. [1965 c 7 § 35.17.350. Prior: 1911 c 116 § 21, part; RRS § 9110, part.]

35.17.360 Legislative—Initiative—Repeal or amendment—Record. Upon the adoption of a proposition to repeal or amend an ordinance initiated by petition, the city clerk shall write upon the margin of the record of the ordinance "repealed (or amended) by ordinance No. . . .," or "repealed (or amended) by vote of the people." [1965 c 7 § 35.17.360. Prior: 1911 c 116 § 21, part; RRS § 9110, part.]

35.17.370 Organization on commission form—Eligibility—Census. Any city having a population of two thousand and less than thirty thousand may organize as a city under the commission form of government. The requisite population shall be determined by the last preceding state or federal census or the council may cause a census to be taken by one or more suitable persons, in which the full name of each person in the city shall be plainly written, the names alphabetically arranged and regularly numbered in a complete series, verified before an officer authorized to administer oaths and filed with the city clerk. [1965 c 7 § 35.17.370. Prior: 1927 c 210 § 1; 1911 c 116 § 1; RRS § 9090.]

Census to be conducted in decennial periods: State Constitution Art. 2 § 3.

Determination of population: Chapter 43.62 RCW.

35.17.380 Organization—Petition. Upon petition of electors in any city equal in number to twenty-five percent of the votes cast for all candidates for mayor at the last preceding city election therein, the mayor by proclamation shall cause to be submitted the question of organizing the city under the commission form of government at a special election at a time specified therein and within sixty days after the filing of the petition. If the plan is not adopted at the special election called, it shall not be resubmitted to the voters of the city for adoption within two years thereafter. [1965 c 7 § 35.17.380. Prior: 1911 c 116 § 2, part; RRS § 9091, part.]

35.17.390 Organization—Ballots. The proposition on the ballot shall be: "Shall the proposition to organize the city of (name of city) under the commission form of government be adopted?" followed by the words: "For organization as a city under commission form" and "against organization as a city under commission form." The election shall be conducted, the vote canvassed, and the result declared in the same manner as provided by law in respect to other city elections. If a majority of the votes cast are in favor thereof the city shall proceed to elect a mayor and two commissioners. [1965 c 7 § 35.17.390. Prior: 1911 c 116 § 2, part; RRS § 9091, part.]

Canvassing returns, generally: Chapter 29.62 RCW.

Conduct of elections—Canvass: RCW 29.13.040.

Notice of election: RCW 29.27.080.

35.17.400 Organization—Election of officers—Term. The first election of commissioners shall be held within sixty days after the adoption of the proposition to organize under the commission form, and the commission first elected shall commence to serve as soon as they have been elected and have qualified and shall continue to serve until their successors have been elected and qualified and have assumed office in accordance with RCW 29.04.170. The date of the second election for commissioners shall be in accordance with RCW 29.13.020 such that the term of the first commissioners will be as near as possible to, but not in excess of, four years. [1979 ex.s. c 126 § 18; 1965 c 7 § 35.17.400. Prior: 1963 c 200 § 13; 1955 c 55 § 10; prior: 1943 c 25 § 1, part; 1911 c 116 § 3, part; Rem. Supp. 1943 § 9092, part.]

Purpose—1979 ex.s. c 126: See RCW 29.04.170(1).

35.17.410 Organization—Effect on ordinances—Boundaries—Property. All bylaws, ordinances and resolutions in force when a city organizes under the commission form shall remain in force until amended or repealed.

The boundaries of a city reorganized under the commission form shall not be changed thereby.

All rights and property vested in the city before reorganization under the commission form shall vest in the city as reorganized and no right or liability either in favor of or against it, existing at the time and no suit or prosecution shall be affected by the change. [1965 c 7 § 35.17.410. Prior: 1911 c 116 § 4, part; RRS § 9093, part.]

35.17.420 Organization—Revision of appropriations. If, at the beginning of the term of office of the first

commission elected in a city organized under the commission form, the appropriations for the expenditures of the city for the current fiscal year have been made, the commission, by ordinance, may revise them. [1965 c 7 § 35.17.420. Prior: 1911 c 116 § 19; RRS § 9108.]

35.17.430 Abandonment of commission form. Any city which has operated under the commission form for more than six years may again reorganize as a noncommission city without changing its classification unless it desires to do so. [1965 ex.s. c 47 § 3; 1965 c 7 § 35.17.430. Prior: 1911 c 116 § 23, part; RRS § 9112, part.]

35.17.440 Abandonment—Method. Upon the filing of a petition praying therefor, signed by not less than twenty-five percent of the registered voters resident in the city, a special election shall be called at which the following proposition only shall be submitted: "Shall the city of (name of city) abandon its organization as a city under the commission form and become a city under the general laws governing cities of like population?" [1965 c 7 § 35.17.440. Prior: 1911 c 116 § 23, part; RRS § 9112, part.]

35.17.450 Abandonment—Conduct of election—Canvass. The sufficiency of the petition for the abandonment of the commission form of city government shall be determined, the election ordered and conducted, the returns canvassed and the results declared as required by the provisions applicable to the proceedings for the enactment of an ordinance by initiative petition to the extent to which they are appropriate. [1965 c 7 § 35.17.450. Prior: 1911 c 116 § 23, part; RRS § 9112, part.]

35.17.460 Abandonment—Effect. If a majority of the votes cast upon the proposition of abandoning the commission form of city government favor the proposition, the city shall be reorganized under general laws immediately upon the first election of city officers, which shall be held on the date of the next general city election of cities of its class. The change in form of government shall not affect the property, rights, or liabilities of the city. [1965 c 7 § 35.17.460. Prior: 1911 c 116 § 23, part; RRS § 9112, part.]

Chapter 35.18

COUNCIL-MANAGER PLAN

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35.18.005 Definition—"Councilman." As used in this title, the term "councilman" or "councilmen" means councilmember or councilmembers. [1981 c 213 § 1.]

35.18.010 The council-manager plan. Under the council-manager plan of city government, the councilmen shall be the only elective officials. The council shall appoint an officer whose title shall be "city manager" who shall be the chief executive officer and head of the administrative branch of city or town government. The city manager shall be responsible to the council for the proper administration of all affairs of the city or town. [1965 c 7 § 35.18.010. Prior: 1955 c 337 § 2; prior: (i) 1943 c 271 § 8, part; Rem. Supp. 1943 § 9198-17, part. (ii) 1943 c 271 § 12, part; Rem. Supp. 1943 § 9198-21, part. (iii) 1949 c 84 § 2, part; 1943 c 271 § 17, part; Rem. Supp. 1949 § 9198-26, part.]

35.18.020 Number of councilmen—Terms—Vacancies. (1) The number of councilmen shall be in proportion to the population of the city or town indicated in its petition for incorporation and thereafter shall be in proportion to its population as last determined by the office of financial management as follows:

(a) A city or town having not more than two thousand inhabitants, five councilmen;

(b) A city having more than two thousand, seven councilmen.

(2) All councilmen shall be elected at large or from such wards or districts as may be established by ordinance, and shall serve for a term of four years and until their successors are elected and qualified and assume office in accordance with RCW 29.04.170: PROVIDED, HOWEVER, That at the first general municipal election held in the city in accordance with RCW 29.13.020, after the election approving the council-manager plan, the following shall apply:

(a) One councilman shall be nominated and elected from each ward or such other existing district of said city as may have been established for the election of members of the legislative body of the city and the remaining councilmen shall be elected at large; but if there are no such wards or districts in the city, or at an initial election for the incorpora-

tion of a community, the councilmen shall be elected at large.

(b) In cities electing five councilmen, the candidates having the three highest number of votes shall be elected for a four year term and the other two for a two year term commencing immediately when qualified in accordance with RCW 29.01.135 and continuing until their successors are elected and qualified and have assumed office in accordance with RCW 29.04.170.

(c) In cities electing seven councilmen, the candidates having the four highest number of votes shall be elected for a four year term and the other three for a two year term commencing immediately when qualified in accordance with RCW 29.01.135 and continuing until their successors are elected and qualified and have assumed office in accordance with RCW 29.04.170.

(d) In determining the candidates receiving the highest number of votes, only the candidate receiving the highest number of votes in each ward, as well as the councilman-at-large or councilmen-at-large, are to be considered.

(3) When a municipality has qualified for an increase in the number of councilmen from five to seven by virtue of the next succeeding population determination made by the office of financial management after the majority of the voters thereof have approved operation under the council-manager plan, at the first election when two additional councilmen are to be elected, one of the two additional councilmen receiving the highest number of votes shall be elected for a four year term and the other additional councilman shall be elected for a two year term. The terms of the two additional councilmen shall commence immediately when qualified in accordance with RCW 29.01.135.

(4) In the event such population determination as provided in subsection (3) of this section requires an increase in the number of councilmen, the city or town council shall fill the additional councilmanic positions by appointment not later than thirty days following the release of said population determination, and the appointee shall hold office only until the next regular city or town election at which a person shall be elected to serve for the remainder of the unexpired term. In the event such population determination results in a decrease in the number of councilmen, said decrease shall not take effect until the next regular city or town election: PROVIDED, That the council shall by ordinance indicate which, if any, of the remaining positions shall be elected at-large or from wards or districts.

(5) If a vacancy in the council occurs, the remaining members shall appoint a person to fill such office only until the next regular general municipal election at which a person shall be elected to serve for the remainder of the unexpired term. [1981 c 260 § 7. Prior: 1979 ex.s. c 126 § 19; 1979 c 151 § 26; 1956 c 7 § 35.18.020; prior: 1959 c 76 § 1; 1955 c 337 § 3; prior: (i) 1943 c 271 § 6; Rem. Supp. 1943 § 9198-15. (ii) 1943 c 271 § 4, part; Rem. Supp. 1943 § 9198-13, part.]

Purpose—1979 ex.s. c 126: See RCW 29.04.170(1).

Population determinations, office of financial management: Chapter 43.62 RCW.

Times for holding elections: Chapter 29.13 RCW.

35.18.030 Laws applicable to council-manager cities—Civil service. A city or town organized under the council-manager plan shall have all the powers which cities of its class have and shall be governed by the statutes applicable to such cities to the extent to which they are appropriate and not in conflict with the provisions specifically applicable to cities organized under the council-manager plan.

Any city adopting a council-manager form of government may adopt any system of civil service which would be available to it under any other form of city government. Any state law relative to civil service in cities of the class of a city under the council-manager type of government shall be applicable thereto. [1965 c 7 § 35.18.030. Prior: (i) 1949 c 84 § 4; Rem. Supp. 1949 § 9198-33. (ii) 1943 c 271 § 10, part; Rem. Supp. 1943 § 9198-19, part. (iii) 1943 c 271 § 21; Rem. Supp. 1943 § 9198-30.]

35.18.035 Third class cities, parking meter revenue for revenue bonds. See RCW 35.24.305.

35.18.040 City manager—Qualifications. The city manager need not be a resident. He shall be chosen by the council solely on the basis of his executive and administrative qualifications with special reference to his actual experience in, or his knowledge of, accepted practice in respect to the duties of his office. No person elected to membership on the council shall be eligible for appointment as city manager until one year has elapsed following the expiration of the term for which he was elected. [1965 c 7 § 35.18.040. Prior: 1955 c 337 § 4; prior: (i) 1949 c 84 § 2, part; 1943 c 271 § 17, part; Rem. Supp. 1949 § 9198-26, part. (ii) 1943 c 271 § 12, part; Rem. Supp. 1943 § 9198-21, part.]

35.18.050 City manager—Bond and oath. Before entering upon the duties of his office the city manager shall take the official oath for the support of the government and the faithful performance of his duties and shall execute and file with the clerk of the council a bond in favor of the city or town in such sum as may be fixed by the council. [1965 c 7 § 35.18.050. Prior: 1955 c 337 § 5; prior: 1943 c 271 § 12, part; Rem. Supp. 1943 § 9198-21, part.]

35.18.060 City manager—Authority. The powers and duties of the city manager shall be:

(1) To have general supervision over the administrative affairs of the municipality;

(2) To appoint and remove at any time all department heads, officers, and employees of the city or town, except members of the council, and subject to the provisions of any applicable law, rule, or regulation relating to civil service: PROVIDED, That the council may provide for the appointment by the mayor, subject to confirmation by the council, of the city planning commission, and other advisory citizens' committees, commissions and boards advisory to the city council: PROVIDED FURTHER, That the city manager shall appoint the municipal judge to a term of four years, subject to confirmation by the council. The municipal judge may be removed only on conviction of malfeasance or misconduct in office, or because of physical or mental

disability rendering him incapable of performing the duties of his office. The council may cause an audit to be made of any department or office of the city or town government and may select the persons to make it, without the advice or consent of the city manager;

(3) To attend all meetings of the council at which his attendance may be required by that body;

(4) To see that all laws and ordinances are faithfully executed, subject to the authority which the council may grant the mayor to maintain law and order in times of emergency;

(5) To recommend for adoption by the council such measures as he may deem necessary or expedient;

(6) To prepare and submit to the council such reports as may be required by that body or as he may deem it advisable to submit;

(7) To keep the council fully advised of the financial condition of the city or town and its future needs;

(8) To prepare and submit to the council a tentative budget for the fiscal year;

(9) To perform such other duties as the council may determine by ordinance or resolution. [1987 c 3 § 5; 1965 ex.s. c 116 § 1; 1965 c 7 § 35.18.060. Prior: 1955 c 337 § 6; prior: (i) 1949 c 84 § 2, part; 1943 c 271 § 17, part; Rem. Supp. 1949 § 9198-26, part. (ii) 1949 c 84 § 1; 1943 c 271 § 15; Rem. Supp. 1949 § 9198-24. (iii) 1949 c 84 § 3, part; 1943 c 271 § 18, part; Rem. Supp. 1949 § 9198-27, part.]

Severability—1987 c 3: See note following RCW 3.46.020.

35.18.070 City manager—May serve two or more cities. Whether the city manager shall devote his full time to the affairs of one city or town shall be determined by the council. A city manager may serve two or more cities or towns in that capacity at the same time. [1965 c 7 § 35.18.070. Prior: 1943 c 271 § 13; Rem. Supp. 1943 § 9198-22.]

35.18.080 City manager—Creation of departments. On recommendation of the city manager, the council may create such departments, offices and employments as may be found necessary and may determine the powers and duties of each department or office. [1965 c 7 § 35.18.080. Prior: 1943 c 271 § 16; Rem. Supp. 1943 § 9198-25.]

35.18.090 City manager—Department heads—Authority. The city manager may authorize the head of a department or office responsible to him to appoint and remove subordinates in such department or office. Any officer or employee who may be appointed by the city manager, or by the head of a department or office, except one who holds his position subject to civil service, may be removed by the manager or other such appointing officer at any time. Subject to the provisions of RCW 35.18.060, the decision of the manager or other appointing officer, shall be final and there shall be no appeal therefrom to any other office, body, or court whatsoever. [1965 c 7 § 35.18.090. Prior: 1955 c 337 § 7; prior: (i) 1949 c 84 § 2, part; 1943 c 271 § 17, part; Rem. Supp. 1949 § 9198-26, part. (ii) 1949 c 84 § 3, part; 1943 c 271 § 18, part; Rem. Supp. 1949 § 9198-27, part.]

35.18.100 City manager—Appointment of subordinates—Qualifications—Terms. Appointments made by or under the authority of the city manager shall be on the basis of executive and administrative ability and of the training and experience of the appointees in the work which they are to perform. Residence within the city or town shall not be a requirement. All such appointments shall be without definite term. [1965 c 7 § 35.18.100. Prior: 1955 c 337 § 8; prior: 1949 c 84 § 2, part; 1943 c 271 § 17, part; Rem. Supp. 1949 § 9198-26, part.]

35.18.110 City manager—Interference by council members. Neither the council, nor any of its committees or members shall direct or request the appointment of any person to, or his removal from, office by the city manager or any of his subordinates. Except for the purpose of inquiry, the council and its members shall deal with the administrative service solely through the manager and neither the council nor any committee or member thereof shall give orders to any subordinate of the city manager, either publicly or privately: PROVIDED, HOWEVER, That nothing herein shall be construed to prohibit the council, while in open session, from fully and freely discussing with the city manager anything pertaining to appointments and removals of city officers and employees and city affairs. [1965 c 7 § 35.18.110. Prior: 1955 c 337 § 14; prior: 1943 c 271 § 19, part; Rem. Supp. 1943 § 9198-28, part.]

35.18.120 City manager—Removal—Resolution and notice. The city manager shall be appointed for an indefinite term and may be removed by a majority vote of the council.

At least thirty days before the effective date of his removal, the city manager must be furnished with a formal statement in the form of a resolution passed by a majority vote of the city council stating the council's intention to remove him and the reasons therefor. Upon passage of the resolution stating the council's intention to remove the manager, the council by a similar vote may suspend him from duty, but his pay shall continue until his removal becomes effective. [1965 c 7 § 35.18.120. Prior: 1955 c 337 § 17; prior: 1943 c 271 § 14, part; Rem. Supp. 1943 § 9198-23, part.]

35.18.130 City manager—Removal—Reply and hearing. The city manager may, within thirty days from the date of service upon him of a copy thereof, reply in writing to the resolution stating the council's intention to remove him. In the event no reply is timely filed, the resolution shall upon the thirty-first day from the date of such service, constitute the final resolution removing the manager, and his services shall terminate upon that day. If a reply shall be timely filed with its clerk, the council shall fix a time for a public hearing upon the question of the manager's removal and a final resolution removing the manager shall not be adopted until a public hearing has been had. The action of the council in removing the manager shall be final. [1965 c 7 § 35.18.130. Prior: 1955 c 337 § 18; prior: 1943 c 271 § 14, part; Rem. Supp. 1943 § 9198-23, part.]

35.18.140 City manager—Substitute. The council may designate a qualified administrative officer of the city or town to perform the duties of manager:

(1) Upon the adoption of the council-manager plan, pending the selection and appointment of a manager; or

(2) Upon the termination of the services of a manager, pending the selection and appointment of a new manager; or

(3) During the absence, disability, or suspension of the manager. [1965 c 7 § 35.18.140. Prior: 1955 c 337 § 19; prior: 1943 c 271 § 14, part; Rem. Supp. 1943 § 9198-23, part.]

35.18.150 Council—Eligibility. Only a qualified elector of the city or town may be a member of the council and upon ceasing to be such, or upon being convicted of a crime involving moral turpitude, or of violating the provisions of RCW 35.18.110, he shall immediately forfeit his office. [1965 c 7 § 35.18.150. Prior: 1955 c 337 § 15; prior: (i) 1943 c 271 § 19, part; Rem. Supp. 1943 § 9198-28, part. (ii) 1943 c 271 § 9, part; Rem. Supp. 1943 § 9198-18, part.]

35.18.160 Council—Authority. The council shall have all of the powers which inhere in the city or town not reserved to the people or vested in the city manager, including but not restricted to the authority to adopt ordinances and resolutions. [1965 c 7 § 35.18.160. Prior: (i) 1943 c 271 § 9, part; Rem. Supp. 1943 § 9198-18, part. (ii) 1943 c 271 § 10, part; Rem. Supp. 1943 § 9198-19, part.]

35.18.170 Council meetings. The council shall meet at the times and places fixed by ordinance but must hold at least one regular meeting each month. The clerk shall call special meetings of the council upon request of the mayor or any two members. At all meetings of the city council, a majority of the councilmen shall constitute a quorum for the transaction of business, but a less number may adjourn from time to time and may compel the attendance of absent members in such manner and under such penalties as may be prescribed by ordinance. Requests for special meetings shall state the subject to be considered and no other subject shall be considered at a special meeting.

All meetings of the council and of committees thereof shall be open to the public and the rules of the council shall provide that citizens of the city or town shall have a reasonable opportunity to be heard at any meetings in regard to any matter being considered thereat. [1965 c 7 § 35.18.170. Prior: 1955 c 337 § 20; prior: 1943 c 271 § 7; Rem. Supp. 1943 § 9198-16.]

35.18.180 Council—Ordinances—Recording. No ordinance, resolution, or order, including those granting a franchise or valuable privilege, shall have any validity or effect unless passed by the affirmative vote of at least a majority of the members of the city or town council. Every ordinance or resolution adopted shall be signed by the mayor or two members, filed with the clerk within two days and by him recorded. [1965 c 7 § 35.18.180. Prior: 1959 c 76 § 3; 1943 c 271 § 11; Rem. Supp. 1943 § 9198-20.]

35.18.190 Mayor—Election—Vacancy. Biennially at the first meeting of the new council the members thereof shall choose a chairman from among their number who shall have the title of mayor. In addition to the powers conferred upon him as mayor, he shall continue to have all the rights, privileges and immunities of a member of the council. If a vacancy occurs in the office of mayor, the members of the council at their next regular meeting shall select a mayor from among their number for the unexpired term. [1969 c 101 § 1; 1965 c 7 § 35.18.190. Prior: 1955 c 337 § 9; prior: 1943 c 271 § 8, part; Rem. Supp. 1943 § 9198-17, part.]

35.18.200 Mayor—Duties. The mayor shall preside at meetings of the council, and be recognized as the head of the city or town for all ceremonial purposes and by the governor for purposes of military law.

He shall have no regular administrative duties, but in time of public danger or emergency, if so authorized by the council, shall take command of the police, maintain law, and enforce order. [1965 c 7 § 35.18.200. Prior: 1955 c 337 § 10; prior: 1943 c 271 § 8, part; Rem. Supp. 1943 § 9198-17, part.]

35.18.210 Mayor pro tempore. In case of the mayor's absence, a mayor pro tempore selected by the members of the council from among their number shall act as mayor during the continuance of the absence. [1969 c 101 § 2; 1965 c 7 § 35.18.210. Prior: 1955 c 337 § 11; prior: 1943 c 271 § 8, part; Rem. Supp. 1943 § 9198-17, part.]

35.18.220 Salaries. Each member of the council shall receive such compensation as may be provided by law to cities of the class to which it belongs. The city manager and other officers or assistants shall receive such salary or compensation as the council shall fix by ordinance and shall be payable at such times as the council may determine. [1965 c 7 § 35.18.220. Prior: (i) 1943 c 271 § 9, part; Rem. Supp. 1943 § 9198-18, part. (ii) 1943 c 271 § 20; Rem. Supp. 1943 § 9198-29.]

35.18.230 Organization on council-manager plan—Eligibility. Any city or town having a population of less than thirty thousand may be organized as a council-manager city or town under this chapter. [1965 c 7 § 35.18.230. Prior: 1959 c 76 § 2; 1943 c 271 § 1; Rem. Supp. 1943 § 9198-10.]

35.18.240 Organization—Petition. Petitions to reorganize a city or town on the council-manager plan must be signed by registered voters resident therein equal in number to at least twenty percent of the votes cast for all candidates for mayor at the last preceding municipal election. In addition to the signature and residence addresses of the petitioners thereon, a petition must contain an affidavit stating the number of signers thereon at the time the affidavit is made.

Petitions containing the required number of signatures shall be accepted by the city or town clerk as prima facie valid until their invalidity has been proved.

A variation on such petitions between the signatures on the petition and that on the voter's permanent registration caused by the substitution of initials instead of the first or middle names or both shall not invalidate the signature on the petition if the surname and handwriting are the same. Signatures, including the original, of any voter who has signed such petitions two or more times shall be stricken. [1965 c 7 § 35.18.240. Prior: 1955 c 337 § 22; prior: (i) 1943 c 271 § 2, part; Rem. Supp. 1943 § 9198-11, part. (ii) 1943 c 271 § 5; Rem. Supp. 1943 § 9198-14.]

35.18.250 Organization—Election procedure. Upon the filing of a petition for the adoption of the council-manager plan of government, or upon resolution of the council to that effect, the mayor, only after the petition has been found to be valid, by proclamation issued within ten days after the filing of the petition or the resolution with the clerk, shall cause the question to be submitted at a special election to be held at a time specified in the proclamation, which shall be as soon as possible after the sufficiency of the petition has been determined or after the said resolution of the council has been enacted, but in no event shall said special election be held during the ninety day period immediately preceding any regular municipal election therein. All acts necessary to hold this election, including legal notice, jurisdiction and canvassing of returns, shall be conducted in accordance with existing law. [1965 c 7 § 35.18.250. Prior: 1959 c 76 § 4; 1955 c 337 § 23; prior: 1943 c 271 § 2, part; Rem. Supp. 1943 § 9198-11, part.]

Canvassing returns, generally: Chapter 29.62 RCW.

Conduct of elections—Canvass: RCW 29.13.040.

Notice of election: RCW 29.27.080.

Times for holding elections: Chapter 29.13 RCW.

35.18.260 Organization—Ballots. At the election for organization on the council-manager plan, the proposition on the ballots shall be: "Shall the city (or town) of adopt the council-manager plan of municipal government?" followed by the words:

"For organization as a council-manager city or town"

"Against organization as a council-manager city or town"

The election shall be conducted, the vote canvassed and the results declared in the same manner as provided by law in respect to other municipal elections. [1965 c 7 § 35.18.260. Prior: 1943 c 271 § 3; Rem. Supp. 1943 § 9198-12.]

35.18.270 Organization—Election of council, procedure. If the majority of the votes cast at a special election for organization on the council-manager plan favor the plan, the city or town at its next regular election shall elect the council required under the council-manager plan in number according to the population of the municipality: PROVIDED, That if the date of the next municipal general election is more than one year from the date of the election approving the council-manager plan, a special election shall be held to elect the councilmen; the newly elected councilmen shall assume office immediately when they are qualified in accordance with RCW 29.01.135 following the canvass of

votes as certified and shall remain in office until their successors are elected at the next general municipal election: PROVIDED, That such successor shall hold office for staggered terms as provided in RCW 35.18.020 as now or hereafter amended. Councilmen shall take office at the time provided by general law. Declarations of candidacy for city or town elective positions under the council-manager plan for cities and towns shall be filed with the county auditor as the case may be not more than forty-five nor less than thirty days prior to said special election to elect the members of the city council. Any candidate may file a written declaration of withdrawal at any time within five days after the last day for filing a declaration of candidacy. All names of candidates to be voted upon shall be printed upon the ballot alphabetically in group under the designation of the title of the offices for which they are candidates. There shall be no rotation of names. [1979 ex.s. c 126 § 20; 1965 c 7 § 35.18.270. Prior: 1959 c 76 § 5; 1955 c 337 § 12; prior: (i) 1943 c 271 § 8, part; Rem. Supp. 1943 § 9198-17, part. (ii) 1943 c 271 § 4, part; Rem. Supp. 1943 § 9198-13, part.]

Purpose—1979 ex.s. c 126: See RCW 29.04.170(1).

35.18.280 Organization—Holding over by incumbent officials and employees. Councilmen shall take office at the times provided by RCW 35.18.270 as now or hereafter amended. The other city officials and employees who are incumbent at the time the council-manager plan takes effect shall hold office until their successors have been selected in accordance with the provisions of this chapter. [1965 c 7 § 35.18.280. Prior: 1943 c 271 § 8, part; Rem. Supp. 1943 § 9198-17, part.]

35.18.285 Organization—First council may revise budget. If, at the beginning of the term of office of the first council elected in a city organized under the council-manager plan, the appropriations for the expenditures of the city for the current fiscal year have been made, the council, by ordinance, may revise them but may not exceed the total appropriations for expenditures already specified in the budget for the year. [1965 c 7 § 35.18.285. Prior: 1955 c 337 § 24.]

35.18.290 Abandonment of council-manager plan. Any city or town which has operated under the council-manager plan for more than six years may abandon such organization and accept the provisions of the general laws then applicable to municipalities upon the petition of not less than twenty percent of the registered voters therein, without changing its classification unless it desires to do so. [1965 ex.s. c 47 § 4; 1965 c 7 § 35.18.290. Prior: 1943 c 271 § 22, part; Rem. Supp. 1943 § 9198-31, part.]

35.18.300 Abandonment—Method. The sufficiency of the petition for abandonment of the council-manager form of government shall be determined, the election ordered and conducted, and the results declared generally as provided for the procedure for reorganizing under the council-manager plan so far as those provisions are applicable. [1965 c 7 § 35.18.300. Prior: 1943 c 271 § 23, part; Rem. Supp. 1943 § 9198-32, part.]

Organization on council-manager plan: RCW 35.18.240 through 35.18.285.

(1992 Ed.)

35.18.310 Abandonment—Special election necessary. The proposition to abandon the council-manager plan must be voted on at a special election called for that purpose at which the only proposition to be voted on shall be: "Shall the city (or town) of abandon its organization under the council-manager plan and become a city (or town) under the general law governing cities (or towns) of class?" [1965 c 7 § 35.18.310. Prior: 1943 c 271 § 22 part; Rem. Supp. 1943 § 9198-31, part.]

35.18.320 Abandonment—Effect. If a majority of votes cast at the special election favor the abandonment of the council-manager form of government, the officers elected at the next succeeding biennial election shall be those then prescribed for cities or towns of like class. Upon the qualification of such officers, the municipality shall again become organized under the general laws of the state, but such change shall not affect in any manner or degree the property, rights, or liabilities of the corporation but shall merely extend to such change in its form of government. [1965 c 7 § 35.18.320. Prior: 1943 c 271 § 23, part; Rem. Supp. 1943 § 9198-32, part.]

Chapter 35.20

MUNICIPAL COURTS—CITIES OVER FOUR HUNDRED THOUSAND

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Courts of limited jurisdiction: Title 3 RCW.

Courts of record: Title 2 RCW.

Rights of accused: State Constitution Art. 1 § 22 (Amendment 10).

Rules for courts of limited jurisdiction: Volume 0.

35.20.010 Municipal court established—Termination of court—Agreement covering costs of handling resulting criminal cases—Arbitration. (1) There is hereby created and established in each incorporated city of this state having a population of more than four hundred thousand inhabitants, as shown by the federal or state census, whichever is the later, a municipal court, which shall be styled "The Municipal Court of (name of city)," hereinafter designated and referred to as the municipal court, which court shall have jurisdiction and shall exercise all the powers by this chapter declared to be vested in such municipal court, together with such powers and jurisdiction as is generally conferred in this state either by common law or statute.

(2) A municipality operating a municipal court under this section may terminate that court if the municipality has reached an agreement with the county under chapter 39.34 RCW under which the county is to be paid a reasonable amount for costs associated with prosecution, adjudication, and sentencing in criminal cases filed in district court as a result of the termination. The agreement shall provide for periodic review and renewal of the terms of the agreement. If the municipality and the county are unable to agree on the terms for renewal of the agreement, they shall be deemed to have entered into an agreement to submit the issue to arbitration under chapter 7.04 RCW. Pending conclusion of the arbitration proceeding, the terms of the agreement shall remain in effect. The municipality and the county have the same rights and are subject to the same duties as other parties who have agreed to submit to arbitration under chapter 7.04 RCW. [1984 c 258 § 201; 1975 c 33 § 4; 1965 c 7 § 35.20.010. Prior: 1955 c 290 § 1.]

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

Severability—1975 c 33: See note following RCW 35.21.780.

35.20.020 Sessions—Judges may act as magistrates—Night court. The municipal court shall be always open except on nonjudicial days. It shall hold regular and special sessions at such times as may be prescribed by the judges thereof. The judges shall have the power to act as magistrates in accordance with the provisions of chapter 10.16 RCW. The legislative body of the city may by ordinance authorize a department of the municipal court to act as a night court, and shall appropriate the necessary funds therefor. [1965 c 7 § 35.20.020. Prior: 1955 c 290 § 2.]

35.20.030 Jurisdiction—Maximum penalties for criminal violations—Review—Costs. The municipal court shall have jurisdiction to try violations of all city ordinances and all other actions brought to enforce or recover license penalties or forfeitures declared or given by any such ordinances. It is empowered to forfeit cash bail or bail bonds and issue execution thereon, to hear and determine all causes, civil or criminal, arising under such ordinances, and to pronounce judgment in accordance therewith: **PROVIDED,** That for a violation of the criminal provisions of an ordinance no greater punishment shall be imposed than a

fine of five thousand dollars or imprisonment in the city jail not to exceed one year, or both such fine and imprisonment. All civil and criminal proceedings in municipal court, and judgments rendered therein, shall be subject to review in the superior court by writ of review or on appeal: **PROVIDED,** That an appeal from the court's determination or order in a traffic infraction proceeding may be taken only in accordance with RCW 46.63.090(5). Costs in civil and criminal cases may be taxed as provided in district courts. [1984 c 258 § 801; 1979 ex.s. c 136 § 23; 1965 c 7 § 35.20.030. Prior: 1955 c 290 § 3.]

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

Effective date—Severability—1979 ex.s. c 136: See notes following RCW 46.63.010.

35.20.090 Trial by jury—Juror's fees. In all civil cases and criminal cases where jurisdiction is concurrent with district courts as provided in RCW 35.20.250, within the jurisdiction of the municipal court, the plaintiff or defendant may demand a jury, which shall consist of six citizens of the state who shall be impaneled and sworn as in cases before district courts, or the trial may be by a judge of the municipal court: **PROVIDED,** That no jury trial may be held on a proceeding involving a traffic infraction. A defendant requesting a jury shall pay to the court a fee which shall be the same as that for a jury in district court. Where there is more than one defendant in an action and one or more of them requests a jury, only one jury fee shall be collected by the court. Each juror may receive up to twenty-five dollars but in no case less than ten dollars for each day in attendance upon the municipal court, and in addition thereto shall receive mileage at the rate determined under RCW 43.03.060: **PROVIDED,** That the compensation paid jurors shall be determined by the legislative authority of the city and shall be uniformly applied. Trial by jury shall be allowed in criminal cases involving violations of city ordinances commencing January 1, 1972, unless such incorporated city affected by this chapter has made provision therefor prior to January 1, 1972. [1987 c 202 § 195; 1980 c 148 § 6. Prior: 1979 ex.s. c 136 § 24; 1979 ex.s. c 135 § 8; prior: 1977 ex.s. c 248 § 3; 1977 ex.s. c 53 § 3; 1969 ex.s. c 147 § 8; 1965 c 7 § 35.20.090; prior: 1955 c 290 § 9.]

Intent—1987 c 202: See note following RCW 2.04.190.

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.

Severability—1979 ex.s. c 135: See note following RCW 2.36.080.

35.20.100 Departments of court—Change of venue—Presiding judge—Costs of election. There shall be three departments of the municipal court, which shall be designated as Department Nos. 1, 2 and 3: **PROVIDED,** That when the administration of justice and the accomplishment of the work of the court make additional departments necessary, the legislative body of the city may create additional departments as they are needed. The departments shall be established in such places as may be provided by the legislative body of the city, and each department shall be presided over by a municipal judge. The judges shall select,

by majority vote, one of their number to act as presiding judge of the municipal court for a term of one year, and he shall be responsible for administration of the court and assignment of calendars to all departments. A change of venue from one department of the municipal court to another department shall be allowed in accordance with the provisions of RCW 3.66.090 in all civil and criminal proceedings. The city shall assume the costs of the elections of the municipal judges in accordance with the provisions of RCW 29.13.045. [1984 c 258 § 71; 1972 ex.s. c 32 § 1; 1969 ex.s. c 147 § 1; 1967 c 241 § 2; 1965 c 7 § 35.20.100. Prior: 1955 c 290 § 10.]

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

Application—1967 c 241: See note following RCW 3.66.090.

Severability—1967 c 241: See RCW 3.74.932.

35.20.105 Court administrator. There shall be a court administrator of the municipal court appointed by the judges of the municipal court, subject to confirmation by a majority of the legislative body of the city, and removable by the judges of the municipal court subject to like confirmation. Before entering upon the duties of his office the court administrator shall take and subscribe an oath the same as required for officers of the city, and shall execute a penal bond in such sum and with such sureties as the legislative body of the city may direct and subject to their approval, conditioned for the faithful performance of his duties, and that he will pay over to the treasurer of said city all moneys belonging to the city which shall come into his hands as such court administrator. The court administrator shall be paid such compensation as the legislative body of the city may deem reasonable. The court administrator shall act under the supervision and control of the presiding judge of the municipal court and shall supervise the functions of the chief clerk and director of the traffic violations bureau or similar agency of the city, and perform such other duties as may be assigned to him by the presiding judge of the municipal court. [1969 ex.s. c 147 § 2.]

35.20.110 Seal of court—Extent of process. The municipal court shall have a seal which shall be the vignette of George Washington, with the words "Seal of The Municipal Court of (name of city), State of Washington," surrounding the vignette. All process from such court shall issue under the seal thereof and shall run throughout the state. [1965 c 7 § 35.20.110. Prior: 1955 c 290 § 11.]

35.20.120 Expenses of court. All blanks, books, papers, stationery and furniture necessary for the transaction of business and the keeping of records of the court shall be furnished at the expense of the city, except those expenses incidental to the operation of the court in matters brought before the court because of concurrent jurisdiction with the district court, which expense shall be borne by the county and paid out of the county treasury. All other expenses on account of such court which may be authorized by the city council or the county commissioners and which are not specifically mentioned in this chapter, shall be paid respectively out of the city treasury and county treasury. [1987 c 202 § 196; 1965 c 7 § 35.20.120. Prior: 1955 c 290 § 12.]

Intent—1987 c 202: See note following RCW 2.04.190.

35.20.131 Director of traffic violations. There shall be a director of the traffic violations bureau or such similar agency of the city as may be created by ordinance of said city. Said director shall be appointed by the judges of the municipal court subject to such civil service laws and rules as may be provided in such city. Said director shall act under the supervision of the court administrator of the municipal court and shall be responsible for the supervision of the traffic violations bureau or similar agency of the city. Upon *this 1969 amendatory act becoming effective those employees connected with the traffic violations bureau under civil service status shall be continued in such employment and such classification. Before entering upon the duties of his office said director shall take and subscribe an oath the same as required for officers of the city and shall execute a penal bond in such sum and with such sureties as the legislative body of the city may direct and subject to their approval, conditioned for the faithful performance of his duties, and that he will faithfully account to and pay over to the treasurer of said city all moneys belonging to the city which shall come into his hands as such director. Said director shall be paid such compensation as the legislative body of the city may deem reasonable. [1969 ex.s. c 147 § 3.]

*Reviser's note: "this 1969 amendatory act" [1969 ex.s. c 147] became effective August 11, 1969.

35.20.140 Monthly meeting of judges—Rules and regulations of court. It shall be the duty of the judges to meet together at least once each month, except during the months of July and August, at such hour and place as they may designate, and at such other times as they may desire, for the consideration of such matters pertaining to the administration of justice in said court as may be brought before them. At these meetings they shall receive and investigate, or cause to be investigated, all complaints presented to them pertaining to the court and the employees thereof, and shall take such action as they may deem necessary or proper with respect thereto. They shall have power and it shall be their duty to adopt, or cause to be adopted, rules and regulations for the proper administration of justice in said court. [1965 c 7 § 35.20.140. Prior: 1955 c 290 § 14.]

35.20.150 Election of judges—Vacancies. The municipal judges shall be elected on the first Tuesday after the first Monday in November, 1958, and on the first Tuesday after the first Monday of November every fourth year thereafter by the electorate of the city in which the court is located. The auditor of the county concerned shall designate by number each position to be filled in the municipal court, and each candidate at the time of the filing of his declaration of candidacy shall designate by number so assigned the position for which he is a candidate, and the name of such candidate shall appear on the ballot only for such position. The name of the person who receives the greatest number of votes and of the person who receives the next greatest number of votes at the primary for a single nonpartisan position shall appear on the general election

ballot under the designation therefor. Elections for municipal judge shall be nonpartisan. They shall hold office for a term of four years and until their successors are elected and qualified. The term of office shall start on the second Monday in January following such election. Any vacancy in the municipal court due to a death, disability or resignation of a municipal court judge shall be filled by the mayor, to serve out the unexpired term. Such appointment shall be subject to confirmation by the legislative body of the city. [1975-'76 2nd ex.s. c 120 § 7; 1965 c 7 § 35.20.150. Prior: 1961 c 213 § 1; 1955 c 290 § 15.]

Severability—1975-'76 2nd ex.s. c 120: See note following RCW 29.21.010.

Times for holding elections: Chapter 29.13 RCW.

35.20.160 Judges' salaries. The total of the salaries of each municipal judge under this chapter shall be fixed by the legislative body of the city at not less than nine thousand dollars per annum, to be paid in monthly or semimonthly installments as for other officials of the city, and such total salaries shall not be more than the salaries paid the superior court judges in the county in which the court is located. [1965 c 147 § 3; 1965 c 7 § 35.20.160. Prior: 1955 c 290 § 16.]

Cities over four hundred thousand, district court judges' salaries: RCW 3.58.010.

35.20.170 Qualifications of judges—Practice of law prohibited. No person shall be eligible to the office of judge of the municipal court unless he shall have been admitted to practice law before the courts of record of this state and is an elector of the city in which he files for office. No judge of said court during his term of office shall engage either directly or indirectly in the practice of law. [1965 c 7 § 35.20.170. Prior: 1955 c 290 § 17.]

35.20.180 Judges' oath of office, official bonds. Every judge of such municipal court, before he enters upon the duties of his office, shall take and subscribe the following oath or affirmation: "I do solemnly swear (or affirm) that I will support the Constitution of the United States and the Constitution of the State of Washington, and that I will faithfully discharge the duties of the office of judge of the municipal court of the city of (naming such city) according to the best of my ability; and I do further certify that I do not advocate, nor am I a member of an organization that advocates, the overthrow of the government of the United States by force or violence." The oath shall be filed in the office of the county auditor. He shall also give such bonds to the state and city for the faithful performance of his duties as may be by law or ordinance directed. [1965 c 7 § 35.20.180. Prior: 1955 c 290 § 18.]

35.20.190 Additional judge. Whenever the number of departments of the municipal court is increased, the mayor of such city shall appoint a qualified person as provided in RCW 35.20.170 to act as municipal judge until the next general election. He shall be paid salaries in accordance with the provisions of this chapter and provided with the necessary court, office space and personnel as

authorized herein. [1967 c 241 § 4; 1965 c 7 § 35.20.190. Prior: 1955 c 290 § 19.]

Application—1967 c 241: See note following RCW 3.66.090.

Severability—1967 c 241: See RCW 3.74.932.

35.20.200 Judges pro tempore. The mayor shall, from attorneys residing in the city and qualified to hold the position of judge of the municipal court as provided in RCW 35.20.170, appoint judges pro tempore who shall act in the absence of the regular judges of the court or in addition to the regular judges when the administration of justice and the accomplishment of the work of the court make it necessary. The mayor may appoint, as judges pro tempore, any full-time district court judges serving in the county in which the city is situated. The judges of the municipal court shall promulgate rules establishing general standards for the use of judges pro tempore. A copy of said rules shall be filed with the legislative authority of the city at the time of budget consideration. Such appointments of attorneys shall be made from a list of attorneys in accordance herewith furnished by the judges of the municipal court, which list shall contain not less than five names in addition to the number of judges pro tempore requested. Appointment of judges pro tempore shall be for the term of office of the regular judges unless sooner removed in the same manner as they were appointed. While acting as judge of the court judges pro tempore shall have all of the powers of the regular judges. Before entering upon his or her duties, each judge pro tempore shall take, subscribe and file an oath as is taken by a municipal judge. Judges pro tempore shall not practice before the municipal court during their term of office as judge pro tempore. Such municipal judges pro tempore shall receive such compensation as shall be fixed by ordinance by the legislative body of the city and such compensation shall be paid by the city except that district court judges shall not be compensated by the city other than pursuant to an interlocal agreement. [1990 c 182 § 1; 1972 ex.s. c 32 § 2; 1965 c 7 § 35.20.200. Prior: 1955 c 290 § 20.]

35.20.205 Judicial officers—Hearing examiner. The judges of the municipal court may employ judicial officers to assist in the administration of justice and the accomplishment of the work of the court as said work may be assigned to it by statute or ordinance. The duties and responsibilities of such officers shall be judicial in nature and shall be fixed by court rule as adopted by the municipal court judges or fixed by ordinance of the city. The judicial officers may be authorized to hear and determine cases involving the commission of traffic infractions as provided in chapter 46.63 RCW. The mayor may appoint the judicial officers as judges pro tempore pursuant to RCW 35.20.200: PROVIDED, That the judicial officer need not be a resident of the city.

To utilize the services of such judicial officers for the purpose of hearing contested matters relating to the interest of the city and its citizens and the operation of the various departments of the city, the city may by ordinance create the office of hearing examiner in the municipal court and assign to it judicial duties and responsibilities. [1980 c 128 § 7; 1975 1st ex.s. c 214 § 1.]

Effective date—Severability—1980 c 128: See notes following RCW 46.63.060.

35.20.210 Clerks of court. There shall be a chief clerk of the municipal court appointed by the judges of the municipal court subject to such civil service laws and rules as may be provided in such city. After August 11, 1969, those employees connected with the court under civil service status shall be continued in such employment and such classification. Before the chief clerk enters upon the duties of the chief clerk's office, the chief clerk shall take and subscribe an oath the same as required for officers of the city, and shall execute a penal bond in such sum and with such sureties as the legislative body of the city may direct and subject to their approval, conditioned that the chief clerk will faithfully account to and pay over to the treasurer of said city all moneys coming into his or her hands as such clerk, and that he or she will faithfully perform the duties of his or her office to the best of his or her knowledge and ability. Upon the recommendation of the judges of the municipal court, the legislative body of the city may provide for the appointment of such assistant clerks of the municipal court as said legislative body deems necessary, with such compensation as said legislative body may deem reasonable and such assistant clerks shall be subject to such civil service as may be provided in such city: **PROVIDED,** That the judges of the municipal court shall appoint such clerks as the board of county commissioners may determine to handle cases involving violations of state law, wherein the court has concurrent jurisdiction with the district and superior court. All clerks of the court shall have power to administer oaths, swear and acknowledge signatures of those persons filing complaints with the court, take testimony in any action, suit or proceeding in the court relating to the city or county for which they are appointed, and may certify any records and documents of the court pertaining thereto. They shall give bond for the faithful performance of their duties as required by law. [1987 c 202 § 197; 1969 ex.s. c 147 § 4; 1965 c 7 § 35.20.210. Prior: 1955 c 290 § 21.]

Intent—1987 c 202: See note following RCW 2.04.190.

35.20.220 Powers and duties of chief clerk—Remittance by city treasurer. (1) The chief clerk, under the supervision and direction of the court administrator of the municipal court, shall have the custody and care of the books, papers and records of said court; he shall be present by himself or deputy during the session of said court, and shall have the power to swear all witnesses and jurors, and administer oaths and affidavits, and take acknowledgments. He shall keep the records of said court, and shall issue all process under his hand and the seal of said court, and shall do and perform all things and have the same powers pertaining to his office as the clerks of the superior courts have in their office. He shall receive all fines, penalties and fees of every kind, and keep a full, accurate and detailed account of the same; and shall on each day pay into the city treasury all money received for said city during the day previous, with a detailed account of the same, and taking the treasurer's receipt therefor.

(2) The city treasurer shall remit monthly thirty-two percent of the money received under this section, other than for parking infractions and certain costs to the state treasurer.

(1992 Ed.)

"Certain costs" as used in this subsection, means those costs awarded to prevailing parties in civil actions under RCW 4.84.010 or 36.18.040, or those costs awarded against convicted defendants in criminal actions under RCW 10.01.160, 10.46.190, or 36.18.040, or other similar statutes if such costs are specifically designated as costs by the court and are awarded for the specific reimbursement of costs incurred by the state, county, city, or town in the prosecution of the case, including the fees of defense counsel. Money remitted under this subsection to the state treasurer shall be deposited as provided in RCW 43.08.250.

(3) The balance of the money received under this section shall be retained by the city and deposited as provided by law. [1988 c 169 § 6; 1985 c 389 § 8; 1984 c 258 § 319; 1969 ex.s. c 147 § 5; 1965 c 7 § 35.20.220. Prior: 1955 c 290 § 22.]

Effective date—1985 c 389: See note following RCW 27.24.070.

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.

35.20.230 Director of probation services—Probation officers—Bailiffs. The judges of the municipal court shall appoint a director of probation services who shall under the supervision of the presiding judge of the municipal court supervise the probation officers of the municipal court. The judges of the municipal court shall also appoint a bailiff for the court, together with such number of probation officers and additional bailiffs as may be authorized by the legislative body of the city. Said director of probation services, probation officers, and bailiff or bailiffs shall be paid by the city treasurer in such amount as is deemed reasonable by the legislative body of the city: **PROVIDED,** That such additional probation officers and bailiffs of the court as may be authorized by the county commissioners shall be paid from the county treasury. [1969 ex.s. c 147 § 6; 1965 c 7 § 35.20.230. Prior: 1955 c 290 § 23.]

35.20.240 First judges—Transfer of equipment. Upon the effective date of this chapter (June 8, 1955), any justice of the peace who was the duly appointed and acting police justice of the city shall become a judge of the municipal court upon his filing his oath of office and bond as required by this chapter, and shall serve as a judge of said municipal court until the regularly elected judges of the court shall qualify following their election in 1958, or thereafter as provided in RCW 35.20.150. Such judge shall be paid salaries in accordance with this chapter while so serving. Such salaries from the city and county shall be in lieu of those now (June 8, 1955) being paid to the justice of the peace acting as police justice of the city court: **PROVIDED,** That upon the justices of the peace qualifying as municipal judges under this chapter, the number of justices of the peace for such city shall be reduced accordingly as provided in RCW 35.20.190. Should any justice of the peace acting as police judge fail to qualify as a judge of the municipal court, the mayor of such city shall designate one of the other justices of the peace of that city to act as municipal judge until the next general election in November, 1958, and the qualifying of the regularly elected judge. All furniture and equipment belonging to the city and county in which the

court is situated, now under the care and custody of the justice of the peace and municipal judge, shall be transferred to the municipal court for use in the operation and maintenance of such court. [1965 c 7 § 35.20.240. Prior: 1955 c 290 § 24.]

Reviser's note: Justices of the peace and courts to be construed to mean district judges and courts. See RCW 3.30.015.

35.20.250 Concurrent jurisdiction with superior court and district court. The municipal court shall have concurrent jurisdiction with the superior court and district court in all civil and criminal matters as now provided by law for district judges, and a judge thereof may sit in preliminary hearings as magistrate. Fines, penalties, and forfeitures before the court under the provisions of this section shall be paid to the county treasurer as provided for district court and commitments shall be to the county jail. Appeals from judgment or order of the court in such cases shall be governed by the law pertaining to appeals from judgments or orders of district judges operating under chapter 3.30 RCW. [1987 c 202 § 198; 1979 ex.s. c 136 § 25; 1969 ex.s. c 147 § 7; 1965 c 7 § 35.20.250. Prior: 1955 c 290 § 25.]

Intent—1987 c 202: See note following RCW 2.04.190.

Effective date—Severability—1979 ex.s. c 136: See notes following RCW 46.63.010.

35.20.255 Deferral or suspension of sentences—Probation—Maximum term. Judges of the municipal court, in their discretion, shall have the power in all criminal proceedings within their jurisdiction including violations of city ordinances, to defer imposition of any sentence, suspend all or part of any sentence, fix the terms of any such deferral or suspension, and provide for such probation and parole as in their opinion is reasonable and necessary under the circumstances of the case, but in no case shall it extend for more than two years from the date of conviction. [1983 c 156 § 8; 1969 ex.s. c 147 § 9.]

35.20.260 Subpoenas—Witness fees. The court shall have authority to subpoena witnesses as now authorized in superior courts throughout the state. Such witnesses shall be paid according to law with mileage as authorized for witnesses to such cases. [1965 c 7 § 35.20.260. Prior: 1955 c 290 § 26.]

35.20.270 Warrant officer—Position created—Authority—Service of criminal and civil process—Jurisdiction—Costs. (1) The position of warrant officer is hereby created and shall be maintained by the city within the city police department. The number and qualifications of warrant officers shall be fixed by ordinance, and their compensation shall be paid by the city.

(2) Warrant officers shall be vested only with the special authority to make arrests authorized by warrants and other arrests as are authorized by ordinance.

(3) All criminal and civil process issuing out of courts created under this title shall be directed to the chief of police of the city served by the court and/or to the sheriff of the county in which the court is held and/or the warrant officers

and be by them executed according to law in any county of this state.

(4) No process of courts created under this title shall be executed outside the corporate limits of the city served by the court unless the person authorized by the process first contacts the applicable law enforcement agency in whose jurisdiction the process is to be served.

(5) Upon a defendant being arrested in another city or county the cost of arresting or serving process thereon shall be borne by the court issuing the process including the cost of returning the defendant from any county of the state to the city.

(6) Warrant officers shall not be entitled to death, disability, or retirement benefits pursuant to chapter 41.26 RCW on the basis of service as a warrant officer as described in this section. [1992 c 99 § 1; 1977 ex.s. c 108 § 1.]

35.20.910 Construction of other laws. All acts or parts of acts which are inconsistent or conflicting with the provisions of this chapter, are hereby repealed or modified accordingly. No provision of this chapter shall be construed as repealing or anywise limiting or affecting the jurisdiction of district judges under the general laws of this state. [1987 c 202 § 199; 1965 c 7 § 35.20.910. Prior: 1955 c 290 § 28.]

Intent—1987 c 202: See note following RCW 2.04.190.

35.20.921 Severability—1969 ex.s. c 147. If any provision of *this 1969 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected. [1969 ex.s. c 147 § 11.]

***Reviser's note:** "this 1969 amendatory act" [1969 ex.s. c 147] consists of RCW 35.20.105, 35.20.131, 35.20.255, 35.20.921, the 1969 amendments to RCW 35.20.090, 35.20.100, 35.20.210, 35.20.220, 35.20.230, and 35.20.250, and the repeal of RCW 35.20.130.

Chapter 35.21

MISCELLANEOUS PROVISIONS AFFECTING ALL CITIES AND TOWNS

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Accident claims against: RCW 35.31.010 through 35.31.030.

Acquisition of interests in land for conservation, protection, preservation, or open space purposes by cities or towns: RCW 64.04.130.

Actions against public corporations: RCW 4.08.120.
state: Chapter 4.92 RCW.

Actions by in corporate name: RCW 4.08.110.

Cemeteries, public acquisition and maintenance: Chapter 68.52 RCW.

Diking and drainage districts: Chapters 85.05, 86.09 RCW.

Disturbances at state penal facilities: Chapter 72.02 RCW.

Dog handler using police dog in line of duty—Immunity: RCW 4.24.410.

Eminent domain by cities: Chapter 8.12 RCW.

Fire protection districts: Title 52 RCW.

Flood control maintenance, state participation in: Chapter 86.26 RCW.

Hospitals, joint operation with counties: RCW 36.62.030, 36.62.110.

Industrial development revenue bonds: Chapter 39.84 RCW.

Intergovernmental disposition of property: Chapter 39.33 RCW.

Irrigation districts: Chapter 87.03 RCW.

Joint governmental activities: Chapter 36.64 RCW.

Judgment against public corporations, enforcement: RCW 6.17.080.

Legal publications: Chapter 65.16 RCW.

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revolving fund, distribution from: RCW 66.08.190, 66.08.210.

sales of subject to local option: Chapter 66.40 RCW.

Local adopt-a-highway programs: RCW 47.40.105.

Local governmental organizations, actions affecting boundaries, etc., review by boundary review board: Chapter 36.93 RCW.

Local law enforcement agencies, reports by regarding missing children: RCW 13.60.020.

Lost and found property: Chapter 63.21 RCW.

Meetings, minutes of governmental bodies, open to public inspection: Chapter 42.30 RCW.

Municipal utilities: Chapter 35.92 RCW.

Municipal water and sewer facilities act: Chapter 35.91 RCW.

Peddlers' and hawkers' licenses: Chapter 36.71 RCW, RCW 73.04.050, 73.04.060.

Port districts: Title 53 RCW.

Public records, destruction of: Chapter 40.14 RCW.

Public utility districts: Title 54 RCW.

Residence qualifications of civil service employees—Residency not grounds for discharge: RCW 52.30.050.

Senior citizens programs—Authorization to establish and administer: RCW 36.39.060.

Sewer districts: Title 56 RCW.

Soil and water conservation districts: Chapter 89.08 RCW.

Townships, organized townships, generally: Title 45 RCW.

Transfer of real property or contract for use for park and recreational purposes: RCW 39.33.060.

Unclaimed property in hands of city police: Chapter 63.32 RCW.

Water districts: Title 57 RCW.

Weeds, duty to destroy, extermination areas: RCW 17.04.160.

35.21.010 General corporate powers—Towns, restrictions as to area. Municipal corporations now or hereafter organized are bodies politic and corporate under the name of the city of, or the town of, as the case may be, and as such may sue and be sued, contract or be contracted with, acquire, hold, possess and dispose of property, subject to the restrictions contained in other chapters of this title, having a common seal, and change or alter the same at pleasure, and exercise such other powers, and have such other privileges as are conferred by this title: PROVIDED, That not more than two square miles in area shall be included within the corporate limits of a town having a population of fifteen hundred or less, or located in a county with a population of one million or more, and not more than three square miles in area shall be included within the corporate limits of a town having a population of more than fifteen hundred in a county with a population of less than one million, nor shall more than twenty acres of unplatted land belonging to any one person be taken within the corporate limits of a town without the consent of the owner of such unplatted land: PROVIDED FURTHER, That the original incorporation of a town shall be limited to an area of not more than one square mile and a population as prescribed in RCW 35.01.040. [1991 c 363 § 37; 1965 c

138 § 1; 1965 c 7 § 35.21.010. Prior: 1963 c 119 § 1; 1890 p 141 § 15, part; RRS § 8935.]

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

Validation of certain incorporations and annexations—Municipal corporations of the fourth class—1961 ex.s. c 16: "Any incorporation of a municipal corporation of the fourth class and any annexation of territory to a municipal corporation of the fourth class prior to March 31, 1961, which is otherwise valid except for compliance with the limitation to the area of one square mile as prescribed by section 15, page 141, Laws of 1889-90, is hereby validated and declared to be a valid incorporation or annexation in all respects." [1961 ex.s. c 16 § 1.]

35.21.020 Auditoriums, art museums, swimming pools, etc.—Power to acquire. Any city or town in this state acting through its council or other legislative body, and any separately organized park district acting through its board of park commissioners or other governing officers, shall have power to acquire by donation, purchase or condemnation, and to construct and maintain public auditoriums, art museums, swimming pools, and athletic and recreational fields, including golf courses, buildings and facilities within or without its parks, and to use or let the same for such public and private purposes for such compensation and rental and upon such conditions as its council or other legislative body or board of park commissioners shall from time to time prescribe. [1965 c 7 § 35.21.020. Prior: 1947 c 28 § 1; 1937 c 98 § 1; Rem. Supp. 1947 § 8981-4.]

Acquisition of property for parks, recreational, viewpoint, greenbelt, conservation, historic, scenic or view purposes: RCW 36.34.340.

35.21.030 Auxiliary water systems for protection from fire. Any city or town shall have power to provide for the protection of such city or town, or any part thereof, from fire, and to establish, construct and maintain an auxiliary water system, or systems, or extensions thereof, or additions thereto, and the structures and works necessary therefor or forming a part thereof, including the acquisition or damaging of lands, rights-of-way, rights, property, water rights, and the necessary sources of supply of water for such purposes, within or without the corporate limits of such city or town, and to manage, regulate and control the same. [1965 c 7 § 35.21.030. Prior: 1911 c 98 § 5; RRS § 9356.]

35.21.070 Cumulative reserve fund—Authority to create. Any city or town may establish by ordinance a cumulative reserve fund in general terms for several different municipal purposes as well as for a very specific municipal purpose, including that of buying any specified supplies, material or equipment, or the construction, alteration or repair of any public building or work, or the making of any public improvement, or for creation of a revenue stabilization fund for future operations. The ordinance shall designate the fund as "cumulative reserve fund for (naming purpose or purposes for which fund is to be accumulated and expended)." The moneys in the fund may be allowed to accumulate from year to year until the legislative authority of the city or town shall determine to expend the moneys in the fund for the purpose or purposes specified: PROVIDED, That any moneys in the fund shall never be expended for any other purpose or purposes than those specified, without an approving vote by a two-thirds

majority of the members of the legislative authority of the city or town. [1983 c 173 § 1; 1965 c 7 § 35.21.070. Prior: 1953 c 38 § 1; 1941 c 60 § 1; Rem. Supp. 1941 § 9213-5.]

35.21.080 Cumulative reserve fund—Annual levy for—Application of budget law. An item for said cumulative reserve fund may be included in the city or town's annual budget or estimate of amounts required to meet public expense for the ensuing year and a tax levy made within the limits and as authorized by law for said item; and said item and levy may be repeated from year to year until, in the judgment of the legislative body of the city or town, the amount required for the specified purpose or purposes has been raised or accumulated. Any moneys in said fund at the end of the fiscal year shall not lapse nor shall the same be a surplus available or which may be used for any other purpose or purposes than those specified, except as herein provided. [1965 c 7 § 35.21.080. Prior: 1953 c 38 § 2; 1941 c 60 § 2; Rem. Supp. 1941 § 9213-6.]

35.21.085 Payrolls fund—Claims fund. The legislative authority of any city or town is authorized to create the following special funds:

(1) Payrolls—into which moneys may be placed from time to time as directed by the legislative authority from any funds available and upon which warrants may be drawn and cashed for the purpose of paying any moneys due city employees for salaries and wages. The accounts of the city or town shall be so kept that they shall show the department or departments and amounts to which the payment is properly chargeable.

(2) Claims—into which may be paid moneys from time to time from any funds which are available and upon which warrants may be issued and paid in payment of claims against the city or town for any purpose. The accounts of the city or town shall be so kept that they shall show the department or departments and the respective amounts for which the warrant is issued and paid. [1965 c 7 § 35.21.085. Prior: 1953 c 27 § 1.]

35.21.086 Payrolls fund—Transfers from insolvent funds. Transfers from an insolvent fund to the payrolls fund or claims fund shall be by warrant. [1965 c 7 § 35.21.086. Prior: 1953 c 27 § 2.]

35.21.087 Employee checks, drafts, warrants—City, town may cash. Any city or town is hereby authorized, at its option and after the adoption of the appropriate ordinance, to accept in exchange for cash a payroll check, draft, or warrant; expense check, draft, or warrant; or personal check from a city or town employee in accordance with the following conditions:

(1) The check, warrant, or draft must be drawn to the order of cash or bearer and be immediately payable by a drawee financial institution;

(2) The person presenting the check, draft, or warrant to the city or town must produce identification as outlined by the city or town in the authorizing ordinance;

(3) The payroll check, draft, or warrant or expense check, draft, or warrant must have been issued by the city or town; and

(4) Personal checks cashed pursuant to this authorization cannot exceed two hundred dollars.

In the event that any personal check cashed for a city or town employee by the city or town under this section is dishonored by the drawee financial institution when presented for payment, the city or town is authorized, after notice to the drawer or endorser of the dishonor, to withhold from the drawer's or endorser's next payroll check, draft, or warrant the full amount of the dishonored check. [1991 c 185 § 1.]

35.21.088 Equipment rental fund. Any city or town may create, by ordinance, an "equipment rental fund," hereinafter referred to as "the fund," in any department of the city or town to be used as a revolving fund to be expended for salaries, wages, and operations required for the repair, replacement, purchase, and operation of equipment, and for the purchase of equipment, materials, and supplies to be used in the administration and operation of the fund.

The legislative authority of a city or town may transfer any equipment, materials or supplies of any office or department to the equipment rental fund either without charge, or may grant a credit to such office or department equivalent to the value of the equipment, materials or supplies transferred. An office or department receiving such a credit may use it any time thereafter for renting or purchasing equipment, materials, supplies or services from the equipment rental fund.

Money may be placed in the fund from time to time by the legislative authority of the city or town. Cities and towns may purchase and sell equipment, materials and supplies by use of such fund, subject to any laws governing the purchase and sale of property. Such equipment, materials and supplies may be rented for the use of various offices and departments of any city or town or may be rented by any such city or town to governmental agencies. The proceeds received by any city or town from the sale or rental of such property shall be placed in the fund, and the purchase price of any such property or rental payments made by a city or town shall be made from moneys available in the fund. The ordinance creating the fund shall designate the official or body that is to administer the fund and the terms and charges for the rental for the use of any such property which has not been purchased for its own use out of its own funds and may from time to time amend such ordinance.

There shall be paid monthly into the fund out of the moneys available to the department using any equipment, materials, and/or supplies, which have not been purchased by that department for its own use and out of its own funds, reasonable rental charges fixed by the legislative authority of the city or town, and moneys in the fund shall be retained there from year to year so long as the legislative authority of the city or town desires to do so.

Every city having a population of more than eight thousand, according to the last official census, shall establish such an equipment rental fund in its street department or any other department of city government. Such fund shall acquire the equipment necessary to serve the needs of the city street department. Such fund may, in addition, be created to service any other departments of city government or other governmental agencies as authorized hereinabove.

[1965 c 7 § 35.21.088. Prior: 1963 c 115 § 7; 1953 c 67 § 1.]

Census to be conducted in decennial periods: State Constitution Art. 2 § 3.

Determination of population: Chapter 43.62 RCW.

35.21.090 Dikes, levees, embankments—Authority to construct. Any city or town shall have power to provide for the protection of such city or town, or any part thereof, from overflow, and to establish, construct and maintain dikes, levees, embankments, or other structures and works, or to open, deepen, straighten or otherwise enlarge natural watercourses, waterways and other channels, including the acquisition or damaging of lands, rights-of-way, rights and property therefor, within or without the corporate limits of such city or town, and to manage, regulate and control the same. [1965 c 7 § 35.21.090. Prior: 1911 c 98 § 4; 1907 c 241 § 68; RRS § 9355.]

Eminent domain: Chapter 8.12 RCW.

35.21.100 Donations—Authority to accept and use. Every city and town by ordinance may accept any money or property donated, devised, or bequeathed to it and carry out the terms of the donation, devise, or bequest, if within the powers granted by law. If no terms or conditions are attached to the donation, devise, or bequest, the city or town may expend or use it for any municipal purpose. [1965 c 7 § 35.21.100. Prior: 1941 c 80 § 1; Rem. Supp. 1941 § 9213-8.]

35.21.110 Ferries—Authority to acquire and maintain. Any incorporated city or town within the state is authorized to construct, or condemn and purchase, or purchase, and to maintain a ferry across any unfordable stream adjoining and within one mile of its limits, together with all necessary grounds, roads, approaches and landings necessary or appertaining thereto located within one mile of the limits of such city or town, with full jurisdiction and authority to manage, regulate and control the same beyond the limits of the corporation and to operate the same free or for toll. [1965 c 7 § 35.21.110. Prior: 1895 c 130 § 1; RRS § 5476.]

35.21.120 Solid waste handling system—Contracts. A city or town may by ordinance provide for the establishment of a system or systems of solid waste handling for the entire city or town or for portions thereof. A city or town may provide for solid waste handling by or under the direction of officials and employees of the city or town or may award contracts for any service related to solid waste handling including contracts entered into under RCW 35.21.152. Contracts for solid waste handling may provide that a city or town provide for a minimum periodic fee or other method of compensation in consideration of the operational availability of a solid waste handling system, plant, site, or other facility at a specified minimum level, without regard to the ownership of the system, plant, site, or other facility, or the amount of solid waste actually handled during all or any part of the contract period. When a minimum level of solid waste is specified in a contract for solid waste handling, there shall be a specific allocation of

financial responsibility in the event the amount of solid waste handled falls below the minimum level provided in the contract.

As used in this chapter, the terms "solid waste" and "solid waste handling" shall be as defined in RCW 70.95.030. [1989 c 399 § 1; 1986 c 282 § 18; 1965 c 7 § 35.21.120. Prior: 1943 c 270 § 1, part; Rem. Supp. 1943 § 9504-1, part.]

Severability—Legislative findings—Construction—Liberal construction—Supplemental powers—1986 c 282: See notes following RCW 35.21.156.

Contracts with vendors for solid waste handling: RCW 35.21.156.

35.21.130 Solid waste or recyclable materials collection—Ordinance. A solid waste or recyclable materials collection ordinance may:

(1) Require property owners and occupants of premises to use the solid waste collection and disposal system or recyclable materials collection and disposal system, and to dispose of their solid waste and recyclable materials as provided in the ordinance: PROVIDED, That a solid waste or recycling ordinance shall not require any retail enterprise engaged in the sale of consumer-packaged products to locate or place a public recycling collection site or buy-back center upon or within a certain distance of the retail establishment as a condition of engaging in the sale of consumer-packaged products; and

(2) Fix charges for solid waste collection and disposal, recyclable materials collection and disposal, or both, and the manner and time of payment therefor including therein a provision that upon failure to pay the charges, the amount thereof shall become a lien against the property for which the solid waste or recyclable materials collection service is rendered. The ordinance may also provide penalties for its violation. [1989 c 431 § 51; 1965 c 7 § 35.21.130. Prior: 1943 c 270 § 1, part; Rem. Supp. 1943 § 9504-1, part.]

Severability—1989 c 431: See RCW 70.95.901.

35.21.135 Solid waste or recyclable materials collection—Curbside recycling—Reduced rate. (1) Each city or town providing by ordinance or resolution a reduced solid waste collection rate to residents participating in a residential curbside recycling program implemented under RCW 70.95.090, may provide a similar reduced rate to residents participating in any other recycling program, if such program is approved by the jurisdiction. Nothing in this section shall be interpreted to reduce the authority of a city to adopt ordinances under RCW 35.21.130(1).

(2) For the purposes of this section, "reduced rate" means a residential solid waste collection rate incorporating a rebate, refund, or discount. Reduced rate shall not include residential solid waste collection rate based on the volume or weight of solid waste set out for collection. [1991 c 319 § 404.]

Severability—Part headings not law—1991 c 319: See RCW 70.95F.900 and 70.95F.901.

35.21.140 Garbage—Notice of lien—Foreclosure. A notice of the city's or town's lien for garbage collection and disposal service specifying the charges, the period covered by the charges and giving the legal description of

the premises sought to be charged, shall be filed with the county auditor within the time required and shall be foreclosed in the manner and within the time prescribed for liens for labor and material. [1965 c 7 § 35.21.140. Prior: 1943 c 270 § 1, part; Rem. Supp. 1943 § 9504-1, part.]

35.21.150 Garbage—Lien—Priority. The garbage collection and disposal service lien shall be prior to all liens and encumbrances filed subsequent to the filing of the notice of it with the county auditor, except the lien of general taxes and local improvement assessments whether levied prior or subsequent thereto. [1965 c 7 § 35.21.150. Prior: 1943 c 270 § 1, part; Rem. Supp. 1943 § 9504-1, part.]

35.21.152 Solid waste handling—Agreements—Purposes—Terms and conditions. A city or town may construct, lease, condemn, purchase, acquire, add to, alter, and extend systems, plants, sites, or other facilities for solid waste handling, and shall have full jurisdiction and authority to manage, regulate, maintain, utilize, operate, control, and establish the rates and charges for those solid waste handling systems, plants, sites, or other facilities owned or operated by the city or town. A city or town may enter into agreements with public or private parties to: (1) Construct, lease, purchase, acquire, manage, maintain, utilize, or operate publicly or privately owned or operated solid waste handling systems, plants, sites, or other facilities; (2) establish rates and charges for those systems, plants, sites, or other facilities; (3) designate particular publicly or privately owned or operated systems, plants, sites, or other facilities as disposal sites; and (4) sell the materials or products of those systems, plants, or other facilities. Any agreement entered into shall be for such term and under such conditions as may be determined by the legislative authority of the city or town. [1989 c 399 § 2; 1977 ex.s. c 164 § 1; 1975 1st ex.s. c 208 § 1.]

35.21.154 Solid waste—Compliance with chapter 70.95 RCW required. Nothing in RCW 35.21.152 will relieve a city or town of its obligations to comply with the requirements of chapter 70.95 RCW. [1989 c 399 § 3; 1975 1st ex.s. c 208 § 3.]

35.21.156 Solid waste—Contracts with vendors for solid waste handling systems, plants, sites, or facilities—Requirements—Vendor selection procedures. (1) Notwithstanding the provisions of any city charter, or any law to the contrary, and in addition to any other authority provided by law, the legislative authority of a city or town may contract with one or more vendors for one or more of the design, construction, or operation of, or other service related to, the systems, plants, sites, or other facilities for solid waste handling in accordance with the procedures set forth in this section. Solid waste handling systems, plants, sites, or other facilities constructed, purchased, acquired, leased, added to, altered, extended, maintained, managed, utilized, or operated pursuant to this section, RCW 35.21.120 and 35.21.152, whether publicly or privately owned, shall be in substantial compliance with the solid waste management plan applicable to the city or town adopted pursuant to chapter 70.95 RCW. Agreements relating to such solid

waste handling systems, plants, sites, or other facilities may be for such term and may contain such covenants, conditions, and remedies as the legislative authority of a city or town may deem necessary or appropriate. When a contract for design services is entered into separately from other services permitted under this section, procurement shall be in accordance with chapter 39.80 RCW.

(2) If the legislative authority of the city or town decides to proceed with the consideration of qualifications or proposals for services from vendors, the city or town shall publish notice of its requirements and request submission of qualifications statements or proposals. The notice shall be published in the official newspaper of the city or town at least once a week for two weeks not less than sixty days before the final date for the submission of qualifications statements or proposals. The notice shall state in summary form (a) the general scope and nature of the design, construction, operation, or other service, (b) the name and address of a representative of the city or town who can provide further details, (c) the final date for the submission of qualifications statements or proposals, (d) an estimated schedule for the consideration of qualifications, the selection of vendors, and the negotiation of a contract or contracts for services, (e) the location at which a copy of any request for qualifications or request for proposals will be made available, and (f) the criteria established by the legislative authority to select a vendor or vendors, which may include but shall not be limited to the vendor's prior experience, including design, construction, or operation of other similar facilities; respondent's management capability, schedule availability and financial resources; cost of the services, nature of facility design proposed by the vendor; system reliability; performance standards required for the facilities; compatibility with existing service facilities operated by the public body or other providers of service to the public; project performance guarantees; penalty and other enforcement provisions; environmental protection measures to be used; consistency with the applicable comprehensive solid waste management plan; and allocation of project risks.

(3) If the legislative authority of the city or town decides to proceed with the consideration of qualifications or proposals, it may designate a representative to evaluate the vendors who submitted qualifications statements or proposals and conduct discussions regarding qualifications or proposals with one or more vendors. The legislative authority or representative may request submission of qualifications statements and may later request more detailed proposals from one or more vendors who have submitted qualifications statements, or may request detailed proposals without having first received and evaluated qualifications statements. The legislative authority or its representative shall evaluate the qualifications or proposals, as applicable. If two or more vendors submit qualifications or proposals that meet the criteria established by the legislative authority of the city or town, discussions and interviews shall be held with at least two vendors. Any revisions to a request for qualifications or request for proposals shall be made available to all vendors then under consideration by the city or town and shall be made available to any other person who has requested receipt of that information.

(4) Based on criteria established by the legislative authority of the city or town, the representative shall recom-

mend to the legislative authority a vendor or vendors that are initially determined to be the best qualified to provide one or more of the design, construction or operation of, or other service related to, the proposed project or services. The legislative authority may select one or more qualified vendors for one or more of the design, construction, or operation of, or other service related to, the proposed project or services.

(5) The legislative authority or its representative may attempt to negotiate a contract with the vendor or vendors selected for one or more of the design, construction, or operation of, or other service related to, the proposed project or services on terms that the legislative authority determines to be fair and reasonable and in the best interest of the city or town. If the legislative authority or its representative is unable to negotiate such a contract with any one or more of the vendors first selected on terms that it determines to be fair and reasonable and in the best interest of the city or town, negotiations with any one or more of the vendors shall be terminated or suspended and another qualified vendor or vendors may be selected in accordance with the procedures set forth in this section. If the legislative authority decides to continue the process of selection, negotiations shall continue with a qualified vendor or vendors in accordance with this section at the sole discretion of the legislative authority until an agreement is reached with one or more qualified vendors, or the process is terminated by the legislative authority. The process may be repeated until an agreement is reached.

(6) Prior to entering into a contract with a vendor, the legislative authority of the city or town shall make written findings, after holding a public hearing on the proposal, that it is in the public interest to enter into the contract, that the contract is financially sound, and that it is advantageous for the city or town to use this method for awarding contracts compared to other methods.

(7) Each contract shall include a project performance bond or bonds or other security by the vendor that in the judgment of the legislative authority of the city or town is sufficient to secure adequate performance by the vendor.

(8) The provisions of chapters 39.12, 39.19, and 39.25 RCW shall apply to a contract entered into under this section to the same extent as if the systems and plants were owned by a public body.

(9) The vendor selection process permitted by this section shall be supplemental to and shall not be construed as a repeal of or limitation on any other authority granted by law.

The alternative selection process provided by this section may not be used in the selection of a person or entity to construct a publicly owned facility for the storage or transfer of solid waste or solid waste handling equipment unless the facility is either (a) privately operated pursuant to a contract greater than five years, or (b) an integral part of a solid waste processing facility located on the same site. Instead, the applicable provisions of RCW 35.22.620, and 35.23.352, and chapters 39.04 and 39.30 RCW shall be followed. [1989 c 399 § 7; 1986 c 282 § 17. Formerly RCW 35.92.024.]

Legislative findings—Construction—1986 c 282 §§ 17-20: "The legislature finds that the regulation, management, and disposal of solid waste through waste reduction, recycling, and the use of resource recovery

facilities of the kind described in RCW 35.92.022 and 36.58.040 should be conducted in a manner substantially consistent with the priorities and policies of the solid waste management act, chapter 70.95 RCW. Nothing contained in sections 17 through 20 of this act shall detract from the powers, duties, and functions given to the utilities and transportation commission in chapter 81.77 RCW." [1986 c 282 § 16.]

Liberal construction—Supplemental powers—1986 c 282 §§ 16-20: "Sections 16 through 20 of this act, being necessary for the health and welfare of the state and its inhabitants, shall be liberally construed to effect its purposes. Sections 16 through 20 of this act shall be deemed to provide an alternative method for the performance of those subjects authorized by these sections and shall be regarded as supplemental and additional to powers conferred by the Washington state Constitution, other state laws, and the charter of any city or county." [1986 c 282 § 21.]

Severability—1986 c 282: See RCW 82.18.900.

35.21.158 Collection and transportation of recyclable materials by recycling companies or nonprofit entities—Reuse or reclamation—Application of chapter. Nothing in this chapter shall prevent a recycling company or nonprofit entity from collecting and transporting recyclable materials from a buy-back center, drop-box, or from a commercial or industrial generator of recyclable materials, or upon agreement with a solid waste collection company.

Nothing in this chapter shall be construed as prohibiting a commercial or industrial generator of commercial recyclable materials from selling, conveying, or arranging for transportation of such material to a recycler for reuse or reclamation. [1989 c 431 § 33.]

Severability—1989 c 431: See RCW 70.95.901.

35.21.160 Jurisdiction over adjacent waters. The powers and jurisdiction of all incorporated cities and towns of the state having their boundaries or any part thereof adjacent to or fronting on any bay or bays, lake or lakes, sound or sounds, river or rivers, or other navigable waters are hereby extended into and over such waters and over any tidelands intervening between any such boundary and any such waters to the middle of such bays, sounds, lakes, rivers, or other waters in every manner and for every purpose that such powers and jurisdiction could be exercised if the waters were within the city or town limits. In calculating the area of any town for the purpose of determining compliance with the limitation on the area of a town prescribed by RCW 35.21.010, the area over which jurisdiction is conferred by this section shall not be included. [1969 c 124 § 1; 1965 c 7 § 35.21.160. Prior: 1961 c 277 § 4; 1909 c 111 § 1; RRS § 8892.]

35.21.165 Driving while under the influence of liquor or drug—Minimum penalties. Except as limited by the maximum penalties authorized by law, no city or town may establish a penalty for an act that constitutes the crime of driving while under the influence of intoxicating liquor or any drug, as provided in RCW 46.61.502, or the crime of being in actual physical control of a motor vehicle while under the influence of intoxicating liquor or any drug, as provided in RCW 46.61.504, that is less than the penalties prescribed for those crimes in RCW 46.61.515. [1983 c 165 § 40.]

Legislative finding, intent—Effective dates—Severability—1983 c 165: See notes following RCW 46.20.308.

35.21.175 Offices to be open certain days and hours. All city and town offices shall be kept open for the transaction of business during such days and hours as the municipal legislative authority shall by ordinance prescribe. [1965 c 7 § 35.21.175. Prior: 1955 ex.s. c 9 § 4; prior: 1951 c 100 § 2.]

35.21.180 Ordinances—Adoption of codes by reference. Ordinances passed by cities or towns must be posted or published in a newspaper as required by their respective charters or the general laws: PROVIDED, That ordinances may by reference adopt Washington state statutes and codes, including fire codes and ordinances relating to the construction of buildings, the installation of plumbing, the installation of electric wiring, health and sanitation, the slaughtering, processing and selling of meats and meat products for human consumption, the production, pasteurizing and sale of milk and milk products, or other subjects, may adopt by reference, any printed code or compilation, or portions thereof, together with amendments thereof or additions thereto, on the subject of the ordinance; and where publications of ordinances in a newspaper is required, such Washington state statutes or codes or other codes or compilations so adopted need not be published therein: PROVIDED, HOWEVER, That not less than one copy of such statute, code or compilation and amendments and additions thereto adopted by reference shall be filed for use and examination by the public, in the office of the city or town clerk of said city, or town prior to adoption thereof. Any city or town ordinance heretofore adopting any state law or any such codes or compilations by reference are hereby ratified and validated. [1982 c 226 § 1; 1965 c 7 § 35.21.180. Prior: 1963 c 184 § 1; 1943 c 213 § 1; 1935 c 32 § 1; Rem. Supp. 1943 § 9199-1.]

Effective date—1982 c 226: "This act shall take effect on July 1, 1982." [1982 c 226 § 8.]

35.21.190 Parkways, park drives and boulevards. Any city or town council upon request of the board of park commissioners, shall have authority to designate such streets as they may see fit as parkways, park drives, and boulevards, and to transfer all care, maintenance and improvement of the surface thereof to the board of park commissioners, or to such authority of such city or town as may have the care and management of the parks, parkways, boulevards and park drives of the city.

Any city or town may acquire, either by gift, purchase or the right of eminent domain, the right to limit the class, character and extent of traffic that may be carried on such parkways, park drives and boulevards, and to prescribe that the improvement of the surface thereof shall be made wholly in accordance with plans of such board of park commissioners, but that the setting over of all such streets for such purposes shall not in any wise limit the right and authority of the city council to construct underneath the surface thereof any and all public utilities nor to deprive the council of the right to levy assessments for special benefits. In the construction of any such utilities, any damages done to the surface of such parkways, park drives or boulevards shall not be borne by any park funds of such city or town. [1965 c 7 § 35.21.190. Prior: 1911 c 98 § 57; RRS § 9410.]

35.21.200 Residence qualifications of appointive officials and employees. Any city or town may by ordinance of its legislative authority determine whether there shall be any residential qualifications for any or all of its appointive officials or for preference in employment of its employees, but residence of an employee outside the limits of such city or town shall not be grounds for discharge of any regularly appointed civil service employee otherwise qualified: PROVIDED, That this section shall not authorize a city or town to change any residential qualifications prescribed in any city charter for any appointive official or employee: PROVIDED, FURTHER, That all employees appointed prior to the enactment of any ordinance establishing such residence qualifications as provided herein or who shall have been appointed or employed by such cities or towns having waived such residential requirements shall not be discharged by reason of such appointive officials or employees having established their residence outside the limits of such city or town: PROVIDED, FURTHER, That this section shall not authorize a city or town to change the residential requirements with respect to employees of private public utilities acquired by public utility districts or by the city or town. [1965 c 7 § 35.21.200. Prior: 1951 c 162 § 1; 1941 c 25 § 1; Rem. Supp. 1941 § 9213-3.]

35.21.203 Recall sufficiency hearing—Payment of defense expenses. The necessary expenses of defending an elective city or town official in a judicial hearing to determine the sufficiency of a recall charge as provided in RCW 29.82.023 shall be paid by the city or town if the official requests such defense and approval is granted by the city or town council. The expenses paid by the city or town may include costs associated with an appeal of the decision rendered by the superior court concerning the sufficiency of the recall charge. [1989 c 250 § 2.]

35.21.205 Liability insurance for officials and employees. Each city or town may purchase liability insurance with such limits as it may deem reasonable for the purpose of protecting its officials and employees against liability for personal or bodily injuries and property damage arising from their acts or omissions while performing or in good faith purporting to perform their official duties. [1973 c 125 § 2.]

Dog handler using police dog in line of duty—Immunity: RCW 4.24.410.

35.21.207 Liability insurance for officers and employees authorized. See RCW 36.16.138.

35.21.209 Liability insurance and workers' compensation for offenders performing court-ordered community service. The legislative authority of a city or town may purchase liability insurance in an amount it deems reasonable to protect the city or town, its officers, and employees against liability for the wrongful acts of offenders or injury or damage incurred by offenders in the course of court-ordered community service, and may elect to treat offenders as employees and/or workers under Title 51 RCW. [1984 c 24 § 1.]

Workers' compensation coverage of offenders performing community service: RCW 51.12.045.

35.21.210 Sewerage, drainage and water supply. Any city or town shall have power to provide for the sewerage, drainage and water supply thereof, and to establish, construct and maintain a system or systems of sewers and drains and a system or systems of water supply, within or without the corporate limits of such city or town, and to control, regulate and manage the same. [1965 c 7 § 35.21.210. Prior: 1911 c 98 § 3; RRS § 9354.]

35.21.220 Sidewalks—Regulation of use of. Cities of several classes in this state shall be empowered to regulate the use of sidewalks within their limits, and may in their discretion and under such terms and conditions as they may determine permit a use of the same by abutting owners, provided such use does not in their judgment unduly and unreasonably impair passage thereon, to and fro, by the public. Such permission shall not be considered as establishing a prescriptive right, and the right may be revoked at any time by the authorities of such cities. [1965 c 7 § 35.21.220. Prior: 1927 c 261 § 1; RRS § 9213-1.]

35.21.225 Transportation benefit districts. The legislative authority of a city may establish one or more transportation benefit districts within a city for the purpose of acquiring, constructing, improving, providing, and funding any city street, county road, or state highway improvement that is (1) consistent with state, regional, and local transportation plans, (2) necessitated by existing or reasonably foreseeable congestion levels attributable to economic growth, and (3) partially funded by local government or private developer contributions, or a combination of such contributions. Such transportation improvements shall be owned by the city of jurisdiction if located in an incorporated area, by the county of jurisdiction if located in an unincorporated area, or by the state in cases where the transportation improvement is or becomes a state highway; and all such transportation improvements shall be administered as other public streets, roads, and highways. The district may include any area within the corporate limits of another city if that city has agreed to the inclusion pursuant to chapter 39.34 RCW. The district may include any unincorporated area if the county legislative authority has agreed to the inclusion pursuant to chapter 39.34 RCW. The agreement shall specify the area and such other powers as may be granted to the benefit district.

The members of the city legislative authority, acting ex officio and independently, shall compose the governing body of the district. The city treasurer shall act as the ex officio treasurer of the district: PROVIDED, That where a transportation benefit district includes any unincorporated area or portion of another city, the district may be governed as provided in an interlocal agreement adopted pursuant to chapter 39.34 RCW. The electors of the district shall all be registered voters residing within the district. For the purposes of this section, the term "city" means both cities and towns. [1989 c 53 § 2; 1987 c 327 § 3.]

Severability—1989 c 53: See note following RCW 36.73.020.

Transportation benefit districts: Chapter 36.73 RCW.

35.21.230 Streets over tidelands declared public highways. All streets in any incorporated city in this state,

extending from high tide into the navigable waters of the state, are hereby declared public highways. [1965 c 7 § 35.21.230. Prior: 1890 p 733 § 1; RRS § 9293.]

Public highways: Title 47 RCW.

35.21.240 Streets over tidelands—Control of. All streets declared public highways under the provisions of RCW 35.21.230 shall be under the control of the corporate authorities of the respective cities. [1965 c 7 § 35.21.240. Prior: 1890 p 733 § 2; RRS § 9294.]

35.21.250 Streets and alleys over first class tidelands—Control of. All streets and alleys, which have been heretofore or may hereafter be established upon, or across tide and shore lands of the first class shall be under the supervision and control of the cities within whose corporate limits such tide and shore lands are situated, to the same extent as are all other streets and alleys of such cities. [1965 c 7 § 35.21.250. Prior: 1901 c 149 § 1; RRS § 9295.]

35.21.260 Streets—Annual report to secretary of transportation. The governing authority of each city and town on or before March 31st of each year shall submit such records and reports regarding street operations in the city or town to the secretary of transportation on forms furnished by him as are necessary to enable him to compile an annual report thereon. [1984 c 7 § 19; 1977 c 75 § 29; 1965 c 7 § 35.21.260. Prior: 1943 c 82 § 12; 1937 c 187 § 64; Rem. Supp. 1943 § 6450-64.]

Severability—1984 c 7: See note following RCW 47.01.141.

35.21.270 Streets—Records of funds received and used for construction, repair, maintenance. The city engineer or the city clerk of each city or town shall maintain records of the receipt and expenditure of all moneys used for construction, repair, or maintenance of streets and arterial highways.

To assist in maintaining uniformity in such records, the division of municipal corporations, with the advice and assistance of the department of transportation, shall prescribe forms and types of records to be so maintained. [1984 c 7 § 20; 1965 c 7 § 35.21.270. Prior: 1949 c 164 § 5; Rem. Supp. 1949 § 9300-5.]

Severability—1984 c 7: See note following RCW 47.01.141.

35.21.275 Street improvements—Provision of supplies or materials. Any city or town may assist a street abutter in improving the street serving the abutter's premises by providing asphalt, concrete, or other supplies or materials. The furnishing of supplies or materials or paying to the abutter the cost thereof and the providing of municipal inspectors and other incidental personnel shall not render the street improvements a public work or improvement subject to competitive bidding. The legislative authority of such city or town shall approve any such assistance at a public meeting and shall maintain a public register of any such assistance setting forth the value, nature, purpose, date and location of the assistance and the name of the beneficiary. [1983 c 103 § 1.]

35.21.278 Contracts with community service organizations for public improvements—Limitations. (1) Without regard to competitive bidding laws for public works, a county, city, town, school district, metropolitan park district, park and recreation district, or park and recreation service area may contract with a chamber of commerce, a service organization, a community, youth, or athletic association, or other similar association located and providing service in the immediate neighborhood, for drawing design plans, making improvements to a park, school playground, or public square, installing equipment or artworks, or providing maintenance services for the facility as a community or neighborhood project, and may reimburse the contracting association its expense. The contracting association may use volunteers in the project and provide the volunteers with clothing or tools; meals or refreshments; accident/injury insurance coverage; and reimbursement of their expenses. The consideration to be received by the public entity through the value of the improvements, artworks, equipment, or maintenance shall have a value at least equal to three times that of the payment to the contracting association. All payments made by a public entity under the authority of this section for all such contracts in any one year shall not exceed twenty-five thousand dollars or two dollars per resident within the boundaries of the public entity, whichever is greater.

(2) A county, city, town, school district, metropolitan park district, park and recreation district, or park and recreation service area may ratify an agreement, which qualifies under subsection (1) of this section and was made before June 9, 1988. [1988 c 233 § 1.]

35.21.280 Tax on admissions—Exception as to schools. Every city and town may levy and fix a tax of not more than one cent on twenty cents or fraction thereof to be paid by the person who pays an admission charge to any place: PROVIDED, No city or town shall impose such tax on persons paying an admission to any activity of any elementary or secondary school. This includes a tax on persons who are admitted free of charge or at reduced rates to any place for which other persons pay a charge or a regular higher charge for the same privileges or accommodations. The city or town may require anyone who receives payment for an admission charge to collect and remit the tax to the city or town.

The term "admission charge" includes:

- (1) A charge made for season tickets or subscriptions;
- (2) A cover charge, or a charge made for use of seats and tables reserved or otherwise, and other similar accommodations;
- (3) A charge made for food and refreshment in any place where free entertainment, recreation or amusement is provided;
- (4) A charge made for rental or use of equipment or facilities for purposes of recreation or amusement; if the rental of the equipment or facilities is necessary to the enjoyment of a privilege for which a general admission is charged, the combined charges shall be considered as the admission charge;
- (5) Automobile parking charges if the amount of the charge is determined according to the number of passengers

in the automobile. [1965 c 7 § 35.21.280. Prior: 1957 c 126 § 1; 1951 c 35 § 1; 1943 c 80 § 1; Rem. Supp. 1943 § 8370-44a.]

35.21.290 Utility services—Lien for. Cities and towns owning their own waterworks, or electric light or power plants shall have a lien against the premises to which water, electric light, or power services were furnished for four months charges therefor due or to become due, but not for any charges more than four months past due: **PROVIDED,** That the owner of the premises or the owner of a delinquent mortgage thereon may give written notice to the superintendent or other head of such works or plant to cut off service to such premises accompanied by payment or tender of payment of the then delinquent and unpaid charges for such service against the premises together with the cut-off charge, whereupon the city or town shall have no lien against the premises for charges for such service thereafter furnished, nor shall the owner of the premises or the owner of a delinquent mortgage thereon be held for the payment thereof. [1965 c 7 § 35.21.290. Prior: 1933 c 135 § 1; 1909 c 161 § 1; RRS § 9471.]

35.21.300 Utility services—Enforcement of lien—Limitations on termination of service for residential heating. (1) The lien for charges for service by a city waterworks, or electric light or power plant may be enforced only by cutting off the service until the delinquent and unpaid charges are paid, except that until June 30, 1991, utility service for residential space heating may be terminated between November 15 and March 15 only as provided in subsections (2) and (4) of this section. In the event of a disputed account and tender by the owner of the premises of the amount he claims to be due before the service is cut off, the right to refuse service to any premises shall not accrue until suit has been entered by the city and judgment entered in the case.

(2) 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 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.

(3) 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.

(4) All municipal utilities 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.

(5) An agreement between the customer and the utility, whether oral or written, shall not waive the protections afforded under this chapter. [1991 c 165 § 2; 1990 1st ex.s. c 1 § 1; 1987 c 356 § 1; 1986 c 245 § 1; 1985 c 6 § 3; 1984

c 251 § 1; 1965 c 7 § 35.21.300. Prior: 1909 c 161 § 2; RRS § 9472.]

Findings—1991 c 165: "The legislature finds that the health and welfare of the people of the state of Washington require that all citizens receive essential levels of heat and electric service regardless of economic circumstance and that rising energy costs have had a negative effect on the affordability of housing for low-income citizens and have made it difficult for low-income citizens of the state to afford adequate fuel for residential space heat. The legislature further finds that level payment plans, the protection against winter heating shutoff, and house weatherization programs have all been beneficial to low-income persons." [1991 c 165 § 1.]

35.21.310 Removal of overhanging or obstructing vegetation—Removal, destroying debris. Any city or town may by general ordinance require the owner of any property therein to remove or destroy all trees, plants, shrubs or vegetation, or parts thereof, which overhang any sidewalk or street or which are growing thereon in such manner as to obstruct or impair the free and full use of the sidewalk or street by the public; and may further so require the owner of any property therein to remove or destroy all grass, weeds, shrubs, bushes, trees or vegetation growing or which has grown and died, and to remove or destroy all debris, upon property owned or occupied by them and which are a fire hazard or a menace to public health, safety or welfare. The ordinance shall require the proceedings therefor to be initiated by a resolution of the governing body of the city or town, adopted after not less than five days' notice to the owner, which shall describe the property involved and the hazardous condition, and require the owner to make such removal or destruction after notice given as required by said ordinance. The ordinance may provide that if such removal or destruction is not made by the owner after notice given as required by the ordinance in any of the above cases, that the city or town will cause the removal or destruction thereof and may also provide that the cost to the city or town shall become a charge against the owner of the property and a lien against the property. Notice of the lien herein authorized shall as nearly as practicable be in substantially the same form, filed with the same officer within the same time and manner, and enforced and foreclosed as is provided by law for liens for labor and materials.

The provisions of this section are supplemental and additional to any other powers granted or held by any city or town on the same or a similar subject. [1969 c 20 § 1; 1965 c 7 § 35.21.310. Prior: 1949 c 113 § 1; Rem. Supp. 1949 § 9213-10.]

Weeds, duty of city or town, extermination areas: RCW 17.04.160.

35.21.320 Warrants—Interest rate—Payment. All city and town warrants shall draw interest from and after their presentation to the treasurer, but no compound interest shall be paid on any warrant directly or indirectly. The city or town treasurer shall pay all warrants in the order of their number and date of issue whenever there are sufficient funds in the treasury applicable to the payment. If five hundred dollars (or any sum less than five hundred dollars as may be prescribed by ordinance) is accumulated in any fund having warrants outstanding against it, the city or town treasurer shall publish a call for warrants to that amount in the next issue of the official newspaper of the city or town. The notice shall describe the warrants so called by number and specifying the fund upon which they were drawn: PROVID-

(1992 Ed.)

ED, That no call need be made until the amount accumulated is equal to the amount due on the warrant longest outstanding: PROVIDED FURTHER, That no more than two calls shall be made in any one month.

Any city or town treasurer who knowingly fails to call for or pay any warrant in accordance with the provisions of this section shall be fined not less than twenty-five dollars nor more than five hundred dollars and conviction thereof shall be sufficient cause for removal from office. [1985 c 469 § 20; 1965 c 7 § 35.21.320. Prior: (i) 1893 c 48 § 1, part; RRS § 4116, part. (ii) 1895 c 152 § 2, part; RRS § 4119, part. (iii) 1895 c 152 § 1, part; RRS § 4118, part.]

35.21.333 Chief of police or marshal—Eligibility requirements. (1) A person seeking appointment to the office of chief of police or marshal, of a city or town, including a code city, with a population in excess of one thousand, is ineligible unless that person:

- (a) Is a citizen of the United States of America;
 - (b) Has obtained a high school diploma or general equivalency diploma;
 - (c) Has not been convicted under the laws of this state, another state, or the United States of a felony;
 - (d) Has not been convicted of a gross misdemeanor or any crime involving moral turpitude within five years of the date of application;
 - (e) Has received at least a general discharge under honorable conditions from any branch of the armed services for any military service if the person was in the military service;
 - (f) Has completed at least two years of regular, uninterrupted, full-time commissioned law enforcement employment involving enforcement responsibilities with a government law enforcement agency; and
 - (g) The person has been certified as a regular and commissioned enforcement officer through compliance with this state's basic training requirement or equivalency.
- (2) A person seeking appointment to the office of chief of police or marshal, of a city or town, including a code city, with a population of one thousand or less, is ineligible unless that person conforms with the requirements of subsection (1) (a) through (e) of this section. A person so appointed as chief of police or marshal must successfully complete the state's basic training requirement or equivalency within nine months after such appointment, unless an extension has been granted by the criminal justice training commission.
- (3) A person seeking appointment to the office of chief of police or marshal shall provide a sworn statement under penalty of perjury to the appointing authority stating that the person meets the requirements of this section. [1987 c 339 § 4.]

Intent—1987 c 339: "The intent of this act is to require certain qualifications for candidates for the office of chief of police or marshal, which position in whole or in part oversees law enforcement personnel or activities for a city or town.

The legislature finds that over the past century the field of law enforcement has become increasingly complex and many new techniques and resources have evolved both socially and technically. In addition the ever-changing requirements of law, both constitutional and statutory provisions protecting the individual and imposing responsibilities and legal liabilities of law enforcement officers and the government of which they represent, require an increased level of training and experience in the field of law enforcement.

The legislature, therefore finds that minimum requirements are reasonable and necessary to seek and hold the offices or office of chief of police or marshal, and that such requirements are in the public interest." [1987 c 339 § 3.]

Severability—1987 c 339: "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 339 § 8.]

Effective date—1987 c 339: "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 339 § 9.]

35.21.334 Chief of police or marshal—Background investigation. Before making an appointment in the office of chief of police or marshal, the appointing agency shall complete a thorough background investigation of the candidate. The Washington association of sheriffs and police chiefs shall develop advisory procedures which may be used by the appointing authority in completing its background investigation of candidates for the office of chief of police or marshal. [1987 c 339 § 5.]

Intent—Severability—Effective date—1987 c 339: See notes following RCW 35.21.333.

35.21.335 Chief of police or marshal—Vacancy. In the case of a vacancy in the office of chief of police or marshal, all requirements and procedures of RCW 35.21.333 and 35.21.334 shall be followed in filling the vacancy. [1987 c 339 § 6.]

Intent—Severability—Effective date—1987 c 339: See notes following RCW 35.21.333.

35.21.340 Cemeteries and funeral facilities. See chapter 68.52 RCW.

35.21.350 Civil service in police and fire departments. See Title 41 RCW.

35.21.360 Eminent domain by cities and towns. See chapter 8.12 RCW.

35.21.370 Joint county and city hospitals. See chapter 36.62 RCW.

35.21.380 Joint county and city buildings. See chapter 36.64 RCW.

35.21.385 Counties with a population of two hundred ten thousand or more may contract with cities concerning buildings and related improvements. See RCW 36.64.070.

35.21.390 Public employment, civil service and pensions. See Title 41 RCW.

35.21.395 Historic preservation—Authorization to acquire property, borrow money, issue bonds, etc. Any city or town may acquire title to or any interest in real and personal property for the purpose of historic preservation and may restore, improve, maintain, manage, and lease the

property for public or private use and may enter into contracts, borrow money, and issue bonds and other obligations for such purposes. This authorization shall not expand the eminent domain powers of cities or towns. [1984 c 203 § 3.]

Severability—1984 c 203: See note following RCW 35.43.140.

35.21.400 City may acquire property for parks, recreational, viewpoint, greenbelt, conservation, historic, scenic, or view purposes. See RCW 36.34.340.

35.21.403 City may establish lake management districts. Any city or town may establish lake management districts within its boundaries as provided in chapter 36.61 RCW. When a city or town establishes a lake management district pursuant to chapter 36.61 RCW, the term "county legislative authority" shall be deemed to mean the city or town governing body, the term "county" shall be deemed to mean the city or town, and the term "county treasurer" shall be deemed to mean the city or town treasurer or other fiscal officer. [1985 c 398 § 27.]

35.21.405 Moorage facilities—Regulations authorized—Port charges, delinquency—Abandoned vessels, public sale. See RCW 53.08.310 and 53.08.320.

35.21.410 Nonpolluting power generation by individual—Exemption from regulation—Authorization to contract with utility. See chapter 80.58 RCW.

35.21.412 Hydroelectric resources—Separate legal authority—Creation by irrigation districts and cities, towns, or public utility districts. See RCW 87.03.825 through 87.03.840.

35.21.415 Electrical utilities—Civil immunity of officials and employees for good faith mistakes and errors of judgment. Officials and employees of cities and towns shall be immune from civil liability for mistakes and errors of judgment in the good faith performance of acts within the scope of their official duties involving the exercise of judgment and discretion which relate solely to their responsibilities for electrical utilities. This grant of immunity shall not be construed as modifying the liability of the city or town. [1983 1st ex.s. c 48 § 1.]

Severability—1983 1st ex.s. c 48: "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 1st ex.s. c 48 § 4.]

35.21.417 Hydroelectric reservoir extending across international boundary—Agreement with Province of British Columbia. To carry out a treaty between the United States of America and Canada, a city that maintains hydroelectric facilities with a reservoir which extends across the international boundary, may enter into an agreement with the Province of British Columbia for enhancing recreational opportunities and protecting environmental resources of the watershed of the river or rivers which forms the reservoir. The agreement may provide for establishment of and payments into an environmental endowment fund and

establishment of an administering commission to implement the purpose of the treaty and the agreement. [1984 c 1 § 1.]

35.21.418 Hydroelectric reservoir extending across international boundary—Commission—Powers. A commission, established by an agreement between a Washington municipality and the Province of British Columbia to carry out a treaty between the United States of America and Canada as authorized in RCW 35.21.417, shall be public and shall have all powers and capacity necessary and appropriate for the purposes of performing its functions under the agreement, including, but not limited to, the following powers and capacity: To acquire and dispose of real property other than by condemnation; to enter into contracts; to sue and be sued in either Canada or the United States; to establish an endowment fund in either or both the United States and Canada and to invest the endowment fund in either or both countries; to solicit, accept, and use donations, grants, bequests, or devises intended for furthering the functions of the endowment; to adopt such rules or procedures as it deems desirable for performing its functions; to engage advisors and consultants; to establish committees and subcommittees; to adopt rules for its governance; to enter into agreements with public and private entities; and to engage in activities necessary and appropriate for implementing the agreement and the treaty.

The endowment fund and commission may not be subject to state or local taxation. A commission, so established, may not be subject to statutes and laws governing Washington cities and municipalities in the conduct of its internal affairs: PROVIDED, That all commission members appointed by the municipality shall comply with chapter 42.22 RCW, and: PROVIDED FURTHER, That all commission meetings held within the state of Washington shall be held in compliance with chapter 42.30 RCW. All obligations or liabilities incurred by the commission shall be satisfied exclusively from its own assets and insurance. [1984 c 1 § 2.]

35.21.420 Utilities—City may support county in which generating plant located. Any city owning and operating a public utility and having facilities for the generation of electricity located in a county other than that in which the city is located, may provide for the public peace, health, safety and welfare of such county as concerns the facilities and the personnel employed in connection therewith, by contributing to the support of the county government of any such county and enter into contracts with any such county therefor. [1965 c 7 § 35.21.420. Prior: 1951 c 104 § 1.]

35.21.422 Utilities—Cities in a county with a population of two hundred ten thousand or more west of Cascades may support cities, towns, counties and taxing districts in which facilities located. Any city, located within a county with a population of two hundred ten thousand or more west of the Cascades, owning and operating a public utility and having facilities for the distribution of electricity located outside its city limits, may provide for the support of cities, towns, counties and taxing districts in which such facilities are located, and enter into contracts

with such county therefor. Such contribution shall be based upon the amount of retail sales of electricity, other than to governmental agencies, made by such city in the areas of such cities, towns, counties or taxing districts in which such facilities are located, and shall be divided among them on the same basis as taxes on real and personal property therein are divided. [1991 c 363 § 38; 1967 ex.s. c 52 § 1.]

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

35.21.425 City constructing generating facility in other county—Reimbursement of county or school district. Whenever after March 17, 1955, any city shall construct hydroelectric generating facilities or acquire land for the purpose of constructing the same in a county other than the county in which such city is located, and by reason of such construction or acquisition shall (1) cause loss of revenue and/or place a financial burden in providing for the public peace, health, safety, welfare, and added road maintenance in such county, in addition to road construction or relocation as set forth in RCW 90.28.010 and/or (2) shall cause any loss of revenues and/or increase the financial burden of any school district affected by the construction because of an increase in the number of pupils by reason of the construction or the operation of said generating facilities, the city shall enter into an agreement with said county and/or the particular school district or districts affected for the payment of moneys to recompense such losses or to provide for such increased financial burden, upon such terms and conditions as may be mutually agreeable to the city and the county and/or school district or districts. [1965 c 7 § 35.21.425. Prior: 1955 c 252 § 1.]

35.21.426 City constructing generating facility in other county—Notice of loss—Negotiations—Arbitration. Whenever a county or school district affected by the project sustains such financial loss or is affected by an increased financial burden as above set forth or it appears that such a financial loss or burden will occur beginning not later than within the next three months, such county or school district shall immediately notify the city in writing setting forth the particular losses or increased burden and the city shall immediately enter into negotiations to effect a contract. In the event the city and the county or school district are unable to agree upon terms and conditions for such contract, then in that event, within sixty days after such notification, the matter shall be submitted to a board of three arbitrators, one of whom shall be appointed by the city council of the city concerned; one by the board of county commissioners for the county concerned or by the school board for the school district concerned, and one by the two arbitrators so appointed. In the event such arbitrators are unable to agree on a third arbitrator within ten days after their appointment then the third arbitrator shall be selected by the state auditor. The board of arbitrators shall determine the loss of revenue and/or the cost of the increased financial burden placed upon the county or school district and its findings shall be binding upon such city and county or school district and the parties shall enter into a contract for reimbursement by the city in accordance with such findings, with the payment under such findings to be retroactive to the date when the city was first

notified in writing. [1965 c 7 § 35.21.426. Prior: 1955 c 252 § 2.]

35.21.427 City constructing generating facility in other county—Additional findings—Renegotiation. The findings provided for in RCW 35.21.426 may also provide for varying payments based on formulas to be stated in the findings, and for varying payments for different stated periods. The findings shall also state a future time at which the agreement shall be renegotiated or, in event of failure to agree on such renegotiation, be arbitrated as provided in RCW 35.21.426. [1965 c 7 § 35.21.427. Prior: 1955 c 252 § 3.]

35.21.430 Utilities—City may pay taxing districts involved after acquisition of private power facilities. On and after January 1, 1951, whenever a city or town shall acquire electric generation, transmission and/or distribution properties which at the time of acquisition were in private ownership, the legislative body thereof may each year order payments made to all taxing districts within which any part of the acquired properties are located, in amounts not greater than the taxes, exclusive of excess levies voted by the people and/or levies made for the payment of bonded indebtedness pursuant to the provisions of Article VII, section 2 of the Constitution of this state, as now or hereafter amended, and/or by statutory provision, imposed on such properties in the last tax year in which said properties were in private ownership. [1973 1st ex.s. c 195 § 15; 1965 c 7 § 35.21.430. Prior: 1951 c 217 § 1.]

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

35.21.440 Utilities—Additional payments to school districts having bonded indebtedness. In the event any portion of such property shall be situated in any school district which, at the time of acquisition, has an outstanding bonded indebtedness, the city or town may in addition to the payments authorized in RCW 35.21.430, make annual payments to such school district which shall be applied to the retirement of the principal and interest of such bonds. Such payments shall be computed in the proportion which the assessed valuation of utility property so acquired shall bear to the total assessed valuation of the district at the time of the acquisition. [1965 c 7 § 35.21.440. Prior: 1951 c 217 § 2.]

35.21.450 Utilities—Payment of taxes. Annual payments shall be ordered by an ordinance or ordinances of the legislative body. The ordinance shall further order a designated officer to notify in writing the county assessor of each county in which any portion of such property is located, of the city's intention to make such payments. The county assessor shall thereupon enter upon the tax rolls of the county the amount to which any taxing district of the county is entitled under the provisions of RCW 35.21.430 to 35.21.450, inclusive; and upon delivery of the tax rolls to the county treasurer as provided by law, the amount of the tax as hereinbefore authorized and determined shall become due and payable by the city or town the same as real property taxes. [1965 c 7 § 35.21.450. Prior: 1951 c 217 § 3.]

35.21.500 Compilation, codification, revision of city or town ordinances—Scope of codification. "Codification" means the editing, rearrangement and/or grouping of ordinances under appropriate titles, parts, chapters and sections and includes but is not limited to the following:

(1) Editing ordinances to the extent deemed necessary or desirable, for the purpose of modernizing and clarifying the language of such ordinances, but without changing the meaning of any such ordinance.

(2) Substituting for the term "this ordinance," where necessary the term "section," "part," "code," "chapter," "title," or reference to specific section or chapter numbers, as the case may require.

(3) Correcting manifest errors in reference to other ordinances, laws and statutes, and manifest spelling, clerical or typographical errors, additions, or omissions.

(4) Dividing long sections into two or more sections and rearranging the order of sections to insure a logical arrangement of subject matter.

(5) Changing the wording of section captions, if any, and providing captions to new chapters and sections.

(6) Striking provisions manifestly obsolete and eliminating conflicts and inconsistencies so as to give effect to the legislative intent. [1965 c 7 § 35.21.500. Prior: 1957 c 97 § 1.]

35.21.510 Compilation, codification, revision of city or town ordinances—Authorized. Any city or town may prepare or cause to be prepared a codification of its ordinances. [1965 c 7 § 35.21.510. Prior: 1957 c 97 § 2.]

35.21.520 Compilation, codification, revision of city or town ordinances—Adoption as official code of city. Any city or town having heretofore prepared or caused to be prepared, or now preparing or causing to be prepared, or that hereafter prepares or causes to be prepared, a codification of its ordinances may adopt such codification by enacting an ordinance adopting such codification as the official code of the city, provided the procedure and requirements of RCW 35.21.500 through 35.21.570 are complied with. [1965 c 7 § 35.21.520. Prior: 1957 c 97 § 3.]

35.21.530 Compilation, codification, revision of city or town ordinances—Filing—Notice of hearing. When a city or town codifies its ordinances, it shall file a typewritten or printed copy of the codification in the office of the city or town clerk. After the first reading of the title of the adopting ordinance and of the title of the code to be adopted thereby, the legislative body of the city or town shall schedule a public hearing thereon. Notice of the hearing shall be published once not more than fifteen nor less than ten days prior to the hearing in the official newspaper of the city, indicating that its ordinances have been compiled, or codified and that a copy of such compilation or codification is on file in the city or town clerk's office for inspection. The notice shall state the time and place of the hearing. [1985 c 469 § 21; 1965 c 7 § 35.21.530. Prior: 1957 c 97 § 4.]

35.21.540 Compilation, codification, revision of city or town ordinances—Legislative body may amend, adopt,

or reject adopting ordinance—When official code. After the hearing, the legislative body may amend, adopt, or reject the adopting ordinance in the same manner in which it is empowered to act in the case of other ordinances. Upon the enactment of such adopting ordinance, the codification shall be the official code of ordinances of the city or town. [1965 c 7 § 35.21.540. Prior: 1957 c 97 § 5.]

35.21.550 Compilation, codification, revision of city or town ordinances—Copies as proof of ordinances. Copies of such codes in published form shall be received without further proof as the ordinances of permanent and general effect of the city or town in all courts and administrative tribunals of this state. [1965 c 7 § 35.21.550. Prior: 1957 c 97 § 6.]

Ordinances, admissibility as evidence: RCW 5.44.080.

35.21.560 Compilation, codification, revision of city or town ordinances—Adoption of new material. New material shall be adopted by the city or town legislative body as separate ordinances prior to the inclusion thereof in such codification: PROVIDED, That any ordinance amending the codification shall set forth in full the section or sections, or subsection or subsections of the codification being amended, as the case may be, and this shall constitute a sufficient compliance with any statutory or charter requirement that no ordinance or any section thereof shall be revised or amended unless the new ordinance sets forth the revised ordinance or amended section in full. [1965 c 7 § 35.21.560. Prior: 1961 c 70 § 1; 1957 c 97 § 7.]

35.21.570 Compilation, codification, revision of city or town ordinances—Codification satisfies single subject, title, and amendment requirements of statute or charter. When a city or town shall make a codification of its ordinances in accordance with RCW 35.21.500 through 35.21.570 that shall constitute a sufficient compliance with any statutory or charter requirements that no ordinance shall contain more than one subject which shall be clearly expressed in its title and that no ordinance or any section thereof shall be revised or amended unless the new ordinance sets forth the revised ordinance or amended section in full. [1965 c 7 § 35.21.570. Prior: 1957 c 97 § 8.]

35.21.590 Executory conditional sales contracts for purchase of property—Limit on indebtedness—Election, when. See RCW 39.30.010.

35.21.600 Powers of cities having ten thousand or more population—Power to frame charter—"Population" defined. Any city of ten thousand or more population shall have all power to conduct its affairs consistent with and subject to state law, including the power to frame a charter for its own government in accordance with RCW 35.22.030 through 35.22.200, as now or hereafter amended. "Population" means the number of residents as shown by the figures released for the most recent official state, federal, or county census, or population determination made under the direction of the office of financial management. Once any city has ten thousand or more population, any subsequent decrease in

population below ten thousand shall not affect any powers theretofore acquired under this section. [1979 c 151 § 27; 1965 ex.s. c 47 § 6; 1965 c 7 § 35.21.600. Prior: 1963 c 222 § 1.]

35.21.610 Cities having ten thousand or more population may frame charter without changing classification—Alternative procedure to become city of first class for cities having twenty thousand or more population. Notwithstanding any other provision of chapters 35.01 and 35.06 RCW, any city having a population of ten thousand inhabitants, or more, may elect to frame a charter for its own government in the same manner as is provided for in RCW 35.22.030 through 35.22.200, as now or hereafter amended, without changing its classification unless it desires to do so by taking the action provided therefor in chapter 35.06 RCW: PROVIDED, That if a city has a population of twenty thousand inhabitants, or more, and desires to become a city of the first class, it may do so in accordance with chapter 35.22 RCW without following the procedure prescribed by chapter 35.06 RCW to effect a change in its classification. [1965 ex.s. c 47 § 1.]

Cities of ten thousand or more may frame charters: State Constitution Art. 11 § 10 (Amendment 40), RCW 35.22.030.

35.21.620 Powers of cities adopting charters. Any city adopting a charter under Article XI, section 10 of the Constitution of the state of Washington, as amended by amendment 40, shall have all of the powers which are conferred upon incorporated cities and towns by Title 35 RCW, or other laws of the state, and all such powers as are usually exercised by municipal corporations of like character and degree. [1965 ex.s. c 47 § 2.]

Legislative powers of charter city: RCW 35.22.200.

35.21.630 Youth agencies—Establishment authorized. Any city, town, or county may establish a youth agency to investigate, advise and act on, within the powers of that municipality, problems relating to the youth of that community, including employment, educational, economic and recreational opportunities, juvenile delinquency and dependency, and other youth problems and activities as that municipality may determine. Any city, town, or county may contract with any other city, town, or county to jointly establish such a youth agency. [1965 ex.s. c 84 § 5.]

35.21.640 Conferences to study regional and governmental problems, counties and cities may establish. See RCW 36.64.080.

35.21.650 Prepayment of taxes or assessments authorized. All moneys, assessments and taxes belonging to or collected for the use of any city or town, including any amounts representing estimates for future assessments and taxes, may be deposited by any taxpayer prior to the due date thereof with the treasurer or other legal depository for the benefit of the funds to which they belong to be credited against any future tax or assessment that may be levied or become due from the taxpayer: PROVIDED, That the taxpayer may with the concurrence of the treasurer designate a particular fund of such city or town against which such

prepayment of tax or assessment is made. [1967 ex.s. c 66 § 1.]

35.21.660 Demonstration Cities and Metropolitan Development Act—Agreements with federal government—Scope of authority. Notwithstanding any other provision of law, all cities shall have the power and authority to enter into agreements with the United States or any department or agency thereof, to carry out the purposes of the Demonstration Cities and Metropolitan Development Act of 1966 (PL 89-754; 80 Stat. 1255), and to plan, organize and administer programs provided for in such contracts. This power and authority shall include, but not be limited to, the power and authority to create public corporations, commissions and authorities to perform duties arising under and administer programs provided for in such contracts and to limit the liability of said public corporations, commissions, and authorities, in order to prevent recourse to such cities, their assets, or their credit. [1971 ex.s. c 177 § 5; 1970 ex.s. c 77 § 1.]

Establishment of public corporations to administer federal grants and programs: RCW 35.21.730 through 35.21.755.

35.21.670 Demonstration Cities and Metropolitan Development Act—Powers and limitations of public corporations, commissions or authorities created. Any public corporation, commission or authority created as provided in RCW 35.21.660, may be empowered to own and sell real and personal property; to contract with individuals, associations and corporations, and the state and the United States; to sue and be sued; to loan and borrow funds; to do anything a natural person may do; and to perform all manner and type of community services and activities in furtherance of an agreement by a city or by the public corporation, commission or authority with the United States to carry out the purposes of the Demonstration Cities and Metropolitan Development Act of 1966: PROVIDED, That

(1) All liabilities incurred by such public corporation, commission or authority shall be satisfied exclusively from the assets and credit of such public corporation, commission or authority; and no creditor or other person shall have any recourse to the assets, credit or services of the municipal corporation creating the same on account of any debts, obligations or liabilities of such public corporation, commission or authority;

(2) Such public corporation, commission or authority shall have no power of eminent domain nor any power to levy taxes or special assessments;

(3) The name, the organization, the purposes and scope of activities, the powers and duties of the officers, and the disposition of property upon dissolution of such public corporation, commission or authority shall be set forth in its charter of incorporation or organization, or in a general ordinance of the city or both. [1971 ex.s. c 177 § 7.]

35.21.680 Participation in Economic Opportunity Act programs. The legislative body of any city or town, is hereby authorized and empowered in its discretion by resolution or ordinance passed by a majority of the legislative body, to take whatever action it deems necessary to enable the city or town to participate in the programs set

forth in the Economic Opportunity Act of 1964 (Public Law 88-452; 78 Stat. 508), as amended. Such participation may be engaged in as a sole city or town operation or in conjunction or cooperation with the state, any other city or town, county, or municipal corporation, or any private corporation qualified under said Economic Opportunity Act. [1971 ex.s. c 177 § 3.]

35.21.685 Low-income housing—Loans and grants. A city or town may assist in the development or preservation of publicly or privately owned housing for persons of low income by providing loans or grants of general municipal funds to the owners or developers of the housing. The loans or grants shall be authorized by the legislative authority of the city or town. They may be made to finance all or a portion of the cost of construction, reconstruction, acquisition, or rehabilitation of housing that will be occupied by a person or family of low income. As used in this section, "low income" means income that does not exceed eighty percent of the median income for the standard metropolitan statistical area in which the city or town is located. Housing constructed with loans or grants made under this section shall not be considered public works or improvements subject to competitive bidding or a purchase of services subject to the prohibition against advance payment for services: PROVIDED, That whenever feasible the borrower or grantee shall make every reasonable and practicable effort to utilize a competitive public bidding process. [1986 c 248 § 1.]

35.21.690 Authority to regulate auctioneers—Limitations. A city or town shall not license auctioneers that are licensed by the state under chapter 18.11 RCW other than by requiring an auctioneer to obtain a general city or town business license and by subjecting an auctioneer to a city or town business and occupation tax. A city or town shall not require auctioneers that are licensed by the state under chapter 18.11 RCW to obtain bonding in addition to the bonding required by the state. [1984 c 189 § 2.]

35.21.692 Authority to regulate massage practitioners—Limitations. (1) A state licensed massage practitioner seeking a city or town license to operate a massage business must provide verification of his or her state massage license as provided for in RCW 18.108.030.

(2) The city or town may charge a licensing or operating fee, but the fee charged a state licensed massage practitioner shall not exceed the licensing or operating fee imposed on similar health care providers, such as physical therapists or occupational therapists, operating within the same city or town.

(3) A state licensed massage practitioner is not subject to additional licensing requirements not currently imposed on similar health care providers, such as physical therapists or occupational therapists. [1991 c 182 § 1.]

35.21.695 Authority to own and operate professional sports franchise. (1) Any city, code city, or county, individually or collectively, may own and operate an existing professional sports franchise when the owners of such

franchises announce their intention to sell or move a franchise.

(2) If a city, code city, or county purchases a professional sports franchise, a public corporation shall be created to manage and operate the franchise. The public corporation created under this section shall have all of the authorities granted by RCW 35.21.730 through 35.21.757. [1987 c 32 § 2.]

Legislative declaration—1987 c 32: "The legislature hereby declares and finds that professional sports franchises are economic, cultural, and entertainment assets to the state and that unilateral actions by the owners of such franchises to move franchises to other locations result in a loss of direct and indirect employment and national visibility for the state. The legislature finds that the retention of professional sports franchises and the enabling authority created by RCW 35.21.695 are public purposes and that RCW 35.21.695 shall not be construed in any manner contrary to the provisions of Article VIII, section 7, of the Washington state Constitution." [1987 c 32 § 1.]

35.21.700 Tourist promotion. Any city or town in this state acting through its council or other legislative body shall have power to expend moneys and conduct promotion of resources and facilities in the city or town, or general area, by advertising, publicizing, or otherwise distributing information for the purpose of attracting visitors and encouraging tourist expansion. [1971 ex.s. c 61 § 2.]

35.21.703 Economic development programs. It shall be in the public purpose for all cities to engage in economic development programs. In addition, cities may contract with nonprofit corporations in furtherance of this and other acts relating to economic development. [1985 c 92 § 1.]

35.21.706 Imposition or increase of business and occupation tax—Referendum procedure required—Exclusive procedure. Every city and town first imposing a business and occupation tax or increasing the rate of the tax after April 22, 1983, shall provide for a referendum procedure to apply to an ordinance imposing the tax or increasing the rate of the tax. This referendum procedure shall specify that a referendum petition may be filed within seven days of passage of the ordinance with a filing officer, as identified in the ordinance. Within ten days, the filing officer shall confer with the petitioner concerning form and style of the petition, issue the petition an identification number, and secure an accurate, concise, and positive ballot title from the designated local official. The petitioner shall have thirty days in which to secure the signatures of not less than fifteen percent of the registered voters of the city, as of the last municipal general election, upon petition forms which 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 petition and, if sufficient valid signatures are properly submitted, shall certify the referendum measure to the next election ballot within the city or at a special election ballot as provided pursuant to RCW 35.17.260(2).

This referendum procedure shall be exclusive in all instances for any city ordinance imposing a business and occupation tax or increasing the rate of the tax and shall supersede the procedures provided under chapters 35.17 and 35A.11 RCW and all other statutory or charter provisions for

initiative or referendum which might otherwise apply. [1983 c 99 § 6.]

Severability—1983 c 99: See note following RCW 82.14.200.

35.21.710 License fees or taxes on certain business activities—Uniform rate required—Maximum rate established. Any city which imposes a license fee or tax upon business activities consisting of the making of retail sales of tangible personal property which are measured by gross receipts or gross income from such sales, shall impose such tax at a single uniform rate upon all such business activities. The taxing authority granted to cities for taxes upon business activities measured by gross receipts or gross income from sales shall not exceed a rate of .0020; except that any city with an adopted ordinance at a higher rate, as of January 1, 1982 shall be limited to a maximum increase of ten percent of the January 1982 rate, not to exceed an annual incremental increase of two percent of current rate: **PROVIDED,** That any adopted ordinance which classifies according to different types of business or services shall be subject to both the ten percent and the two percent annual incremental increase limitation on each tax rate: **PROVIDED FURTHER,** That all surtaxes on business and occupation classifications in effect as of January 1, 1982, shall expire no later than December 31, 1982, or by expiration date established by local ordinance. Cities which impose a license fee or tax upon business activities consisting of the making of retail sales of tangible personal property which are measured by gross receipts or gross income from such sales shall be required to submit an annual report to the state auditor identifying the rate established and the revenues received from each fee or tax. This section shall not apply to any business activities subject to the tax imposed by chapter 82.16 RCW. For purposes of this section, the providing to consumers of competitive telephone service, as defined in RCW 82.04.065, shall be deemed to be the retail sale of tangible personal property. [1983 2nd ex.s. c 3 § 33; 1983 c 99 § 7; 1982 1st ex.s. c 49 § 7; 1981 c 144 § 6; 1972 ex.s. c 134 § 6.]

Construction—Severability—Effective dates—1983 2nd ex.s. c 3: See notes following RCW 82.04.255.

Severability—1983 c 99: See note following RCW 82.14.200.

Intent—1982 1st ex.s. c 49: "The legislature hereby recognizes the concern of local governmental entities regarding the financing of vital services to residents of this state. The legislature finds that local governments are an efficient and responsive means of providing these vital services to the citizens of this state. It is the intent of the legislature that vital services such as public safety, public health, and fire protection be recognized by all local governmental entities in this state as top priorities of the citizens of Washington." [1982 1st ex.s. c 49 § 1.]

Construction—1982 1st ex.s. c 49: "Nothing in this act precludes the imposition of business and occupation taxes by cities and towns, or of sales and use taxes. However, nothing in this act authorizes the imposition of a business and occupation tax by any county." [1982 1st ex.s. c 49 § 6.]

Effective date—1982 1st ex.s. c 49: "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 5 of this act shall take effect July 1, 1982." [1982 1st ex.s. c 49 § 25.] "Section 5 of this act" is the 1982 1st ex.s. c 49 amendment to RCW 82.02.020.

Fire district funding—1982 1st ex.s. c 49: "County legislative authorities who levy optional taxes pursuant to this act shall fully consider funding for fire districts within their respective jurisdictions during the county budget process.

The local government committees of the legislature shall study fire district services and funding and shall report back to the Washington State Legislature by December 31, 1982." [1982 1st ex.s. c 49 § 23.]

The above four annotations apply to 1982 1st ex.s. c 49. For codification of that act, see Codification Tables, Volume 0.

Intent—Severability—Effective date—1981 c 144: See notes following RCW 82.16.010.

License fees and taxes on financial institutions: Chapter 82.14A RCW.

35.21.711 License fees or taxes on certain business activities—Excess rates authorized by voters. The qualified voters of any city or town may by majority vote approve rates in excess of the provisions of RCW 35.21.710. [1982 1st ex.s. c 49 § 8.]

Intent—Construction—Effective date—Fire district funding—1982 1st ex.s. c 49: See notes following RCW 35.21.710.

35.21.712 License fees or taxes on telephone business to be at uniform rate. Any city which imposes a license fee or tax upon the business activity of engaging in the telephone business, as defined in RCW 82.04.065, which is measured by gross receipts or gross income from the business shall impose the tax at a uniform rate on all persons engaged in the telephone business in the city.

This section does not apply to the providing of competitive telephone service as defined in RCW 82.04.065. [1983 2nd ex.s. c 3 § 35; 1981 c 144 § 8.]

Construction—Severability—Effective dates—1983 2nd ex.s. c 3: See notes following RCW 82.04.255.

Intent—Severability—Effective date—1981 c 144: See notes following RCW 82.16.010.

35.21.714 License fees or taxes on telephone business—Imposition on certain gross revenues authorized—Limitations. Any city which imposes a license fee or tax upon the business activity of engaging in the telephone business, as defined in RCW 82.04.065, which is measured by gross receipts or gross income may impose the fee or tax, if it desires, on one hundred percent of the total gross revenue derived from intrastate toll telephone services subject to the fee or tax: PROVIDED, That the city shall not impose the fee or tax on that portion of network telephone service, as defined in RCW 82.04.065, which represents charges to another telecommunications company, as defined in RCW 80.04.010, for connecting fees, switching charges, or carrier access charges relating to intrastate toll telephone services, or for access to, or charges for, interstate services, or charges for network telephone service that is purchased for the purpose of resale. [1989 c 103 § 1; 1986 c 70 § 1; 1983 2nd ex.s. c 3 § 37; 1981 c 144 § 10.]

Severability—1989 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." [1989 c 103 § 5.]

Effective date—1986 c 70 §§ 1, 2, 4, 5: "Sections 1, 2, 4, and 5 of this act shall take effect on January 1, 1987." [1986 c 70 § 8.]

Construction—Severability—Effective dates—1983 2nd ex.s. c 3: See notes following RCW 82.04.255.

Intent—Severability—Effective date—1981 c 144: See notes following RCW 82.16.010.

35.21.715 Taxes on network telephone services. Notwithstanding RCW 35.21.714 or 35A.82.060, any city or

town which imposes a tax upon business activities measured by gross receipts or gross income from sales, may impose such tax on that portion of network telephone service, as defined in RCW 82.04.065, which represents charges to another telecommunications company, as defined in RCW 80.04.010, for connecting fees, switching charges, or carrier access charges relating to intrastate toll services, or charges for network telephone service that is purchased for the purpose of resale. Such tax shall be levied at the same rate as is applicable to other competitive telephone service as defined in RCW 82.04.065. [1989 c 103 § 2; 1986 c 70 § 2.]

Severability—1989 c 103: See note following RCW 35.21.714.

Effective date—1986 c 70 §§ 1, 2, 4, 5: See note following RCW 35.21.714.

35.21.720 City contracts to obtain sheriff's office law enforcement services. See RCW 41.14.250 through 41.14.280.

35.21.730 Public corporations—Powers of cities, towns, and counties—Administration. In order to improve the administration of authorized federal grants or programs, to improve governmental efficiency and services, or to improve the general living conditions in the urban areas of the state, any city, town, or county may by lawfully adopted ordinance or resolution:

(1) Transfer to any public corporation, commission, or authority created hereunder, with or without consideration, any funds, real or personal property, property interests, or services;

(2) Organize and participate in joint operations or cooperative organizations funded by the federal government when acting solely as coordinators or agents of the federal government;

(3) Continue federally-assisted programs, projects, and activities after expiration of contractual term or after expending allocated federal funds as deemed appropriate to fulfill contracts made in connection with such agreements or as may be proper to permit an orderly readjustment by participating corporations, associations, or individuals;

(4) Create public corporations, commissions, and authorities to: Administer and execute federal grants or programs; receive and administer private funds, goods, or services for any lawful public purpose; and perform any lawful public purpose or public function. The ordinance or resolution shall limit the liability of such public corporations, commissions, and authorities to the assets and properties of such public corporation, commission, or authority in order to prevent recourse to such cities, towns, or counties or their assets or credit. [1985 c 332 § 1; 1974 ex.s. c 37 § 2.]

35.21.735 Public corporations—Declaration of public purpose—Power and authority to enter into agreements—Receive and expend funds. The legislature hereby declares that carrying out the purposes of federal grants or programs is both a public purpose and an appropriate function for such a public corporation. The provisions of RCW 35.21.730 through 35.21.755 and RCW 35.21.660 and 35.21.670 and the enabling authority herein conferred to

implement these provisions shall be construed to accomplish the purposes of RCW 35.21.730 through 35.21.755.

All cities, towns and counties shall have the power and authority to enter into agreements with the United States or any agency or department thereof, or any agency of the state government or its political subdivisions, and pursuant to such agreements may receive and expend federal or private funds for any lawful public purpose. [1985 c 332 § 3; 1974 ex.s. c 37 § 3.]

35.21.740 Public corporations—Exercise of powers, authorities, or rights—Territorial jurisdiction. Powers, authorities, or rights expressly or impliedly granted to any city, town, or county or their agents under any provision of RCW 35.21.730 through 35.21.755 shall not be operable or applicable, or have any effect beyond the limits of the incorporated area of any city or town implementing RCW 35.21.730 through 35.21.755, unless so provided by contract between the city and another city or county. [1985 c 332 § 4; 1974 ex.s. c 37 § 4.]

35.21.745 Public corporations—Provision for, control over—Powers. Any city, town, or county which shall create a public corporation, commission, or authority pursuant to RCW 35.21.730 or 35.21.660, shall provide for its organization and operations and shall control and oversee its operation and funds in order to correct any deficiency and to assure that the purposes of each program undertaken are reasonably accomplished.

Any public corporation, commission, or authority created as provided in RCW 35.21.730 may be empowered to own and sell real and personal property; to contract with individuals, associations, and corporations, and the state and the United States; to sue and be sued; to loan and borrow funds and issue bonds and other instruments evidencing indebtedness; transfer any funds, real or personal property, property interests, or services; to do anything a natural person may do; and to perform all manner and type of community services: PROVIDED, That such public corporation, commission, or authority shall have no power of eminent domain nor any power to levy taxes or special assessments. [1985 c 332 § 2; 1974 ex.s. c 37 § 5.]

35.21.747 Public corporations—Real property transferred by city, town, or county—Restrictions, notice, public meeting. (1) In transferring real property to a public corporation, commission, or authority under RCW 35.21.730, the city, town, or county creating such public corporation, commission, or authority shall impose appropriate deed restrictions necessary to ensure the continued use of such property for the public purpose or purposes for which such property is transferred.

(2) The city, town, or county that creates a public corporation, commission, or authority under RCW 35.21.730 shall require of such public corporation, commission, or authority thirty days' advance written notice of any proposed sale or encumbrance of any real property transferred by such city, town, or county to such public corporation, commission, or authority pursuant to RCW 35.21.730(1). At a minimum, such notice shall be provided by such public corporation, commission, or authority to the chief executive or adminis-

trative officer of such city, town, or county, and to all members of its legislative body, and to each local newspaper of general circulation, and to each local radio or television station or other news medium which has on file with such corporation, commission, or authority a written request to be notified.

(3) Any property transferred by the city, town, or county that created such public corporation, commission, or authority may be sold or encumbered by such public corporation, commission, or authority only after approval of such sale or encumbrance by the governing body of the public corporation, commission, or authority at a public meeting of which notice was provided pursuant to RCW 42.30.080. Nothing in this section shall be construed to prevent the governing body of the public corporation, commission, or authority from holding an executive session during a regular or special meeting in accordance with RCW 42.30.110(1)(c). In addition, the public corporation, commission, or authority shall advertise notice of the meeting in a local newspaper of general circulation at least twice no less than seven days and no more than two weeks before the public meeting. [1990 c 189 § 1.]

35.21.750 Public corporations—Insolvency or dissolution. In the event of the insolvency or dissolution of a public corporation, commission, or authority, the superior court of the county in which the public corporation, commission, or authority is or was operating shall have jurisdiction and authority to appoint trustees or receivers of corporate property and assets and supervise such trusteeship or receivership: PROVIDED, That all liabilities incurred by such public corporation, commission, or authority shall be satisfied exclusively from the assets and properties of such public corporation, commission, or authority and no creditor or other person shall have any right of action against the city, town, or county creating such corporation, commission or authority on account of any debts, obligations, or liabilities of such public corporation, commission, or authority. [1974 ex.s. c 37 § 6.]

35.21.755 Public corporations—Exemption or immunity from taxation—In lieu excise tax. (1) A public corporation, commission, or authority created pursuant to RCW 35.21.730 or 35.21.660 shall receive the same immunity or exemption from taxation as that of the city, town, or county creating the same: PROVIDED, That, except for (a) any property within a special review district established by ordinance prior to January 1, 1976, or listed on or which is within a district listed on any federal or state register of historical sites or (b) any property owned or operated by a public corporation that is used primarily for low-income housing, any such public corporation, commission, or authority shall pay to the county treasurer an annual excise tax equal to the amounts which would be paid upon real property and personal property devoted to the purposes of such public corporation, commission, or authority were it in private ownership, and such real property and personal property is acquired and/or operated under RCW 35.21.730 through 35.21.755, and the proceeds of such excise tax shall be allocated by the county treasurer to the various taxing authorities in which such property is situated, in the same

manner as though the property were in private ownership: PROVIDED FURTHER, That the provisions of chapter 82.29A RCW shall not apply to property within a special review district established by ordinance prior to January 1, 1976, or listed on or which is within a district listed on any federal or state register of historical sites and which is controlled by a public corporation, commission, or authority created pursuant to RCW 35.21.730 or 35.21.660, which was in existence prior to January 1, 1987: AND PROVIDED FURTHER, That property within a special review district established by ordinance prior to January 1, 1976, or property which is listed on any federal or state register of historical sites and controlled by a public corporation, commission, or authority created pursuant to RCW 35.21.730 or 35.21.660, which was in existence prior to January 1, 1976, shall receive the same immunity or exemption from taxation as if such property had been within a district listed on any such federal or state register of historical sites as of January 1, 1976, and controlled by a public corporation, commission, or authority created pursuant to RCW 35.21.730 or 35.21.660 which was in existence prior to January 1, 1976.

(2) As used in this section:

(a) "Low-income" means a total annual income, adjusted for family size, not exceeding fifty percent of the area median income.

(b) "Area median income" means:

(i) For an area within a standard metropolitan statistical area, the area median income reported by the United States department of housing and urban development for that standard metropolitan statistical area; or

(ii) For an area not within a standard metropolitan statistical area, the county median income reported by the department of community development. [1990 c 131 § 1; 1987 c 282 § 1; 1985 c 332 § 5; 1984 c 116 § 1; 1979 ex.s. c 196 § 9; 1977 ex.s. c 35 § 1; 1974 ex.s. c 37 § 7.]

Effective date—1979 ex.s. c 196: See note following RCW 82.04.240.

Effective date—1977 ex.s. c 35: "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 35 § 2.]

35.21.757 Public corporations—Statutes to be construed consistent with state Constitution. Nothing in RCW 35.21.730 through 35.21.755 shall be construed in any manner contrary to the provisions of Article VIII, section 7, of the Washington state Constitution. [1985 c 332 § 6.]

35.21.760 Legal interns—Employment authorized. Notwithstanding any other provision of law, the city attorney, corporation counsel, or other chief legal officer of any city or town may employ legal interns as otherwise authorized by statute or court rule. [1974 ex.s. c 7 § 1.]

35.21.765 Fire protection, ambulance or other emergency services provided by municipal corporation within county—Financial and other assistance by county authorized. See RCW 36.32.470.

35.21.766 Ambulance services—Establishment authorized. Whenever the legislative authority of any city or town determines that the city or town or a substantial portion of the city or town is not adequately served by existing private ambulance service, the legislative authority may by appropriate legislation provide for the establishment of a system of ambulance service to be operated as a public utility of the city or town or operated by contract after a call for bids. [1975 1st ex.s. c 24 § 1.]

Ambulance services by counties authorized: RCW 36.01.100.

35.21.768 Ambulance services—Excise taxes authorized—Use of proceeds. The legislative authority of any city or town is authorized to adopt ordinances for the levy and collection of excise taxes and/or for the imposition of an additional tax for the act or privilege of engaging in the ambulance business. Such business and occupation tax shall be imposed in such amounts as fixed and determined by the legislative authority.

The excise taxes other than the business and occupation tax authorized by this section shall be levied and collected from all persons, businesses, and industries who are served and billed for said ambulance service owned and operated or contracted for by the city or town in such amounts as shall be fixed and determined by the legislative authority of the city or town.

All taxes authorized pursuant to this section shall be construed to be taxes other than a retail sales tax defined in chapter 82.08 RCW and a use tax defined in chapter 82.12 RCW, and the city or town shall appropriate and use the proceeds derived from all taxes authorized by this section only for the operation, maintenance and capital needs of its municipally owned, operated, leased or contracted for ambulance service. [1975 1st ex.s. c 24 § 2.]

35.21.769 Levy for emergency medical care and services. See RCW 84.52.069.

35.21.770 Members of legislative bodies authorized to serve as volunteer firemen. Notwithstanding any other provision of law, the legislative body of any city or town, by resolution adopted by unanimous vote, may authorize any of its members to serve as volunteer firemen and to receive the same compensation, insurance and other benefits as are applicable to other volunteer firemen employed by the city or town. [1974 ex.s. c 60 § 1.]

35.21.775 Provision of fire protection services to state-owned facilities. Subject to the provisions of RCW 35.21.779, whenever a city or town has located within its territorial limits facilities, except those leased to a nontax-exempt person or organization, owned by the state or an agency or institution of the state, the state or agency or institution owning such facilities and the city or town may contract for an equitable share of fire protection services for the protection and safety of personnel and property, pursuant to chapter 39.34 RCW, as now or hereafter amended. Nothing in this section shall be construed to require the state, or any state agency or institution, to contract for services which are performed by the staff and equipment of such an entity or by a fire protection district pursuant to RCW

52.30.020. [1992 c 117 § 4; 1985 c 6 § 4; 1984 c 230 § 82; 1983 c 146 § 1; 1979 ex.s. c 102 § 1.]

Findings—1992 c 117: "The legislature finds that certain state-owned facilities and institutions impose a financial burden on the cities and towns responsible for providing fire protection services to those state facilities. The legislature endeavors pursuant to chapter 117, Laws of 1992, to establish a process whereby cities and towns that have a significant share of their total assessed valuation taken up by state-owned facilities can enter into fire protection contracts with state agencies or institutions to provide a share of the jurisdiction's fire protection funding." [1992 c 117 § 3.]

35.21.778 Existing contracts for fire protection services and equipment not abrogated. Nothing in chapter 117, Laws of 1992, shall be interpreted to abrogate existing contracts for fire protection services and equipment, nor be deemed to authorize cities and towns to negotiate additional contractual provisions to apply prior to the expiration of such existing contracts. Upon expiration of contracts negotiated prior to March 31, 1992, future contracts between such cities and towns and state agencies and institutions shall be governed by the provisions of RCW 35.21.775 and 35.21.779. [1992 c 117 § 5.]

Findings—1992 c 117: See note following RCW 35.21.775.

35.21.779 Fire protection services for state-owned facilities—contracts with the department of community development—Consolidation of negotiations with multiple state agencies—Arbitration. (1) In cities or towns where the estimated value of state-owned facilities constitutes ten percent or more of the total assessed valuation, the state agency or institution owning the facilities shall contract with the city or town to pay an equitable share for fire protection services. The contract shall be negotiated as provided in subsections (2) through (6) of this section and shall provide for payment by the agency or institution to the city or town.

(2) A city or town seeking to enter into fire protection contract negotiations shall provide written notification to the department of community development and the state agencies or institutions that own property within the jurisdiction, of its intent to contract for fire protection services. Where there are multiple state agencies located within a single jurisdiction, a city may choose to notify only the department of community development, which in turn shall notify the agencies or institution that own property within the jurisdiction of the city's intent to contract for fire protection services. Any such notification shall be based on the valuation procedures, based on commonly accepted standards, adopted by the department of community development in consultation with the department of general administration and the association of Washington cities.

(3) The department of community development shall review any such notification to ensure that the valuation procedures and results are accurate. The department will notify each affected city or town and state agency or institution of the results of their review within thirty days of receipt of notification.

(4) The parties negotiating fire protection contracts under this section shall conduct those negotiations in good faith. Whenever there are multiple state agencies located within a single jurisdiction, every effort shall be made by the state to consolidate negotiations on behalf of all affected agencies.

(5) In the event of notification by one of the parties that an agreement cannot be reached on the terms and conditions of a fire protection contract, the director of the department of community development shall mediate a resolution of the disagreement. In the event of a continued impasse, the director of the department of community development shall recommend a resolution.

(6) If the parties reject the recommendation of the director and an impasse continues, the director shall direct the parties to arbitration. The parties shall agree on a neutral arbitrator, and the fees and expenses of the arbitrator shall be shared equally between the parties. The arbitration shall be a final offer, total arbitration, with the arbitrator empowered only to pick the final offer of one of the parties or the recommended resolution by the director of the department of community development. The decision of the arbitrator shall be final, binding, and nonappealable on the parties.

(7) The provisions of this section shall not apply if a city or town and a state agency or institution have contracted pursuant to RCW 35.21.775.

(8) The provisions of this section do not apply to cities and towns not meeting the conditions in subsection (1) of this section. Cities and towns not meeting the conditions of subsection (1) of this section may enter into contracts pursuant to RCW 35.21.775. [1992 c 117 § 6.]

Findings—1992 c 117: See note following RCW 35.21.775.

35.21.780 Laws, rules and regulations applicable to cities 500,000 or over deemed applicable to cities 400,000 or over. On and after June 12, 1975, every law and rule or regulation of the state or any agency thereof which immediately prior to June 12, 1975 related to cities of five hundred thousand population or over shall be deemed to be applicable to cities of four hundred thousand population or over. [1975 c 33 § 1.]

Severability—1975 c 33: "If any provision of this 1975 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 c 33 § 7.]

35.21.790 Revision of corporate boundary within street, road, or highway right of way by substituting right of way line—Not subject to review. (1) The governing bodies of a county and any city or town located therein may by agreement revise any part of the corporate boundary of the city or town which coincides with the centerline, edge, or any portion of a public street, road or highway right of way by substituting therefor a right of way line of the same public street, road or highway so as fully to include or fully to exclude that segment of the public street, road or highway from the corporate limits of the city or town.

(2) The revision of a corporate boundary as authorized by this section shall become effective when approved by ordinance of the city or town council or commission and by ordinance or resolution of the county legislative authority. Such a boundary revision is not subject to potential review by a boundary review board. [1989 c 84 § 10; 1975 1st ex.s. c 220 § 17.]

Legislative finding, intent—1975 1st ex.s. c 220: See note following RCW 35.02.170.

Boundary line adjustment: RCW 35.13.300 through 35.13.330.

Use of right of way line as corporate boundary in incorporation proceeding—When right of way may be included in territory to be incorporated: RCW 35.02.170.

When right of way may be included in territory to be incorporated—Use of right of way line as corporate boundary in annexation: RCW 35.13.290.

35.21.800 Foreign trade zones—Legislative finding, intent. It is the finding of the legislature that foreign trade zones serve an important public purpose by the creation of employment opportunities within the state and that the establishment of zones designed to accomplish this purpose is to be encouraged. It is the further intent of the legislature that the department of trade and economic development provide assistance to entities planning to apply to the United States for permission to establish such zones. [1985 c 466 § 43; 1977 ex.s. c 196 § 3.]

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

Effective date—1977 ex.s. c 196: See note following RCW 24.46.010.

35.21.805 Foreign trade zones—Authority to apply for permission to establish, operate and maintain. A city or town, as zone sponsor, may apply to the United States for permission to establish, operate, and maintain foreign trade zones: PROVIDED, That nothing herein shall be construed to prevent these zones from being operated and financed by a private corporation(s) on behalf of a city or town acting as zone sponsor. [1977 ex.s. c 196 § 4.]

Effective date—1977 ex.s. c 196: See note following RCW 24.46.010.

35.21.810 Hydroplane races—Providing for restrooms and other services in public parks for spectators—Admission fees—Authorized. Any city or town may provide restrooms and other services in its public parks to be used by spectators of any hydroplane race held on a lake or river which is located adjacent to or within the city or town, and in addition any city or town may charge admission fees for persons to observe a hydroplane race from public park property which is sufficient to defray the costs of the city or town accommodating spectators, cleaning up after the race, and other costs related to the hydroplane race. Any city or town may authorize the organization which sponsors a hydroplane race to provide restroom and other services for the public on park property and may authorize the organization to collect any admission fees charged by the city or town. [1979 c 26 § 1.]

35.21.815 Hydroplane races—Levying of admission charges declared public park purpose—Reversion prohibited. It is hereby declared to be a legitimate public park purpose for any city or town to levy an admission charge for spectators to view hydroplane races from park property. Property which has been conveyed to a city or town by the state for exclusive use in the city's or town's public park system or exclusively for public park, parkway, and boulevard purposes shall not revert to the state upon the levying of admission fees authorized in RCW 35.21.810. [1979 c 26 § 2.]

35.21.820 Acquisition and disposal of vehicles for commuter ride sharing by city employees. The power of any city, town, county, other municipal corporation, or quasi municipal corporation to acquire, hold, use, possess, and dispose of motor vehicles for official business shall include, but not be limited to, the power to acquire, hold, use, possess, and dispose of motor vehicles for commuter ride sharing by its employees, so long as such use is economical and advantageous to the city, town, county, other municipal corporation. [1979 c 111 § 11.]

Severability—1979 c 111: See note following RCW 46.74.010.

Ride sharing: Chapter 46.74 RCW.

35.21.830 Controls on rent for residential structures—Prohibited—Exceptions. The imposition of controls on rent is of state-wide significance and is preempted by the state. No city or town of any class may enact, maintain, or enforce ordinances or other provisions which regulate the amount of rent to be charged for single family or multiple unit residential rental structures or sites other than properties in public ownership, under public management, or properties providing low-income rental housing under joint public-private agreements for the financing or provision of such low-income rental housing. This section shall not be construed as prohibiting any city or town from entering into agreements with private persons which regulate or control the amount of rent to be charged for rental properties. [1981 c 75 § 1.]

Applicability to floating home moorage sites—1981 c 75: "Nothing in this act shall be construed to preempt local ordinances that relate to the control of rents or other relationships at floating home moorage sites." [1981 c 75 § 3.] This applies to RCW 35.21.830 and 36.01.130.

Severability—1981 c 75: "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 75 § 4.]

35.21.840 Taxation of motor carriers of freight for hire—Allocation of gross receipts. The following principles shall allocate gross receipts of a motor carrier of freight for hire (called the "motor carrier" in this section) to prevent multiple taxation by two or more municipalities. They shall apply when two or more municipalities in this state impose a license fee or tax for the act or privilege of engaging in business activities; each municipality has a basis in local activity for imposing its tax; and the gross receipts measured by all taxing municipalities, added together, exceed the motor carrier's gross receipts.

(1) No municipality shall be entitled to an allocation of the gross receipts of a motor carrier on account of the use of its streets or highways when no pick-up or delivery occurs therein.

(2) Gross receipts of a motor carrier derived within a municipality, where it solicits orders and engages in business activities that are a significant factor in holding the market but where it maintains no office or terminal, shall be allocated equally between the municipality providing the local market and the municipality where the motor carrier's office or terminal is located. Where no such local solicitation and business activity occurs, all the gross receipts shall be allocated to the municipality where the office or terminal is located irrespective of the place of pick-up or delivery.

The word "terminal" means a location at which any three of the following four occur: Dispatching takes place, from which trucks operate or are serviced, personnel report and receive assignments, and orders are regularly received from the public.

(3) Gross receipts of a motor carrier that are not attributable to transportation services, such as investment income, truck repair, and rental of equipment, shall be allocated to the office or terminal conducting such activities.

(4) Gross receipts of a motor carrier with an office or terminal in two or more municipalities in this state shall be allocated to the office or terminal at which the transportation services commenced. [1982 c 169 § 1.]

Applicability—1982 c 169: "This act applies to motor carriers of freight for hire only. Nothing in this act applies to a person engaged in the business of making sales at retail or wholesale or of providing storage services for tangible personal property." [1982 c 169 § 4.] This applies to RCW 35.21.840, 35.21.845, and 35.21.850.

Motor freight carriers: Chapter 81.80 RCW.

Municipal business and occupation tax authorized: RCW 35.95.040.

35.21.845 Taxation of motor carriers of freight for hire—Tax allocation formula. A motor carrier of freight for hire whose gross receipts are subject to multiple taxation by two or more municipalities in this state may request and thereupon shall be given a joint audit of the taxpayer's books and records by all of the taxing authorities seeking to tax all or part of such gross receipts. Such taxing authorities shall agree upon and establish a tax allocation formula which shall be binding upon the taxpayer and the taxing authorities participating in the audit or receiving a copy of such request from the taxpayer. Payment by the taxpayer of the taxes to each taxing authority in accordance with such tax allocation formula shall be a complete defense in any action by any taxing authority to recover additional taxes, interest, and/or penalties. A taxing municipality, whether or not a party to such joint audit, may seek a revision of the formula by giving written notice to each other taxing municipality concerned and the taxpayer. Any such revision as may be agreed upon by the taxing municipalities, or as may be decreed by a court of competent jurisdiction in an action initiated by one or more taxing authorities, shall apply only to gross receipts of the taxpayer received after the date of any such agreed revision or effective date of the judgment or order of any such court. [1982 c 169 § 2.]

Applicability—1982 c 169: See note following RCW 35.21.840.

35.21.850 Taxation of motor carriers of freight for hire—Limitation—Exceptions. No demand for a fee or tax or penalty shall be made by a city or town against a motor carrier of freight for hire on gross income derived from providing transportation services more than four years after the close of the year in which the same accrued except (1) against a taxpayer who has been guilty of fraud or misrepresentation of a material fact; or (2) where a taxpayer has executed a written waiver of such limitations; or (3) against a taxpayer who has not registered as required by the ordinance of the city or town imposing such tax or fee, provided this subsection shall not apply to a taxpayer who has registered in any city or town where the taxpayer maintains an office or terminal, or in the case of a taxpayer who has paid a license fee or tax based on such gross receipts to any

city or town levying same which may reasonably be construed to be the principal market of the taxpayer but in which he maintains no office or terminal. [1982 c 169 § 3.]

Applicability—1982 c 169: See note following RCW 35.21.840.

35.21.860 Electricity, telephone, or natural gas business—Franchise fees prohibited—Exceptions. (1) No city or town may impose a franchise fee or any other fee or charge of whatever nature or description upon the light and power, or gas distribution businesses, as defined in RCW 82.16.010, or telephone business, as defined in RCW 82.04.065, except that (a) a tax authorized by RCW 35.21.865 may be imposed and (b) a fee may be charged to such businesses that recovers actual administrative expenses incurred by a city or town that are directly related to receiving and approving a permit, license, and franchise, to inspecting plans and construction, or to the preparation of a detailed statement pursuant to chapter 43.21C RCW.

(2) Subsection (1) of this section does not prohibit franchise fees imposed on an electrical energy, natural gas, or telephone business, by contract existing on April 20, 1982, with a city or town, for the duration of the contract, but the franchise fees shall be considered taxes for the purposes of the limitations established in RCW 35.21.865 and 35.21.870 to the extent the fees exceed the costs allowable under subsection (1) of this section. [1983 2nd ex.s. c 3 § 39; 1982 1st ex.s. c 49 § 2.]

Construction—Severability—Effective dates—1983 2nd ex.s. c 3: See notes following RCW 82.04.255.

Intent—Construction—Effective date—Fire district funding—1982 1st ex.s. c 49: See notes following RCW 35.21.710.

35.21.865 Electricity, telephone, or natural gas business—Limitations on tax rate changes. No city or town may change the rate of tax it imposes on the privilege of conducting an electrical energy, natural gas, or telephone business which change applies to business activities occurring before the effective date of the change, and no rate change may take effect before the expiration of sixty days following the enactment of the ordinance establishing the change except as provided in RCW 35.21.870. [1983 c 99 § 4; 1982 1st ex.s. c 49 § 3.]

Severability—1983 c 99: See note following RCW 82.14.200.

Intent—Construction—Effective date—Fire district funding—1982 1st ex.s. c 49: See notes following RCW 35.21.710.

35.21.870 Electricity, telephone, natural gas, or steam energy business—Tax limited to six percent—Exception. (1) No city or town may impose a tax on the privilege of conducting an electrical energy, natural gas, steam energy, or telephone business at a rate which exceeds six percent unless the rate is first approved by a majority of the voters of the city or town voting on such a proposition.

(2) If a city or town is imposing a rate of tax under subsection (1) of this section in excess of six percent on April 20, 1982, the city or town shall decrease the rate to a rate of six percent or less by reducing the rate each year on or before November 1st by ordinances to be effective on January 1st of the succeeding year, by an amount equal to one-tenth the difference between the tax rate on April 20, 1982, and six percent.

Nothing in this subsection prohibits a city or town from reducing its rates by amounts greater than the amounts required in this subsection.

Voter approved rate increases under subsection (1) of this section shall not be included in the computations under this subsection. [1984 c 225 § 6; 1983 c 99 § 5; 1982 1st ex.s. c 49 § 4.]

Rules—1984 c 225: See note following RCW 82.14.210.

Severability—1983 c 99: See note following RCW 82.14.200.

Intent—Construction—Effective date—Fire district funding—1982 1st ex.s. c 49: See notes following RCW 35.21.710.

35.21.871 Tax on telephone business—Deferral of rate reduction. A city or town required by RCW 35.21.870(2) to reduce its rate of taxation on telephone business may defer for one year the required reduction in rates for the year 1987. If the delay in rate reductions authorized by the preceding sentence is inadequate for a city or town to offset the impact of revenue reductions arising from the removal of revenues from connecting fees, switching charges, or carrier access charges under the provisions of RCW 35.21.714, then the legislative body of such city or town may reimpose for 1987 the rates that such city or town had in effect upon telephone business during 1985. In each succeeding year, the city or town shall reduce the rate by one-tenth of the difference between the tax rate on April 20, 1982, and six percent. [1986 c 70 § 3.]

35.21.875 Designation of official newspaper. Each city and town shall designate an official newspaper by resolution. The newspaper shall be of general circulation in the city or town and have the qualifications prescribed by chapter 65.16 RCW. [1985 c 469 § 99.]

35.21.880 Right of way donations—Credit against required improvements. Where the zoning and planning provisions of a city or town require landscaping, parking, or other improvements as a condition to granting permits for commercial or industrial developments, the city or town may credit donations of right of way in excess of that required for traffic improvement against such landscaping, parking, or other requirements. [1987 c 267 § 7.]

Severability—1987 c 267: See RCW 47.14.910.

Right of way donations: Chapter 47.14 RCW.

35.21.890 Boundary changes—Providing factual information—Notice to boundary review board. A city or town may provide factual information on the effects of a proposed boundary change on the city or town and the area potentially affected by the boundary change. A statement that the city or town has such information available, and copies of any printed materials or information available to be provided to the public shall be filed [filed] with the boundary review board for the board's information. [1989 c 84 § 70.]

Chapter 35.22 FIRST CLASS CITIES

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35.22.010 Laws governing. Cities of the first class shall be organized and governed according to the law providing for the government of cities having a population of twenty thousand or more inhabitants in accordance with Article 11, section 10 of the state Constitution. [1965 c 7 § 35.22.010. Prior: 1890 p 143 § 23; RRS § 8947.]

First class city, defined: RCW 35.01.010.

35.22.020 Mode of exercising powers, functions and duties. The form of the organization and the manner and mode in which cities of the first class shall exercise the powers, functions and duties conferred upon them by law, with respect to their own government, shall be as provided in the charters thereof. [1965 c 7 § 35.22.020. Prior: 1911 c 17 § 1; RRS § 8948.]

35.22.030 Cities having ten thousand or more population may frame charter for own government. Any city with a population of ten thousand or more inhabitants may frame a charter for its own government. [1965 ex.s. c 47 § 5; 1965 c 7 § 35.22.030. Prior: 1890 p 215 § 1; RRS § 8951.]

Cities of ten thousand or more
may frame charters without change in classification: RCW 35.21.600 through 35.21.620.
permitted to frame charters: State Constitution Art. 11 § 10 (Amendment 40).

35.22.050 Election of freeholders to frame charter. Whenever the population of a city is ten thousand or more, the legislative authority thereof shall provide by ordinance for an election to be held therein for the purpose of electing fifteen freeholders for the purpose of framing a charter for the city. The members of the board of freeholders must be qualified electors and must have been residents of the city for a period of at least two years prior to their election. [1965 ex.s. c 47 § 7; 1965 c 7 § 35.22.050. Prior: 1890 p 216 § 3, part; RRS § 8953, part.]

35.22.055 Election of freeholders in cities of three hundred thousand or more population—Designation of positions—Rotation of names on ballots. Notwithstanding any other provision of law, whenever the population of a city is three hundred thousand persons or more, not less than ten days before the time for filing declarations of candidacy for

election of freeholders under Article XI, section 10 (Amendment 40), of the state Constitution, the city clerk shall designate the positions to be filled by consecutive number, commencing with one. The positions to be designated shall be dealt with as separate offices for all election purposes, and each candidate shall file for one, but only one, of the positions so designated.

In the printing of ballots, the positions of the names of candidates for each numbered position shall be changed as many times as there are candidates for the numbered positions, following insofar as applicable the procedure provided for in RCW 29.30.040 for the rotation of names on primary ballots, the intention being that ballots at the polls will reflect as closely as practicable the rotation procedure as provided for therein. [1974 ex.s. c 1 § 1.]

Severability—1974 ex.s. c 1: "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 1 § 3.]

35.22.060 Submission of charter—Publication. The board of freeholders shall convene within ten days after their election and frame a charter for the city and within thirty days thereafter, they, or a majority of them, shall submit the charter to the legislative authority of the city, which, within five days thereafter, shall cause it to be published in the newspaper having the largest general circulation within the city at least once each week for four weeks next preceding the day of submitting the same to the electors for their approval. [1985 c 469 § 22; 1965 ex.s. c 47 § 8; 1965 c 7 § 35.22.060. Prior: 1890 p 216 § 3, part; RRS § 8953, part.]

Submission of proposed charter, publication: State Constitution Art. 11 § 10 (Amendment 40).

35.22.070 Election on adoption of charter—Notice. Within five days after the filing with the city clerk of affidavits of publication, which affidavits shall be filed immediately after the last publication, the legislative authority of the city shall initiate the proceedings for the submission of the proposed charter to the qualified voters of the city for their adoption or rejection at either a general or special election. At this election the first officers to serve under the provisions of the proposed charter shall also be elected. In electing from wards, the division into wards as specified in the proposed charter shall govern; in all other respects the then existing laws relating to such election shall govern. The notice shall specify the objects for which the election is held, and shall be given as required by law. [1965 ex.s. c 47 § 9; 1965 c 7 § 35.22.070. Prior: (i) 1890 p 216 § 3, part; RRS § 8953, part. (ii) 1890 p 223 § 6, part; RRS § 8977, part.]

Election on adoption of charter, notice: State Constitution Art. 11 § 10 (Amendment 40).

35.22.080 Conduct of elections. The election of the members of the board of freeholders and that upon the proposition of adopting or rejecting the proposed charter and the officers to be elected thereunder, the returns of both elections, the canvassing thereof and the declaration of the result shall be governed by the laws regulating and controlling elections in the city. [1965 c 7 § 35.22.080. Prior: (i)

1890 p 216 § 3, part; RRS § 8953, part. (ii) 1890 p 223 § 6, part; RRS § 8977, part. (iii) 1890 p 217 § 4, part; RRS § 8954, part.]

Elections: Title 29 RCW.

35.22.090 Form of ballot. The form of ballot in the election for the adoption or rejection of the proposed charter shall be: "For the proposed charter," "Against the proposed charter." In submitting the proposed charter or amendments thereto, any alternate article or proposition may be presented for the choice of the voters and may be voted on separately without prejudice to others. In submitting such amendment, article or proposition, the form of the ballot shall be: "For article No. . . . of the charter," "Against article No. . . . of the charter." [1965 c 7 § 35.22.090. Prior: 1890 p 216 § 3, part; RRS § 8953, part.]

35.22.100 Certificates of election to officers. If a majority of the votes cast at the election upon the adoption of the proposed charter favor it, certificates of election shall be issued to each officer elected at that election. Within ten days after the issuance of the certificates of election, the newly elected officers shall qualify as provided in the charter, and on the tenth day thereafter at twelve o'clock noon of that day, the officers so elected and qualified shall enter upon the duties of the offices to which they were elected and at such time the charter shall be authenticated, recorded, attested and go into effect. When so authenticated, recorded and attested, the charter shall become the organic law of the city and supersede any existing charter and amendments thereto and all special laws inconsistent therewith. [1965 c 7 § 35.22.100. Prior: (i) 1890 p 223 § 6, part; RRS § 8977, part. (ii) 1890 p 217 § 4, part; RRS § 8954, part.]

35.22.110 Authentication of charter. The authentication of the charter shall be by certificate of the mayor in substance as follows:

"I, mayor of the city of do hereby certify that in accordance with the provisions of the Constitution and statutes of the State of Washington, the city of caused fifteen freeholders to be elected on the day of 19. . . to prepare a charter for the city; that due notice of that election was given in the manner provided by law and that the following persons were declared elected to prepare and propose a charter for the city, to wit:

.
That thereafter on the day of 19. . . the board of freeholders returned a proposed charter for the city of signed by the following members thereof:

.
That thereafter the proposed charter was published in (Indicate name of newspaper in which published) for at least once each week for four weeks next preceding the day of submitting the same to the electors for their approval. (Indicate dates of publication)

That thereafter on the day of 19. . ., at an election duly called and held, the proposed charter was submitted to the qualified electors thereof, and the returns canvassed resulting as follows: For the proposed charter,

. . . . votes; against the proposed charter, votes; majority for the proposed charter, votes; whereupon the charter was declared adopted by a majority of the qualified electors voting at the election.

I further certify that the foregoing is a full, true and complete copy of the proposed charter so voted upon and adopted as aforesaid.

IN TESTIMONY WHEREOF, I hereunto set my hand and affix the corporate seal of said city at my office this day of 19. . .

Attest:

..... Mayor of the city of Clerk of the city of (Corporate Seal)."

Immediately after authentication, the authenticated charter shall be recorded by the city clerk in a book provided for that purpose known as the charter book of the city of and when so recorded shall be attested by the clerk and mayor under the corporate seal of the city. All amendments shall be in like manner recorded and attested.

All courts shall take judicial notice of a charter and all amendments thereto when recorded and attested as required in this section. [1965 ex.s. c 47 § 10; 1965 c 7 § 35.22.110. Prior: 1890 p 217 § 4, part; RRS § 8954, part.]

35.22.120 Petition for submission of charter amendment. On petition of a number (equal to fifteen percent of the total number of votes cast at the last preceding general state election) of qualified voters of any municipality having adopted a charter under the laws of this state, asking the adoption of a specified charter amendment, providing for any matter within the realm of local affairs, or municipal business, the said amendment shall be submitted to the voters at the next regular municipal election, occurring thirty days or more after said petition is filed, and if approved by a majority of the local electors of the municipality voting upon it, such amendment shall become a part of the charter organic law governing such municipality. [1965 c 7 § 35.22.120. Prior: 1949 c 233 § 1; 1903 c 186 § 1; Rem. Supp. 1949 § 8963.]

Times for holding elections: Chapter 29.13 RCW.

35.22.130 Requisites of petition—Effect of favorable vote. A petition containing the demand for the submission of the proposed charter amendment or for an election to be held for the purpose of electing a board of freeholders for the purpose of preparing a new charter for the city as provided in RCW 35.22.140 shall be filed with the city clerk and each signer shall write his place of residence after his signature. This and RCW 35.22.120 do not deprive city councils of the right to submit proposed charter amendments but affords a concurrent and additional method of submission. [1967 c 123 § 2; 1965 c 7 § 35.22.130. Prior: (i) 1903 c 186 § 2; RRS § 8964. (ii) 1903 c 186 § 3; RRS § 8965.]

35.22.140 New or revised charter—Petition—Freeholders. On the petition of a number of registered voters of a city equal to twenty-five percent of the total

votes cast at the last preceding city election, the city council of a charter city shall, or without such petition may, cause an election to be held for the purpose of electing a board of fifteen freeholders for the purpose of preparing a new charter for the city by altering, revising, adding to or repealing the existing charter including all amendments thereto. The members of the board of freeholders must be qualified electors and must have been residents in the city for a period of at least two years prior to their election. At such election the proposition of whether or not a board of freeholders shall be created at all shall be separately stated on the ballots and unless a majority of the votes cast upon that proposition favor it, no further steps shall be taken in the proceedings. [1965 ex.s. c 47 § 11; 1965 c 7 § 35.22.140. Prior: 1945 c 55 1, part; 1925 ex.s. c 137 § 1, part; 1895 c 27 § 1, part; Rem. Supp. 1945 § 8955, part.]

Amendment of charter: State Constitution Art. 11 § 10 (Amendment 40).

35.22.150 Submission of new charter. Within ten days after the results of the election have been determined, if a majority of the votes cast favor the proceeding, the members of the board of freeholders elected thereat shall convene and prepare a new charter by altering, revising, adding to, or repealing the existing charter including all amendments thereto and within one year thereafter file it with the city clerk. [1974 ex.s. c 1 § 2; 1965 c 7 § 35.22.150. Prior: 1945 c 55 § 1, part; 1925 ex.s. c 137 § 1, part; 1895 c 27 § 1, part; Rem. Supp. 1945 § 8955, part.]

Severability—1974 ex.s. c 1: See note following RCW 35.22.055.

35.22.160 Election on adoption of new charter. Upon the filing of the proposed new, altered, changed or revised charter with the city clerk, it shall be submitted to the qualified voters of the city at an election to be called therefor pursuant to the provisions of law applicable to the holding of elections in such city. [1965 c 7 § 35.22.160. Prior: 1925 ex.s. c 137 § 2, part; 1895 c 27 § 2, part; RRS § 8956, part.]

Times for holding elections: Chapter 29.13 RCW.

35.22.170 Publication of proposed charter. The proposed new, altered or revised charter shall be published in the newspaper having the largest general circulation within the city at least once each week for four weeks next preceding the day of submitting the same to the electors for their approval. [1985 c 469 § 23; 1965 ex.s. c 47 § 12; 1965 c 7 § 35.22.170. Prior: 1925 ex.s. c 137 § 3; 1895 c 27 § 3; RRS § 8957.]

Publication of amendments to charter: State Constitution Art. 11 § 10 (Amendment 40).

35.22.180 Conduct of elections. The election of the board of freeholders and that upon the proposition of adopting the proposed new, altered or revised charter, may be general or special elections and except as herein provided, said elections, the returns, the canvassing thereof and the declaration of the result shall be governed by the laws regulating and controlling elections in the city. In both cases the notice specifying the object of the election must be given at least ten days before the day of election. [1965 c 7 §

35.22.180. Prior: (i) 1895 c 27 § 4; RRS § 8958. (ii) 1895 c 27 § 5; RRS § 8959.]

Election on amendment to charter: State Constitution Art. 11 § 10 (Amendment 40).

35.22.190 Effect of favorable vote. If a majority of the voters voting upon the adoption of the proposed new, altered or revised charter favor it, it shall become the charter of the city and the organic law thereof, superseding any existing charter. All bodies or offices abolished or dispensed with by the new, altered or revised charter, together with the emoluments thereof shall immediately cease to exist, and any new offices created shall be filled by appointment of the mayor until the next general election subject to such approval by the city council as may be required by the new, altered or revised charter. [1965 c 7 § 35.22.190. Prior: (i) 1925 ex.s. c 137 § 2, part; 1895 c 27 § 2, part; RRS § 8956, part. (ii) 1895 c 27 § 6; RRS § 8962.]

Times for holding elections: Chapter 29.13 RCW.

35.22.200 Legislative powers of charter city—Where vested—Direct legislation. The legislative powers of a charter city shall be vested in a mayor and a city council, to consist of such number of members and to have such powers as may be provided for in its charter. The charter may provide for direct legislation by the people through the initiative and referendum upon any matter within the scope of the powers, functions, or duties of the city. The mayor and council and such other elective officers as may be provided for in such charter shall be elected at such times and in such manner as provided in Title 29 RCW, and for such terms and shall perform such duties and receive such compensation as may be prescribed in the charter. [1965 ex.s. c 47 § 13; 1965 c 7 § 35.22.200. Prior: (i) 1890 p 223 § 6, part; RRS § 8977, part. (ii) 1927 c 52 § 1; 1911 c 17 § 2; RRS § 8949.]

Powers of cities adopting charters: RCW 35.21.600, 35.21.620.

35.22.205 Compensation and hours of mayor and elected officials. The compensation and the time to be devoted to the performance of the duties of the mayor and elected officials of all cities of the first class shall be as fixed by ordinance of said city irrespective of any city charter provisions. [1965 c 7 § 35.22.205. Prior: 1957 c 113 § 1; 1955 c 354 § 1.]

35.22.210 Separate designation of councilmen in certain first class cities. Any city of the first class having a population less than one hundred thousand by the last federal census and having a charter providing that each of its councilmen shall be the commissioner of an administrative department of such city, may by ordinance provide for the separate designation of such councilmen as officers, in accordance with such administrative departments, and for their filing for and election to office under such separate designations. [1965 c 7 § 35.22.210. Prior: 1925 ex.s. c 61 § 1; RRS § 8948-1.]

35.22.220 Repeal of separate designation. Whenever any such city shall have passed such an ordinance providing for such separate designations and for filing for and election

to office in accordance therewith, such city shall have no power to repeal the same except by ordinance passed by the council of such city and submitted to the voters thereof at a general or special election and ratified by a majority of the voters voting thereon. [1965 c 7 § 35.22.220. Prior: 1925 ex.s. c 61 § 2; RRS § 8948-2.]

Times for holding elections: Chapter 29.13 RCW.

35.22.280 Specific powers enumerated. Any city of the first class shall have power:

(1) To provide for general and special elections, for questions to be voted upon, and for the election of officers;

(2) To provide for levying and collecting taxes on real and personal property for its corporate uses and purposes, and to provide for the payment of the debts and expenses of the corporation;

(3) To control the finances and property of the corporation, and to acquire, by purchase or otherwise, such lands and other property as may be necessary for any part of the corporate uses provided for by its charter, and to dispose of any such property as the interests of the corporation may, from time to time, require;

(4) To borrow money for corporate purposes on the credit of the corporation, and to issue negotiable bonds therefor, on such conditions and in such manner as shall be prescribed in its charter; but no city shall, in any manner or for any purpose, become indebted to an amount in the aggregate to exceed the limitation of indebtedness prescribed by chapter 39.36 RCW as now or hereafter amended;

(5) To issue bonds in place of or to supply means to meet maturing bonds or other indebtedness, or for the consolidation or funding of the same;

(6) To purchase or appropriate private property within or without its corporate limits, for its corporate uses, upon making just compensation to the owners thereof, and to institute and maintain such proceedings as may be authorized by the general laws of the state for the appropriation of private property for public use;

(7) To lay out, establish, open, alter, widen, extend, grade, pave, plank, establish grades, or otherwise improve streets, alleys, avenues, sidewalks, wharves, parks, and other public grounds, and to regulate and control the use thereof, and to vacate the same, and to authorize or prohibit the use of electricity at, in, or upon any of said streets, or for other purposes, and to prescribe the terms and conditions upon which the same may be so used, and to regulate the use thereof;

(8) To change the grade of any street, highway, or alley within its corporate limits, and to provide for the payment of damages to any abutting owner or owners who shall have built or made other improvements upon such street, highway, or alley at any point opposite to the point where such change shall be made with reference to the grade of such street, highway, or alley as the same existed prior to such change;

(9) To authorize or prohibit the locating and constructing of any railroad or street railroad in any street, alley, or public place in such city, and to prescribe the terms and conditions upon which any such railroad or street railroad shall be located or constructed; to provide for the alteration, change of grade, or removal thereof; to regulate the moving and operation of railroad and street railroad trains, cars, and

locomotives within the corporate limits of said city; and to provide by ordinance for the protection of all persons and property against injury in the use of such railroads or street railroads;

(10) To provide for making local improvements, and to levy and collect special assessments on property benefited thereby, and for paying for the same or any portion thereof;

(11) To acquire, by purchase or otherwise, lands for public parks within or without the limits of such city, and to improve the same. When the language of any instrument by which any property is so acquired limits the use of said property to park purposes and contains a reservation of interest in favor of the grantor or any other person, and where it is found that the property so acquired is not needed for park purposes and that an exchange thereof for other property to be dedicated for park purposes is in the public interest, the city may, with the consent of the grantor or such other person, his heirs, successors, or assigns, exchange such property for other property to be dedicated for park purposes, and may make, execute, and deliver proper conveyances to effect the exchange. In any case where, owing to death or lapse of time, there is neither donor, heir, successor, or assignee to give consent, this consent may be executed by the city and filed for record with an affidavit setting forth all efforts made to locate people entitled to give such consent together with the facts which establish that no consent by such persons is attainable. Title to property so conveyed by the city shall vest in the grantee free and clear of any trust in favor of the public arising out of any prior dedication for park purposes, but the right of the public shall be transferred and preserved with like force and effect to the property received by the city in such exchange;

(12) To construct and keep in repair bridges, viaducts, and tunnels, and to regulate the use thereof;

(13) To determine what work shall be done or improvements made at the expense, in whole or in part, of the owners of the adjoining contiguous, or proximate property, or others specially benefited thereby; and to provide for the manner of making and collecting assessments therefor;

(14) To provide for erecting, purchasing, or otherwise acquiring waterworks, within or without the corporate limits of said city, to supply said city and its inhabitants with water, or authorize the construction of same by others when deemed for the best interests of such city and its inhabitants, and to regulate and control the use and price of the water so supplied;

(15) To provide for lighting the streets and all public places, and for furnishing the inhabitants thereof with gas or other lights, and to erect, or otherwise acquire, and to maintain the same, or to authorize the erection and maintenance of such works as may be necessary and convenient therefor, and to regulate and control the use thereof;

(16) To establish and regulate markets, and to provide for the weighing, measuring, and inspection of all articles of food and drink offered for sale thereat, or at any other place within its limits, by proper penalties, and to enforce the keeping of proper legal weights and measures by all vendors in such city, and to provide for the inspection thereof. Whenever the words "public markets" are used in this chapter, and the public market is managed in whole or in part by a public corporation created by a city, the words shall be construed to include all real or personal property

located in a district or area designated by a city as a public market and traditionally devoted to providing farmers, crafts vendors and other merchants with retail space to market their wares to the public. Property located in such a district or area need not be exclusively or primarily used for such traditional public market retail activities and may include property used for other public purposes including, but not limited to, the provision of human services and low-income or moderate-income housing;

(17) To erect and establish hospitals and pesthouses, and to control and regulate the same;

(18) To provide for establishing and maintaining reform schools for juvenile offenders;

(19) To provide for the establishment and maintenance of public libraries, and to appropriate, annually, such percent of all moneys collected for fines, penalties, and licenses as shall be prescribed by its charter, for the support of a city library, which shall, under such regulations as shall be prescribed by ordinance, be open for use by the public;

(20) To regulate the burial of the dead, and to establish and regulate cemeteries within or without the corporate limits, and to acquire land therefor by purchase or otherwise; to cause cemeteries to be removed beyond the limits of the corporation, and to prohibit their establishment within two miles of the boundaries thereof;

(21) To direct the location and construction of all buildings in which any trade or occupation offensive to the senses or deleterious to public health or safety shall be carried on, and to regulate the management thereof; and to prohibit the erection or maintenance of such buildings or structures, or the carrying on of such trade or occupation within the limits of such corporation, or within the distance of two miles beyond the boundaries thereof;

(22) To provide for the prevention and extinguishment of fires and to regulate or prohibit the transportation, keeping, or storage of all combustible or explosive materials within its corporate limits, and to regulate and restrain the use of fireworks;

(23) To establish fire limits and to make all such regulations for the erection and maintenance of buildings or other structures within its corporate limits as the safety of persons or property may require, and to cause all such buildings and places as may from any cause be in a dangerous state to be put in safe condition;

(24) To regulate the manner in which stone, brick, and other buildings, party walls, and partition fences shall be constructed and maintained;

(25) To deepen, widen, dock, cover, wall, alter, or change the channels of waterways and courses, and to provide for the construction and maintenance of all such works as may be required for the accommodation of commerce, including canals, slips, public landing places, wharves, docks, and levees, and to control and regulate the use thereof;

(26) To control, regulate, or prohibit the anchorage, moorage, and landing of all watercrafts and their cargoes within the jurisdiction of the corporation;

(27) To fix the rates of wharfage and dockage, and to provide for the collection thereof, and to provide for the imposition and collection of such harbor fees as may be consistent with the laws of the United States;

(28) To license, regulate, control, or restrain wharf boats, tugs, and other boats used about the harbor or within such jurisdiction;

(29) To require the owners of public halls or other buildings to provide suitable means of exit; to provide for the prevention and abatement of nuisances, for the cleaning and purification of watercourses and canals, for the drainage and filling up of ponds on private property within its limits, when the same shall be offensive to the senses or dangerous to health; to regulate and control, and to prevent and punish, the defilement or pollution of all streams running through or into its corporate limits, and for the distance of five miles beyond its corporate limits, and on any stream or lake from which the water supply of said city is taken, for a distance of five miles beyond its source of supply; to provide for the cleaning of areas, vaults, and other places within its corporate limits which may be so kept as to become offensive to the senses or dangerous to health, and to make all such quarantine or other regulations as may be necessary for the preservation of the public health, and to remove all persons afflicted with any infectious or contagious disease to some suitable place to be provided for that purpose;

(30) To declare what shall be a nuisance, and to abate the same, and to impose fines upon parties who may create, continue, or suffer nuisances to exist;

(31) To regulate the selling or giving away of intoxicating, malt, vinous, mixed, or fermented liquors as authorized by the general laws of the state: PROVIDED, That no license shall be granted to any person or persons who shall not first comply with the general laws of the state in force at the time the same is granted;

(32) To grant licenses for any lawful purpose, and to fix by ordinance the amount to be paid therefor, and to provide for revoking the same: PROVIDED, That no license shall be granted to continue for longer than one year from the date thereof;

(33) To regulate the carrying on within its corporate limits of all occupations which are of such a nature as to affect the public health or the good order of said city, or to disturb the public peace, and which are not prohibited by law, and to provide for the punishment of all persons violating such regulations, and of all persons who knowingly permit the same to be violated in any building or upon any premises owned or controlled by them;

(34) To restrain and provide for the punishment of vagrants, mendicants, prostitutes, and other disorderly persons;

(35) To provide for the punishment of all disorderly conduct, and of all practices dangerous to public health or safety, and to make all regulations necessary for the preservation of public morality, health, peace, and good order within its limits, and to provide for the arrest, trial, and punishment of all persons charged with violating any of the ordinances of said city. The punishment shall not exceed a fine of five thousand dollars or imprisonment in the city jail for one year, or both such fine and imprisonment. Such cities alternatively may provide that violations of ordinances constitute a civil violation subject to monetary penalties;

(36) To project or extend its streets over and across any tidelands within its corporate limits, and along or across the harbor areas of such city, in such manner as will best promote the interests of commerce;

(37) To provide in their respective charters for a method to propose and adopt amendments thereto. [1990 c 189 § 3; 1986 c 278 § 3; 1984 c 258 § 802; 1977 ex.s. c 316 § 20; 1971 ex.s. c 16 § 1; 1965 ex.s. c 116 § 2; 1965 c 7 § 35.22.280. Prior: 1890 p 218 § 5; RRS § 8966.]

Severability—1986 c 278: See note following RCW 36.01.010.

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

Severability—1977 ex.s. c 316: See note following RCW 70.48.020.

35.22.282 City and town license fees and taxes on financial institutions. See chapter 82.14A RCW.

35.22.283 City license fees or taxes on certain business activities to be at a single uniform rate. See RCW 35.21.710.

35.22.284 Association of sheriffs and police chiefs. See chapter 36.28A RCW.

35.22.285 Nonpolluting power generation by individual—Exemption from regulation—Authorization to contract with utility. See chapter 80.58 RCW.

35.22.287 Hydroelectric resources—Separate legal authority—Creation by irrigation districts and cities, towns, or public utility districts. See RCW 87.03.825 through 87.03.840.

35.22.288 Publication of ordinances or summary—Public notice of hearings and meeting agendas. Promptly after adoption, the text of each ordinance or a summary of the content of each ordinance shall be published at least once in the official newspaper of the city. For purposes of this section, a summary shall mean a brief description which succinctly describes the main points of the ordinance. When the city publishes a summary, the publication shall include a statement that the full text of the ordinance will be mailed upon request.

An inadvertent mistake or omission in publishing the text or a summary of the content of an ordinance shall not render the ordinance invalid.

In addition to the requirement that a city publish the text or a summary of the content of each adopted ordinance, every city shall establish a procedure for notifying the public of upcoming hearings and the preliminary agenda for the forthcoming council meeting. Such procedure may include, but not be limited to, written notification to the city's official newspaper, publication of a notice in the official newspaper, posting of upcoming council meeting agendas, or such other processes as the city determines will satisfy the intent of this requirement. [1988 c 168 § 1; 1985 c 469 § 100.]

35.22.290 Additional powers—Auditoriums, art museums. Every city of the first class may lease, purchase, or construct, and maintain public auditoriums and art museums and may use and let them for such public and private purposes for such compensation and rental and upon such conditions as shall be prescribed by ordinance; it may issue negotiable bonds for the purchase and construction

thereof on such conditions and in such manner as shall be prescribed by its charter and by general law for the borrowing of money for corporate purposes. [1965 c 7 § 35.22.290. Prior: 1925 ex.s. c 81 § 1; 1923 c 179 § 1; RRS § 8981-2.]

35.22.300 Leasing of land for auditoriums, etc. If a city of the first class has acquired title to land for public auditoriums or art museums, it may let it or any part thereof, together with the structures and improvements constructed or to be constructed thereon for such term as may be deemed proper and may raise the needed funds for financing the project, in whole or in part, by transferring or pledging the use and income thereof in such manner as the corporate authorities deem proper.

Any lessee under any such lease may mortgage the leasehold interest and may issue bonds to be secured by the mortgage and may pledge the rent and income of the property to accrue during the term of the lease or any part thereof for the due financing of the project: PROVIDED, That the corporate authorities may specify in any such lease such provisions and restrictions relating thereto as they shall deem proper. [1965 c 7 § 35.22.300. Prior: 1925 c 12 § 1; RRS § 8981-3.]

35.22.302 Conveyance or lease of space above real property or structures or improvements. The legislative authority of every city of the first and second class owning real property, not limited by dedication or trust to a particular public use, may convey or lease for public or private use any estate, right or interest in the areas above the surface of the ground of such real property or structures or improvements thereon: PROVIDED, That the estate, right or interest so created and conveyed and the use authorized in connection therewith will not in the judgment of said legislative authority be needed for or be inconsistent with the public purposes for which such property was acquired, is being used, or to which it is to be devoted: PROVIDED FURTHER, That the legislative authority may impose conditions and restrictions on the use to be made of the estate, right or interest conveyed or leased, in the same manner and to the same extent as may be done by any vendor or lessor of real estate.

No conveyance or lease authorized by this section shall permit, authorize or suffer the lessee or grantee to encumber that portion of the real estate devoted to or needed for public purposes. [1967 ex.s. c 99 § 1.]

35.22.305 Department for administration, etc., of property incident to civic center—Creation authorized—Supervision—Authority. The legislative authority of any city of the first class of more than four hundred thousand population shall have, notwithstanding any charter or statutory provision to the contrary, authority by ordinance to create a separate department of municipal government for the administration, management and control of any multiple use city property, including improvements thereon, devoted to educational, cultural, recreational, entertainment, athletic, convention and such other uses as shall be declared by ordinance to be incident to a civic center. The supervision of said department shall be by a manager, board or commission to be appointed in the manner, receive such compensa-

tion and perform such duties as may be prescribed by ordinance which may include authority to enter into leases, concessions and other agreements on behalf of the city, appoint and remove employees subject to applicable civil service provisions, advertise events and publicize and otherwise promote the use of such civic center facilities, and operate, manage and control municipal off-street parking and public transportation facilities heretofore or hereafter erected primarily to serve such civic center. All expenditures, purchases and improvements made or performed by or under the direction of said department shall be subject to applicable charter provisions and statutes. [1965 c 132 § 1.]

35.22.310 Cesspools, filling of—Removal of debris, etc. Every city of the first class is empowered to provide for the filling and closing of cesspools and for the removing of garbage, debris, grass, weeds, and brush on property in the city. [1965 c 7 § 35.22.310. Prior: 1907 c 89 § 1; RRS § 8972.]

35.22.320 Collection of cost of filling cesspools, etc. Every city of the first class by general ordinance may prescribe the mode and manner of assessing, levying and collecting assessments upon property for filling and closing cesspools thereon and removing garbage, debris, grass, weeds, and brush and provide that the charges therefor shall be a lien on the property upon which such work is done and collected in such manner as is prescribed in the ordinance. [1965 c 7 § 35.22.320. Prior: 1907 c 89 § 2; RRS § 8973.]

35.22.330 Radio communication. Every city of the first class maintaining a harbor department may install, maintain, and operate in connection therewith wireless telegraph stations for the handling of official and commercial messages and for communicating with wireless land and shore stations under such regulations as the corporate authorities may prescribe and in accordance with the statutes and regulations of the federal government. [1965 c 7 § 35.22.330. Prior: 1923 c 92 § 1; RRS § 8981-1.]

35.22.340 Streets—Railroad franchises in, along, over and across. Every city of the first class may by ordinance authorize the location, construction, and operation of railroads in, along, over, and across any highway, street, alley, or public place in the city for such term of years and upon such conditions as the city council may by ordinance prescribe notwithstanding any provisions of the city charter limiting the length of terms of franchises or requiring franchises to contain a provision granting the city the right to appropriate by purchase the property of any corporation receiving a franchise, license, privilege, or authority: PROVIDED, That this does not apply to street railroads nor to railroads operated in connection with street railroads in and along the streets of such city. [1965 c 7 § 35.22.340. Prior: 1907 c 41 § 1; RRS § 8971.]

35.22.350 Utilities—Collective bargaining with employees. Every city of the first class which owns and operates a waterworks system, a light and power system, a street railway or other public utility, shall have power, through its proper officers, to deal with and to enter into

contracts for periods not exceeding one year with its employees engaged in the construction, maintenance, or operation thereof through the accredited representatives of the employees including any labor organization or organizations authorized to act for them concerning wages, hours and conditions of labor in such employment, and every city having not less than one hundred forty thousand nor more than one hundred and seventy thousand population is empowered and authorized to immediately place in effect any adjustment or change in such wages, hours and conditions of labor of such employees as may be required to conform to the provisions of any such contract, irrespective of the provisions of any annual budget or act relating thereto: PROVIDED, That not more than one such contract not in conformity with any annual budget shall be made during any budget year, nor shall any such adjustment or change be made which would result in an excess of expenditures over revenues of such public utility. [1965 c 7 § 35.22.350. Prior: 1955 c 145 § 1; 1951 c 21 § 1; 1935 c 37 § 1; RRS § 8966-5.]

Labor regulations: Title 49 RCW.

35.22.360 Utilities—Wage adjustments. Notwithstanding any annual budget or statute relating thereto, any city of the first class owning and operating a public utility, or the city's public utility department, may make an adjustment or change of the rate of daily wages of employees of any such public utility if such adjustment or change is accompanied by or is approximately coincidental with a shortening of the work week of the employees and if the adjustment or change will not result in any increase in pay per week, or excess of expenditures of the public utility over its revenues. [1965 c 7 § 35.22.360. Prior: 1937 c 16 § 1; RRS § 9000-22a.]

35.22.362 Nuclear thermal power facilities—Joint development with public utility districts and electrical companies. See chapter 54.44 RCW.

35.22.365 Public transportation systems in cities and metropolitan municipal corporations—Financing. See chapter 35.95 RCW.

35.22.370 Wards—Division of city. Notwithstanding that the charter of a city of the first class may forbid the city council from redividing the city into wards except at stated periods, if the city has failed to redivide the city into wards during any such period, the city council by ordinance may do so at any time thereafter: PROVIDED, That there shall not be more than one redivision into wards during any one period specified in the charter. [1965 c 7 § 35.22.370. Prior: 1903 c 141 § 1; RRS § 8970.]

35.22.410 Wharves—City may let wharves or privileges thereon. Every city of the first class may let the whole or any part of a wharf, or the privileges thereon owned by the city, for periods not to exceed one year in such manner, and upon such terms, as may be prescribed by a general ordinance. [1965 c 7 § 35.22.410. Prior: 1911 c 67 § 1; RRS § 8967.]

35.22.415 Municipal airport located in unincorporated area—Subject to county comprehensive plan and zoning ordinances. Whenever a first class city owns and operates a municipal airport which is located in an unincorporated area of a county, the airport shall be subject to the county's comprehensive plan and zoning ordinances in the same manner as if the airport were privately owned and operated. [1979 ex.s. c 124 § 10.]

Severability—1979 ex.s. c 124: See note following RCW 35A.14.015.

35.22.425 Criminal code repeals by city operating municipal court—Agreement covering costs of handling resulting criminal cases—Arbitration. A city of the first class operating a municipal court may not repeal in its entirety that portion of its municipal code defining crimes or repeal a provision of its municipal code which defines a crime equivalent to an offense listed in RCW 46.63.020 unless the municipality has reached an agreement with the appropriate county under chapter 39.34 RCW under which the county is to be paid a reasonable amount for costs associated with prosecution, adjudication, and sentencing in criminal cases filed in district court as a result of the repeal. The agreement shall include provisions for periodic review and renewal of the terms of the agreement. If the municipality and the county are unable to agree on the terms for renewal of the agreement, they shall be deemed to have entered into an agreement to submit the issue to arbitration under chapter 7.04 RCW. Pending conclusion of the arbitration proceeding, the terms of the agreement shall remain in effect. The municipality and the county have the same rights and are subject to the same duties as other parties who have agreed to submit to arbitration under chapter 7.04 RCW. [1984 c 258 § 204.]

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

35.22.570 Omnibus grant of powers to first class cities. Any city adopting a charter under the provisions of this chapter shall have all the powers which are conferred upon incorporated cities and towns by this title or other laws of the state, and all such powers as are usually exercised by municipal corporations of like character and degree. [1965 c 7 § 35.22.570. Prior: 1890 p 224 § 7; RRS § 8981.]

35.22.580 Diversion of local improvement moneys prohibited—Refund of excess. Whenever any city of the first class shall levy and collect moneys by sale of bonds or otherwise for any local improvement by special assessment therefor, the same shall be carried in a special fund to be used for said purpose, and no part thereof shall be transferred or diverted to any other fund or use: PROVIDED, That any funds remaining after the payment of the whole cost and expense of such improvement, in excess of the total sum required to defray all the expenditures by the city on account thereof, shall be refunded on demand to the amount of such overpayment: PROVIDED FURTHER, That this section shall not be deemed to require the refunding of any balance in any local improvement fund after the payment of all outstanding obligations issued against such fund, where such balance accrues from any saving in interest or from

penalties collected upon delinquent assessments, but any such balance may be turned into the general fund or otherwise disposed of, as the legislative authority of such city may direct by ordinance. The provisions of this section relating to the refund of excess local improvement district funds shall not apply to any district whose obligations are guaranteed by the local improvement guaranty fund. [1965 c 7 § 35.22.580. Prior: 1917 c 58 § 1; 1915 c 17 § 1; RRS § 8983. Formerly RCW 35.45.100.]

35.22.590 Bonds voted by people—Transfer of excess to redemption fund. (1) Whenever the issuance or sale of bonds or other obligations of any city of the first class has been authorized by vote of the people, as provided by any existing charter or laws, for any special improvement or purpose, the proceeds of the sale of such bonds including premiums if any shall be carried in a special fund to be devoted to the purpose for which such bonds were authorized, and no portion of such bonds shall be transferred or diverted to any other fund or purpose: PROVIDED, That nothing herein shall be held to prevent the transfer to the interest and redemption fund of any balance remaining in the treasury after the completion of such improvement or purpose so authorized: PROVIDED FURTHER, That nothing herein shall prevent the city council from disposing of such bonds, or any portion thereof, in such amounts and at such times as it shall direct, but no such bonds shall be sold for less than par. Such bonds may be in any form, including bearer bonds or registered bonds as provided in RCW 39.46.030.

(2) Notwithstanding subsection (1) of this section, such bonds may be issued and sold in accordance with chapter 39.46 RCW. [1983 c 167 § 35; 1965 c 7 § 35.22.590. Prior: 1915 c 17 § 2; RRS § 8984. Formerly RCW 35.45.110.]

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

Elections: Title 29 RCW.

35.22.600 Liability for violations of RCW 35.22.580 or 35.22.590. Any ordinance, resolution, order or other action of any city council, board or officer, and every city warrant or other instrument in writing made in violation of any of the provisions of RCW 35.22.580 or 35.22.590 shall be void, and every officer, agent or employee of any such city, or member of the city council, or other board thereof, and every private person or corporation who knowingly commits any violation thereof or knowingly aids in such violation, shall be liable to the city concerned for all moneys so transferred, diverted or paid out, which liability shall also attach to and be enforceable against the official bond (if any) of any such officer, agent, employee, member of city council or board. [1965 c 7 § 35.22.600. Prior: 1915 c 17 § 3; RRS § 8985. Formerly RCW 35.45.120.]

35.22.610 Police officers—Appointment without regard to residence authorized. Notwithstanding the provisions of RCW 35.21.200, as now or hereafter amended, all cities of the first class shall have the right and authority to appoint and employ a person as a regular or special police

officer of said city regardless of his place of residence or domicile at the date of his appointment.

This provision shall supersede any provision of any city charter to the contrary. [1967 ex.s. c 37 § 1.]

Residence requirements for appointive city officials and employees: RCW 35.21.200.

35.22.620 Public works or improvements—Limitations on work by public employees—Small works roster—Purchase of reused or recycled materials or products. (1) As used in this section, the term "public works" means as defined in RCW 39.04.010.

(2) A first class city may have public works performed by contract pursuant to public notice and call for competitive bids. As limited by subsection (3) of this section, a first class city may have public works performed by city employees in any annual or biennial budget period equal to a dollar value not exceeding ten percent of the public works construction budget, including any amount in a supplemental public works construction budget, over the budget period. The amount of public works that a first class city has a county perform for it under RCW 35.77.020 shall be included within this ten percent limitation.

If a first class city has public works performed by public employees in any budget period that are in excess of this ten percent limitation, the amount in excess of the permitted amount shall be reduced from the otherwise permitted amount of public works that may be performed by public employees for that city in its next budget period. Twenty percent of the motor vehicle fuel tax distributions to that city shall be withheld if two years after the year in which the excess amount of work occurred, the city has failed to so reduce the amount of public works that it has performed by public employees. The amount so withheld shall be distributed to the city when it has demonstrated in its reports to the state auditor that the amount of public works it has performed by public employees has been so reduced.

Whenever a first class city has had public works performed in any budget period up to the maximum permitted amount for that budget period, all remaining public works within that budget period shall be done by contract pursuant to public notice and call for competitive bids.

The state auditor shall report to the state treasurer any first class city that exceeds this amount and the extent to which the city has or has not reduced the amount of public works it has performed by public employees in subsequent years.

(3) In addition to the percentage limitation provided in subsection (2) of this section, a first class city with a population in excess of one hundred fifty thousand shall not have public employees perform a public works project in excess of fifty thousand dollars if more than a single craft or trade is involved with the public works project, or a public works project in excess of twenty-five thousand dollars if only a single craft or trade is involved with the public works project or the public works project is street signalization or street lighting. In addition to the percentage limitation provided in subsection (2) of this section, a first class city with a population of one hundred fifty thousand or less shall not have public employees perform a public works project in excess of thirty-five thousand dollars if more than one craft

or trade is involved with the public works project, or a public works project in excess of twenty thousand dollars if only a single craft or trade is involved with the public works project or the public works project is street signalization or street lighting. A public works project means a complete project. The restrictions in this subsection do not permit the division of the project into units of work or classes of work to avoid the restriction on work that may be performed by day labor on a single project.

(4) In addition to the accounting and record-keeping requirements contained in RCW 39.04.070, every first class city annually shall prepare a report for the state auditor indicating the total public works construction budget and supplemental public works construction budget for that year, the total construction costs of public works performed by public employees for that year, and the amount of public works that is performed by public employees above or below ten percent of the total construction budget. However, if a city budgets on a biennial basis, this annual report shall indicate the amount of public works that is performed by public employees within the current biennial period that is above or below ten percent of the total biennial construction budget.

After September 1, 1987, each first class city with a population of one hundred fifty thousand or less shall use the form required by RCW 43.09.205 to account and record costs of public works in excess of five thousand dollars that are not let by contract.

(5) The cost of a separate public works project shall be the costs of materials, supplies, equipment, and labor on the construction of that project. The value of the public works budget shall be the value of all the separate public works projects within the budget.

(6) When any emergency shall require the immediate execution of such public work, upon the finding of the existence of such emergency by the authority having power to direct such public work to be done and duly entered of record, publication of description and estimate may be made within seven days after the commencement of the work. Within two weeks of the finding that such an emergency existed, the city council shall adopt a resolution certifying the existence of this emergency situation.

(7) In lieu of the procedures of subsections (2) and (6) of this section, a first class city may use a small works roster and award contracts under this subsection for contracts of one hundred thousand dollars or less.

(a) The city may maintain a small works roster comprised of all contractors who have requested to be on the roster and are, where required by law, properly licensed or registered to perform such work in this state.

(b) Whenever work is done by contract, the estimated cost of which is one hundred thousand dollars or less, and the city uses the small works roster, the city shall invite proposals from all appropriate contractors on the small works roster: PROVIDED, That not less than five separate appropriate contractors, if available, shall be invited to submit bids on any one contract: PROVIDED FURTHER, That whenever possible, the city shall invite at least one proposal from a minority or woman contractor who shall otherwise qualify under this section. Once a bidder on the small works roster has been offered an opportunity to bid, that bidder shall not be offered another opportunity until all

other appropriate contractors on the small works roster have been afforded an opportunity to submit a bid. Invitations shall include an estimate of the scope and nature of the work to be performed, and materials and equipment to be furnished.

(c) When awarding such a contract for work, the estimated cost of which is one hundred thousand dollars or less, the city shall award the contract to the contractor submitting the lowest responsible bid.

(8) The allocation of public works projects to be performed by city employees shall not be subject to a collective bargaining agreement.

(9) This section does not apply to performance-based contracts, as defined in RCW 39.35A.020(3), that are negotiated under chapter 39.35A RCW.

(10) Nothing in this section shall prohibit any first class city from allowing for preferential purchase of products made from recycled materials or products that may be recycled or reused. [1989 c 431 § 59; 1987 c 120 § 1. Prior: 1985 c 219 § 1; 1985 c 169 § 6; 1979 ex.s. c 89 § 1; 1975 1st ex.s. c 56 § 1.]

Severability—1989 c 431: See RCW 70.95.901.

Competitive bidding violations by municipal officer, penalties: RCW 39.30.020.

35.22.625 Public works or improvements—Inapplicability of RCW 35.22.620 to certain agreements relating to water pollution control, solid waste handling facilities. RCW 35.22.620 does not apply to the selection of persons or entities to construct or develop water pollution control facilities or to provide water pollution control services under RCW 70.150.040 or the selection of persons or entities to construct or develop solid waste handling facilities or to provide solid waste handling services under RCW 35.21.156. [1989 c 399 § 4; 1987 c 436 § 8.]

35.22.630 Public works or improvements—Cost amounts—How determined. The cost of any public work or improvement for the purposes of RCW 35.22.620 and 35.22.640 shall be the aggregate of all amounts to be paid for labor, material, and equipment on one continuous or interrelated project where work is to be performed simultaneously or in close sequence: PROVIDED, That the cost of water services and metering equipment furnished by any first class city in the course of a water service installation from the utility-owned main to and including the meter box assembly shall not be included as part of the aggregate cost as provided herein. The breaking down of any public work or improvement into units or accomplishing any public work or improvement by phases for the purpose of avoiding the minimum dollar amount prescribed in RCW 35.22.620 is contrary to public policy and is prohibited. [1975 1st ex.s. c 56 § 2.]

35.22.640 Public works or improvements—Electrical distribution and generating systems—Customer may contract with qualified electrical contractor. Cities of the first class are relieved from complying with the provisions of RCW 35.22.620 with respect to any public work or improvement relating solely to electrical distribution and generating systems on public rights of way or on

municipally owned property: PROVIDED, That if a city-owned electrical utility directly assesses its customers a service installation charge for a temporary service, permanent service, or expanded service, the customer may, with the written approval of the city-owned electric utility, contract with a qualified electrical contractor licensed under chapter 19.28 RCW to install any material or equipment in lieu of having city utility personnel perform the installation. In the event the city-owned electric utility denies the customer's request to utilize a private electrical contractor for such installation work, it shall provide the customer with written reasons for such denial: PROVIDED FURTHER, That nothing herein shall prevent any first class city from operating a solid waste department utilizing its own personnel.

If a customer elects to employ a private electrical contractor as provided in this section, the private electrical contractor shall be solely responsible for any damages resulting from the installation of any temporary service, permanent service, or expanded service and the city-owned electrical utility shall be immune from any tortious conduct actions as to that installation. [1983 c 217 § 1; 1975 1st ex.s. c 56 § 3.]

35.22.650 Public works or improvements—Minority business, employees—Contract, contents. All contracts by and between a first class city and contractors for any public work or improvement exceeding the sum of ten thousand dollars, or fifteen thousand dollars for construction of water mains, shall contain the following clause:

"Contractor agrees that he shall actively solicit the employment of minority group members. Contractor further agrees that he shall actively solicit bids for the subcontracting of goods or services from qualified minority businesses. Contractor shall furnish evidence of his compliance with these requirements of minority employment and solicitation. Contractor further agrees to consider the grant of subcontracts to said minority bidders on the basis of substantially equal proposals in the light most favorable to said minority businesses. The contractor shall be required to submit evidence of compliance with this section as part of the bid."

As used in this section, the term "minority business" means a business at least fifty-one percent of which is owned by minority group members. Minority group members include, but are not limited to, blacks, women, native Americans, Orientals, Eskimos, Aleuts, and Spanish Americans. [1975 1st ex.s. c 56 § 4.]

35.22.660 Child care facilities—Review of need and demand—Adoption of ordinances. If a first class city zones pursuant to its inherent charter authority and not pursuant to chapter 35.63 RCW, and does not provide for the siting of family day care homes in zones or areas that are designated for single family or other residential uses, and for the siting of mini-day care centers and day care centers in zones or areas that are designated for any residential or commercial uses, the city shall conduct a review of the need and demand for child care facilities, including the cost of any conditional or special use permit that may be required. The review shall be completed by August 30, 1990. A copy of the findings, conclusions, and recommendations resulting

from the review shall be sent to the department of community development by September 30, 1990.

On or before June 30, 1991, each municipality that plans and zones under this chapter shall have adopted an ordinance or ordinances that are necessary to implement the findings of this review, if the findings indicate that such changes are necessary, or shall notify the department of community development as to why such implementing ordinances were not adopted. [1989 c 335 § 7.]

~~Findings—Purpose—Severability—1989 c 335:~~ See notes following RCW 35.63.170.

~~Definitions for RCW 35.22.660:~~ See RCW 35.63.170.

35.22.670 Mobile home parks—Review of need and demand. If a first class city zones under its inherent charter authority and not under chapter 35.63 RCW, then each first class city shall conduct a review of the need and demand for mobile home parks. The review shall be completed by May 31, 1990. A copy of the findings, conclusions, and recommendations resulting from the review shall be sent to the department of community development by June 30, 1990. [1989 c 274 § 5.]

~~Findings—Purpose—Severability—1989 c 274:~~ See notes following RCW 35.63.190.

35.22.680 Residential care facilities—Review of need and demand—Adoption of ordinances. If a first class city zones pursuant to its inherent charter authority and not pursuant to chapter 35.63 RCW, and does not provide for the siting of residential care facilities in zones or areas that are designated for single family or other residential uses, the city shall conduct a review of the need and demand for the facilities, including the cost of any conditional or special use permit that may be required. The review shall be completed by August 30, 1990. A copy of the findings, conclusions, and recommendations resulting from the review shall be sent to the department of community development by September 30, 1990.

On or before June 30, 1991, each municipality that plans and zones under this chapter shall have adopted an ordinance or ordinances that are necessary to implement the findings of this review, if the findings indicate that such changes are necessary, or shall notify the department of community development as to why such implementing ordinances were not adopted. [1989 c 427 § 39.]

~~Severability—1989 c 427:~~ See RCW 74.39.900.

Report to legislature, model ordinance: RCW 70.128.180.

35.22.690 First class cities subject to limitations on moratoria, interim zoning controls. A first class city that plans under the authority of its charter is subject to the provisions of RCW 35.63.200. [1992 c 207 § 2.]

35.22.700 Conformance with chapter 43.97 RCW required. With respect to the National Scenic Area, as defined in the Columbia River Gorge National Scenic Area Act, P.L. 99-663, the exercise of any power or authority by a city pursuant to this chapter shall be subject to and in conformity with the requirements of chapter 43.97 RCW, including the Interstate Compact adopted by RCW 43.97.015, and with the management plan regulations and

ordinances adopted by the Columbia River Gorge commission pursuant to the Compact. [1987 c 499 § 5.]

35.22.900 Liberal construction. The rule that statutes in derogation of the common law are to be strictly construed shall have no application to this chapter, but the same shall be liberally construed for the purpose of carrying out the objects for which this chapter is intended. [1965 c 7 § 35.22.900. Prior: 1890 p 224 § 8.]

Chapter 35.23

SECOND CLASS CITIES

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35.23.010 Rights, powers and privileges—Exchange of park purpose property. Every city of the second class shall be entitled "City of" (naming it), and by such name shall have perpetual succession; may sue and be sued

in all courts and in all proceedings; shall have and use a common seal which it may alter at pleasure; may acquire, hold, lease, use and enjoy property of every kind and control and dispose of it for the common benefit; and, upon making a finding that any property acquired for park purposes is not useful for such purposes and that an exchange thereof for other property to be dedicated for park purposes is in the public interest, may, with the consent of the dedicator or donor, his heirs, successors or assigns, exchange such property for other property to be dedicated for park purposes and make, execute and deliver proper conveyances to effect the exchange. In any case where owing to death or lapse of time there is neither donor, heir, successor, nor assigns to give consent to the exchange, then this consent may be executed by the grantee. Title to property so conveyed by the city shall vest in the grantee free and clear of any trust in favor of the public arising out of any prior dedication for park purposes. [1965 c 7 § 35.23.010. Prior: 1953 c 190 § 1; 1907 c 241 § 1; RRS § 9006.]

35.23.020 Elective officers. The elective officers of a city of the second class shall consist of a mayor, twelve councilmen, a city clerk, and a city treasurer. [1987 c 3 § 6; 1965 c 7 § 35.23.020. Prior: 1949 c 83 § 1; 1907 c 241 § 2; RRS § 9007.]

Severability—1987 c 3: See note following RCW 3.46.020.

35.23.030 Eligibility to hold elective office. No person shall be eligible to hold any elective office in any city of the second class unless he is a registered voter therein and has resided therein for at least one year next preceding the date of his election. [1965 c 7 § 35.23.030. Prior: 1907 c 241 § 9; RRS § 9014.]

35.23.040 Elections—Terms of office. A general municipal election shall be held biennially in second class cities not operating under the commission form of government in each odd-numbered year as provided in RCW 29.13.020.

The term of office of mayor, city clerk, city treasurer and councilmen in such cities shall be four years, and until their successors are elected and qualified and assume office in accordance with RCW 29.04.170, but not more than six councilmen shall be elected in any one year to fill a full term. [1987 c 3 § 7; 1979 ex.s. c 126 § 21; 1965 c 7 § 35.23.040. Prior: 1963 c 200 § 14; 1959 c 86 § 3; prior: (i) 1951 c 71 § 1; 1909 c 120 § 4; 1907 c 241 § 3; RRS § 9008. (ii) 1951 c 71 § 1; 1907 c 241 § 4; RRS § 9009.]

Severability—1987 c 3: See note following RCW 3.46.020.

Purpose—1979 ex.s. c 126: See RCW 29.04.170(1).

35.23.050 Conduct of elections. All municipal elections held under the provisions of this chapter shall be conducted according to the general election laws of this state, as far as practicable: PROVIDED, That any qualified voter of such city, duly registered for the general county or state election next preceding any municipal election, general or special, shall be qualified to vote at such municipal election. No person shall be qualified to vote at such election unless he is a qualified elector of the county and has resided in such city for at least thirty days next preceding

such election. [1965 c 7 § 35.23.050. Prior: 1907 c 241 § 5; 1890 p 145 § 27; RRS § 9010.]

Elections: Title 29 RCW.

35.23.070 Contested elections. The city council as constituted at the time of election, or as it may be constituted between that date and the first Monday of January following, shall hear and determine any and all contested elections of any and all city offices. The city council shall have power by general ordinance to prescribe rules and regulations for the hearing of contested elections of city officers, but proceedings before the city council in cases of contested elections shall conform as near as may be to the provisions of the general election laws, relating to contested elections. [1965 c 7 § 35.23.070. Prior: 1951 c 71 § 2; 1907 c 241 § 7; RRS § 9012.]

Election contests: Chapter 29.65 RCW.

35.23.080 Mayor—General duties. The mayor shall be the chief executive officer of the city. He shall:

- (1) Have general supervision over the several departments of the city government and over all its interests;
- (2) Preside over the city council when present;
- (3) Once in three months, submit a general statement of the condition of the various departments and recommend to the city council such measures as he may deem expedient for the public health or improvement of the city, its finances or government;
- (4) Countersign all warrants and licenses, deeds, leases and contracts requiring signature issued under and by authority of the city.

If there is a vacancy in the office of mayor or he is absent from the city, or is unable from any cause to discharge the duties of his office, the president of the council shall act as mayor, exercise all his powers and be subject to all his duties. [1965 c 7 § 35.23.080. Prior: (i) 1907 c 241 § 16, part; RRS § 9021, part. (ii) 1907 c 241 § 17, part; RRS § 9022, part.]

35.23.090 City clerk—Duties. The city clerk shall:

- (1) Keep the corporate seal and all papers and documents belonging to the city and file them in his office under appropriate heads;
- (2) Attend the sittings of the city council, and keep a journal of its proceedings and records of its resolutions and ordinances;
- (3) Sign all warrants and licenses issued pursuant to the orders and ordinances of the city council and affix the corporate seal to the licenses;
- (4) Sign all deeds, leases, contracts, bonds and other documents when authorized by the council;
- (5) Keep an accurate account in a suitable book under the appropriate heads of all expenditures, of all orders drawn upon the city treasurer and of all warrants issued in pursuance thereof;
- (6) Keep an account in an appropriate book of all licenses issued, with the names of the persons to whom issued, the date of issue, the time for which they were granted and the sums paid therefor;
- (7) Perform such other duties as he may be required to perform by statute or by ordinance. [1965 c 7 § 35.23.090.]

Prior: 1955 c 355 § 2; prior: 1939 c 105 § 2, part; 1907 c 241 § 20, part; RRS § 9025, part.]

35.23.100 Clerk may take acknowledgments. The clerk or deputy clerk of any second class city shall, without charge, take acknowledgments and administer oaths required by law on all claims and demands against the city. [1965 c 7 § 35.23.100. Prior: 1941 c 88 § 1, part; Rem. Supp. 1941 § 9025-1, part.]

35.23.110 City treasurer—Duties. The city treasurer shall:

- (1) Receive and safely keep all money belonging to the city from whatever source derived;
- (2) Place it to the credit of the different funds to which it belongs in a book kept for that purpose;
- (3) Disburse the funds of the city by direction of the council as authorized by law;
- (4) Report monthly to the city council the condition of the treasury. [1965 c 7 § 35.23.110. Prior: 1907 c 241 § 19; RRS § 9024.]

35.23.120 Appointive officers. The appointive officers of a city of the second class shall be a chief of police, city attorney, health officer, and street commissioner; the council may also create by ordinance the offices of superintendent of irrigation, city engineer, harbor master, pound keeper, city jailer, chief of the fire department, and any other offices necessary to discharge the functions of the city and for whose election or appointment no other provision is made. If a paid fire department is established therein a chief engineer and one or more assistant engineers may be appointed. If a free library and reading room is established therein five library trustees shall be appointed. The council by ordinance shall prescribe the duties of the officers and fix their compensation subject to the provisions of any statutes pertaining thereto. [1965 c 7 § 35.23.120. Prior: 1949 c 83 § 2; Rem. Supp. 1949 § 9007A.]

35.23.130 Chief of police and police force. The police force of a second class city shall consist of a chief of police and such number of policemen as shall from time to time be fixed and determined by the city council.

The mayor with the consent of the council, shall appoint the policemen and all subordinate officers of the city and may, for cause, remove them with the consent of the council, as in this chapter provided. [1965 c 7 § 35.23.130. Prior: (i) 1907 c 241 § 24; RRS § 9029. (ii) 1907 c 241 § 25; RRS § 9030.]

Law enforcement chaplains authorized: Chapter 41.22 RCW.

35.23.132 Police officers—Hot pursuit. Police officers of cities of the second class may pursue and arrest violators of city ordinances beyond the city limits. [1965 c 7 § 35.23.132. Prior: 1963 c 191 § 2.]

35.23.134 Association of sheriffs and police chiefs. See chapter 36.28A RCW.

35.23.140 City attorney—Duties. The city attorney shall be the legal advisor of the city council and of all the officers of the city in relation to matters pertaining to their respective offices. He shall represent the city in all litigation in all courts in which the city is a party or directly interested and shall prosecute all violations of city ordinances and shall act generally as attorney for the city and the several departments of the city government, and he shall perform such other duties as the city council may direct. [1965 c 7 § 35.23.140. Prior: 1955 c 355 § 3; prior: 1939 c 105 § 5, part; 1907 c 241 § 26, part; RRS § 9031, part.]

Employment of legal interns: RCW 35.21.760.

35.23.150 Health officer. The city council shall create the office of city health officer, prescribe his duties and qualifications and fix his compensation. [1965 c 7 § 35.23.150. Prior: 1907 c 241 § 64; RRS § 9067.]

35.23.160 Street commissioner. The street commissioner under the direction of the mayor and city council shall have control of the streets and public places of the city and shall perform such duties as the city council may prescribe. [1965 c 7 § 35.23.160. Prior: 1907 c 241 § 23; RRS § 9028.]

35.23.170 Park commissioners. City councils of cities of the second, third and fourth class may provide by ordinance, for a board of park commissioners, not to exceed seven in number, to be appointed by the mayor, with the consent of the city council, from citizens of recognized fitness for such position. No person shall be ineligible as a commissioner by reason of sex and no commissioner shall receive any compensation. The first commissioners shall determine by lot whose term of office shall expire each year, and a new commissioner shall be appointed annually to serve for a term of years corresponding in number to the number of commissioners in order that one term shall expire each year. Such board of park commissioners shall have only such powers and authority with respect to the management, supervision, and control of parks and recreational facilities and programs as are granted to it by the legislative body of cities of the second, third, and fourth class. [1973 c 76 § 1; 1965 c 7 § 35.23.170. Prior: 1953 c 86 § 1; 1925 ex.s. c 121 § 1; 1907 c 228 § 2; RRS § 9200.]

35.23.180 Appointment of officers—Confirmation. The mayor shall appoint all the appointive officers of the city subject to confirmation by the city council. If the council refuses to confirm any nomination of the mayor, he shall nominate another person for that office within ten days thereafter, and may continue to so nominate until his nominee is confirmed. If the mayor fails to make another nomination for the same office within ten days after the rejection of a nominee, the city council shall elect a suitable person to fill the office during the term. The affirmative vote of not less than seven councilmen is necessary to confirm any nomination made by the mayor. [1965 c 7 § 35.23.180. Prior: 1907 c 241 § 8, part; 1890 p 145 § 25; RRS § 9013, part.]

35.23.190 Oath and bond of officers. Before entering upon his duties and within ten days after receiving notice of his election or appointment every officer of the city shall qualify by taking the oath of office and by filing such bond duly approved as may be required of him. The oath of office shall be filed with the county auditor. If no notice of election or appointment was received, the officer must qualify on or before the date fixed for the assumption by him of the duties of the office to which he was elected or appointed. The city council shall fix the amount of all official bonds and may designate what officers shall be required to give bonds in addition to those required to do so by statute.

The clerk, treasurer, city attorney, chief of police, and street commissioner shall each execute an official bond in such penal sum as the city council by ordinance may determine, conditioned for the faithful performance of their duties, including in the same bond the duties of all offices of which he is the ex officio incumbent.

All official bonds shall be approved by the city council and when so approved shall be filed with the city clerk except the city clerk's which shall be filed with the mayor. No city officer shall be eligible as a surety upon any bond running to the city as obligee.

The city council may require a new or additional bond of any officer whenever it deems it expedient. [1987 c 3 § 8; 1986 c 167 § 17; 1965 c 7 § 35.23.190. Prior: (i) 1907 c 241 § 10, part; 1890 p 145 § 29; RRS § 9015, part. (ii) 1907 c 241 § 11; 1890 p 145 § 29; RRS § 9016.]

Severability—1987 c 3: See note following RCW 3.46.020.

Severability—1986 c 167: See note following RCW 29.01.055.

35.23.200 Deputies. The chief of police, the city attorney and the city clerk may each, with the approval of the city council, appoint such deputies as may be necessary by a written designation filed with the clerk. The compensation of each deputy shall be fixed by the city council. The deputies under the direction of their principal shall perform such duties as the council may prescribe. The principals shall be responsible for their respective deputies and may revoke their appointments at pleasure. [1965 c 7 § 35.23.200. Prior: 1953 c 19 § 1; 1907 c 241 § 18; RRS § 9023.]

35.23.210 Removal of appointive officers. Subject to applicable civil service laws any appointive officer, except police judges who are appointed may be removed only upon conviction of misconduct or malfeasance in office, or because of physical or mental disability rendering him incapable of performing the duties of his office, may be removed:

(1) By the mayor for any cause by him deemed sufficient by and with the concurrence of the vote of at least six members of the city council: PROVIDED, That the chief of police may be removed by the mayor without the concurrence of the city council; or

(2) By the affirmative vote of nine councilmen upon their own initiative. [1965 ex.s. c 116 § 6; 1965 c 7 § 35.23.210. Prior: 1907 c 241 § 62; 1890 p 146 § 30; RRS § 9065.]

35.23.220 Salaries of officers. The city council shall fix the salary of all officials (except library trustees who shall serve without compensation and any other officer where provision is made by this title that such officer shall serve without compensation).

No officer shall be allowed any extra or additional compensation, either directly or indirectly, for the rendition of services that the city council have authority to require of him by virtue of his office.

The salaries of all city officers shall be paid monthly. [1969 ex.s. c 270 § 7; 1965 c 7 § 35.23.220. Prior: 1961 c 89 § 1; 1955 c 355 § 4; 1951 c 85 § 1; prior: (i) 1939 c 105 § 1; 1907 c 241 § 12; 1890 p 146 §§ 32, 33; RRS § 9017. (ii) 1939 c 105 § 2, part; 1907 c 241 § 20, part; RRS § 9025, part. (iii) 1939 c 105 § 3; 1907 c 241 § 21; RRS § 9026. (iv) 1939 c 105 § 4; 1907 c 241 § 22; RRS § 9027. (v) 1939 c 105 § 5, part; 1907 c 241 § 26, part; RRS § 9031, part.]

35.23.230 Restrictions on official conduct. In addition to any other restrictions upon his official conduct imposed by law, no officer of a city of the second class shall:

(1) Accept from any railroad or street railway corporation, operating in whole or in part within the city, any pass or free transportation or transportation upon any terms save such as are open to the public generally: PROVIDED, That this provision shall not apply to police officers while on duty;

(2) Accept or receive, directly or indirectly, any commodity or thing of value from any public service corporation owning or enjoying a franchise granted by the city, free of charge or upon any terms save such as are open to the public generally.

The violation of any of the provisions of this section by any officer shall work a forfeiture of his office and warrant his removal therefrom by impeachment or other proper procedure and subject to forfeiture and recovery by judgment against him of all sums of money paid him as salary during the term in which the violation was committed up to the time of the recovery of judgment against him therefor. A civil action for the salary so forfeited may be commenced at any time in the name of the city in any court of competent jurisdiction. [1965 c 7 § 35.23.230. Prior: 1961 c 268 § 7; 1907 c 241 § 13; 1890 p 156 § 44; RRS § 9018.]

Code of ethics for officers and employees: Chapters 42.22, 42.23 RCW.

35.23.240 Vacancies. If anyone either elected or appointed to office fails for ten days to qualify as required by law or fails to enter upon his duties at the time fixed by law or the orders of the city council, his office shall become vacant; or if such officer absents himself from the city without the consent of the city council for three consecutive weeks or openly neglects or refuses to discharge his duties, the council may declare his office vacant: PROVIDED, That this penalty for absence from the city shall not apply to such officers as serve without compensation.

If a vacancy occurs by reason of death, resignation, or otherwise in the office of mayor or councilman, the city council shall fill the vacancy until the next general municipal election.

If a vacancy occurs by reason of death, resignation, or otherwise in any other office it shall be filled by appointment of the mayor and confirmed by the council in the same manner as other appointments are made. [1965 c 7 § 35.23.240. Prior: (i) 1907 c 241 § 10, part; 1890 p 145 § 29; RRS § 9015. (ii) 1907 c 241 § 8, part; 1890 p 145 § 25; RRS § 9013, part. (iii) 1907 c 241 § 63; RRS § 9066. (iv) 1907 c 228 § 5, part; RRS § 9203.]

35.23.250 City council—How constituted. The mayor and twelve councilmen shall constitute the city council and at their first meeting after taking office the city council shall elect one of their own body to serve as president of the council. The mayor shall preside at all meetings at which he is present. In the absence of the mayor, the president of the council shall preside. In the absence of both the mayor and the president of the council, the council may elect a president pro tempore from its own body or any other elector of the city may be elected president pro tempore. The president pro tempore shall have all the powers of the president of the council during the session of the council at which the president pro tempore is presiding except that if he is not a member of the council he shall have no vote. [1965 c 7 § 35.23.250. Prior: (i) 1907 c 241 § 17, part; RRS § 9022, part. (ii) 1907 c 247 § 27; RRS § 9032. (iii) 1907 c 241 § 28, part; 1890 p 148 § 37; RRS § 9033, part.]

35.23.260 City council—Meetings. The city council of a city of the second class shall hold regular meetings at least once every three weeks but not oftener than once per week, the time and place to be prescribed by ordinance. Special meetings may be called by the mayor at any time and he shall call one upon the written request of four councilmen. Written notice of the time and place of special meetings stating the purpose thereof must be given to each member by handing it to him personally, or by leaving it at his last and usual place of abode or by leaving it at his place of business during business hours. The sittings of the council shall be open to the public except where the interests of the city require secrecy. No ordinance of any kind nor any resolution or order for the payment of money shall be passed at any time other than at a regular meeting of the council. [1965 c 7 § 35.23.260. Prior: (i) 1907 c 241 § 28, part; 1890 p 148 § 37; RRS § 9033, part. (ii) 1907 c 241 § 16, part; RRS § 9021, part. (iii) 1907 c 241 § 72, part; RRS § 9075, part.]

35.23.270 City council—Quorum—Rules—Journal, etc. A majority of the councilmen shall constitute a quorum for the transaction of business. A less number may compel the attendance of absent members and may adjourn from time to time. The council shall determine its rules of proceedings. The council may punish their members for disorderly conduct and upon written charges entered upon the journal therefor, may, after trial, expel a member by two-thirds vote of all the members elected. All orders of the city council shall be entered upon the journal of its proceedings, which journal shall be signed by the officer who presided at the meeting. The journal shall be kept by the clerk under the council's direction. [1965 c 7 § 35.23.270. Prior: (i)

1907 c 241 § 28, part; 1890 p 148 § 37; RRS § 9033, part. (ii) 1907 c 241 § 59; 1890 p 159 § 49; RRS § 9062.]

35.23.280 City council—Presiding officer—Voting rights. The mayor shall have a vote only in the case of a tie in the votes of the councilmen. The president of the council while presiding or the president pro tempore, if a councilman, shall have the right to vote upon all questions coming before the council.

A majority of all the members elected shall be necessary to pass any ordinance appropriating for any purpose the sum of five hundred dollars or upwards or any ordinance imposing any assessment, tax, or license or in any wise increasing or diminishing the city revenue. [1965 c 7 § 35.23.280. Prior: (i) 1907 c 241 § 28, part; 1890 p 148 § 37; RRS § 9033, part. (ii) 1907 c 241 § 61; 1890 p 159 § 51; RRS § 9064.]

35.23.290 City council—Entry of ayes and noes on journal. At any time, at the request of any two members the ayes and noes on any question may be taken and entered upon the journal and they must be so taken and entered upon the passage of all ordinances appropriating money, imposing taxes, abolishing licenses, increasing or lessening the amount to be paid for licenses. [1965 c 7 § 35.23.290. Prior: (i) 1907 c 241 § 28, part; 1890 p 148 § 37; RRS § 9033, part. (ii) 1907 c 241 § 60; 1890 p 159 § 50; RRS § 9063.]

35.23.300 Ordinances—Style—Veto power of mayor. The style of the city ordinances shall be as follows: "Be it ordained by the mayor and city council of the city of" They shall be passed by the city council and signed by the mayor, if he approves them; if he does not approve them, he shall return them to the city clerk's office with his objections in writing within eight days after their submission to him, and at the first meeting of the city council thereafter, the objection shall be entered on their journal and they shall then reconsider the ordinance whereupon unless at least two-thirds of the councilmen elected vote for its passage, it shall not become law. If the mayor does not return an ordinance within eight days of its submission to him, it shall become law without his signature. [1965 c 7 § 35.23.300. Prior: (i) 1907 c 241 § 16, part; RRS § 9021, part. (ii) 1907 c 241 § 57, part; 1890 p 158 § 47; RRS § 9060, part. (iii) 1907 c 241 § 58, part; 1890 p 158 § 48; RRS § 9061, part.]

35.23.310 Ordinances—Publication—Copy as evidence—Public notice of hearings and meeting agendas. Promptly after adoption, the text of each ordinance or a summary of the content of each ordinance shall be published at least once in the official newspaper of the city. For purposes of this section, a summary shall mean a brief description which succinctly describes the main points of the ordinance. When the city publishes a summary, the publication shall include a statement that the full text of the ordinance will be mailed upon request.

An inadvertent mistake or omission in publishing the text or a summary of the content of an ordinance shall not render the ordinance invalid.

In addition to the requirement that a city publish the text or a summary of the content of each adopted ordinance, every city shall establish a procedure for notifying the public of upcoming hearings and the preliminary agenda for the forthcoming council meeting. Such procedure may include, but not be limited to, written notification to the city's official newspaper, publication of a notice in the official newspaper, posting of upcoming council meeting agendas, or such other processes as the city determines will satisfy the intent of this requirement.

A certified copy of any ordinance certified to by the clerk, or a printed copy of any ordinance or compilation printed by authority of the city council and attested by the clerk shall be competent evidence in any court. [1988 c 168 § 2; 1965 c 7 § 35.23.310. Prior: (i) 1907 c 241 § 57, part; 1890 p 158 § 47; RRS § 9060, part. (ii) 1907 c 241 § 58, part; 1890 p 158 § 48; RRS § 9061, part.]

Ordinances, recording as evidence of passage: RCW 5.44.080.

35.23.320 Ordinances—Penalty for breach—Inhabitant not disqualified as judge, juror, etc. The interest which an inhabitant of a city of the second class may have in a penalty for the breach of a bylaw or ordinance of such city shall not disqualify such inhabitant to act as judge, juror, or witness in any prosecution to recover the penalty. [1965 c 7 § 35.23.320. Prior: 1890 p 178 § 103; RRS § 9086.]

35.23.330 Limitation on allowance of claims, warrants, etc. No claim shall be allowed against the city by the city council, nor shall the city council order any warrants to be drawn except at a general meeting of the council. The council shall never allow, make valid, or recognize any demand against the city which was not a valid claim against it when the obligation was created, nor authorize to be paid any demand which without such action would be invalid or which is then barred by the statute of limitations, or for which the city was never liable, and any such action shall be void. [1965 c 7 § 35.23.330. Prior: (i) 1907 c 241 § 35; RRS § 9042. (ii) 1907 c 241 § 72, part; RRS § 9075, part.]

35.23.351 Application of RCW 35.23.352 to certain agreements relating to water pollution control, solid waste handling facilities. RCW 35.23.352 does not apply to the selection of persons or entities to construct or develop water pollution control facilities or to provide water pollution control services under RCW 70.150.040 or the selection of persons or entities to construct or develop solid waste handling facilities or to provide solid waste handling services under RCW 35.21.156. [1989 c 399 § 5; 1986 c 244 § 10.]

Severability—1986 c 244: See RCW 70.150.905.

35.23.352 Public works—Contracts—Bids—Small works roster—Purchasing requirements, recycled or reused materials or products. (1) Any second or third class city or any town may construct any public works, as defined in RCW 39.04.010, by contract or day labor without calling for bids therefor whenever the estimated cost of the work or improvement, including cost of materials, supplies and equipment will not exceed the sum of thirty thousand dollars if more than one craft or trade is involved with the

public works, or twenty thousand dollars if a single craft or trade is involved with the public works or the public works project is street signalization or street lighting. A public works project means a complete project. The restrictions in this subsection do not permit the division of the project into units of work or classes of work to avoid the restriction on work that may be performed by day labor on a single project.

Whenever the cost of the public work or improvement, including materials, supplies and equipment, will exceed these figures, the same shall be done by contract. All such contracts shall be let at public bidding upon posting notice calling for sealed bids upon the work. The notice thereof shall be posted in a public place in the city or town and by publication in the official newspaper, or a newspaper of general circulation most likely to bring responsive bids, once each week for two consecutive weeks before the date fixed for opening the bids. The notice shall generally state the nature of the work to be done that plans and specifications therefor shall then be on file in the city or town hall for public inspections, and require that bids be sealed and filed with the council or commission within the time specified therein. Each bid shall be accompanied by a bid proposal deposit in the form of a cashier's check, postal money order, or surety bond to the council or commission for a sum of not less than five percent of the amount of the bid, and no bid shall be considered unless accompanied by such bid proposal deposit. The council or commission of the city or town shall let the contract to the lowest responsible bidder or shall have power by resolution to reject any or all bids and to make further calls for bids in the same manner as the original call.

When the contract is let then all bid proposal deposits shall be returned to the bidders except that of the successful bidder which shall be retained until a contract is entered into and a bond to perform the work furnished, with surety satisfactory to the council or commission, in the full amount of the contract price. If the bidder fails to enter into the contract in accordance with his bid and furnish a bond within ten days from the date at which he is notified that he is the successful bidder, the check or postal money order and the amount thereof shall be forfeited to the council or commission or the council or commission shall recover the amount of the surety bond.

If no bid is received on the first call the council or commission may readvertise and make a second call, or may enter into a contract without any further call or may purchase the supplies, material or equipment and perform the work or improvement by day labor.

(2) The allocation of public works projects to be performed by city or town employees shall not be subject to a collective bargaining agreement.

(3) In lieu of the procedures of subsection (1) of this section, a second or third class city or a town may use a small works roster and award contracts under this subsection for contracts of one hundred thousand dollars or less.

(a) The city or town may maintain a small works roster comprised of all contractors who have requested to be on the roster and are, where required by law, properly licensed or registered to perform such work in this state.

(b) Whenever work is done by contract, the estimated cost of which is one hundred thousand dollars or less, and the city uses the small works roster, the city or town shall

invite proposals from all appropriate contractors on the small works roster: PROVIDED, That whenever possible, the city or town shall invite at least one proposal from a minority or woman contractor who shall otherwise qualify under this section. The invitation shall include an estimate of the scope and nature of the work to be performed, and materials and equipment to be furnished.

(c) When awarding such a contract for work, the estimated cost of which is one hundred thousand dollars or less, the city or town shall award the contract to the contractor submitting the lowest responsible bid.

(4) After September 1, 1987, each second class city, third class city, and town shall use the form required by RCW 43.09.205 to account and record costs of public works in excess of five thousand dollars that are not let by contract.

(5) The cost of a separate public works project shall be the costs of the materials, equipment, supplies, and labor on that construction project.

(6) Any purchase of supplies, material, equipment or services other than professional services, except for public work or improvement, where the cost thereof exceeds seven thousand five hundred dollars shall be made upon call for bids: PROVIDED, That the limitations herein shall not apply to any purchases of materials at auctions conducted by the government of the United States, any agency thereof or by the state of Washington or a political subdivision thereof.

(7) Bids shall be called annually and at a time and in the manner prescribed by ordinance for the publication in a newspaper published or of general circulation in the city or town of all notices or newspaper publications required by law. The contract shall be awarded to the lowest responsible bidder.

(8) For advertisement and competitive bidding to be dispensed with as to purchases between seven thousand five hundred and fifteen thousand dollars, the city legislative authority must authorize by resolution a procedure for securing telephone and/or written quotations from enough vendors to assure establishment of a competitive price and for awarding the contracts for purchase of materials, equipment, or services to the lowest responsible bidder. Immediately after the award is made, the bid quotations obtained shall be recorded and open to public inspection and shall be available by telephone inquiry.

(9) These requirements for purchasing may be waived by resolution of the city or town council which declared that the purchase is clearly and legitimately limited to a single source or supply within the near vicinity, or the materials, supplies, equipment, or services are subject to special market conditions, and recites why this situation exists. Such actions are subject to RCW 39.30.020.

(10) This section does not apply to performance-based contracts, as defined in RCW 39.35A.020(3), that are negotiated under chapter 39.35A RCW.

(11) Nothing in this section shall prohibit any second or third class city or any town from allowing for preferential purchase of products made from recycled materials or products that may be recycled or reused. [1989 c 431 § 56; 1988 c 168 § 3; 1987 c 120 § 2. Prior: 1985 c 469 § 24; 1985 c 219 § 2; 1985 c 169 § 7; 1979 ex.s. c 89 § 2; 1977 ex.s. c 41 § 1; 1974 ex.s. c 74 § 2; 1965 c 114 § 1; 1965 c 7 § 35.23.352; prior: 1957 c 121 § 1; 1951 c 211 § 1; prior: (i) 1907 c 241 § 52; RRS § 9055. (ii) 1915 c 184 § 31;

RRS § 9145. (iii) 1947 c 151 § 1; 1890 p 209 § 166; Rem. Supp. 1947 § 9185.]

Severability—1989 c 431: See RCW 70.95.901.

Competitive bidding violations by municipal officer, penalties: RCW 39.30.020.

35.23.370 Eight-hour day on public work. In all public work done by or for a city of the second class, either by day work or by contract, eight hours shall constitute a day's work; and no employee of the city on city works, or of any contractor or subcontractor doing work for the city shall be required to work longer than eight hours in any one calendar day. This section shall be enforced by the city council in an appropriate ordinance. [1965 c 7 § 35.23.370. Prior: 1907 c 241 § 37; RRS § 9044.]

Labor regulations, hours of labor: Chapter 49.28 RCW.

35.23.380 Exclusive franchises prohibited. No exclusive franchise or privilege shall be granted for the use of any street, alley, highway, or public place or any part thereof. [1965 c 7 § 35.23.380. Prior: 1907 c 241 § 32; RRS § 9039.]

35.23.390 Requisites to granting of franchises—Rates—Bond. No franchise or privilege shall be created or granted by the city council otherwise than by ordinance nor shall it be passed on the day of the introduction nor for thirty days thereafter and then only upon the affirmative vote of two-thirds of the councilmen elected. The city council may fix the rates and tolls to be charged within the city by any public service corporation enjoying a franchise granted by the city subject to review by any court of competent jurisdiction as to the reasonableness thereof. The city council may require a bond in a reasonable amount from any person or corporation obtaining a franchise from the city conditioned for the faithful performance of the conditions and terms of the franchise and providing a recovery on the bond in case of failure to perform the terms and conditions of the franchise. [1965 c 7 § 35.23.390. Prior: (i) 1907 c 241 § 31, part; RRS § 9038, part. (ii) 1907 c 228 § 1, part; RRS § 9199, part. (iii) 1907 c 241 § 67, part; RRS § 9070, part.]

35.23.400 Franchise ordinances—Publication before passage. No ordinance granting a franchise or privilege and no ordinance amending a prior ordinance granting a franchise or privilege shall be passed until it has been published in at least one issue of the official newspaper of the city: PROVIDED, That ordinances or amendments thereto granting a franchise to lay spur railroad tracks connecting manufacturing plants, warehouses, or other private property with a main line of railroad need not be published before they are passed by the council. No ordinance required to be published before passage shall be amended after publication by an amendment which imposes terms, conditions, or privileges less favorable to the city than those in the proposed ordinance as published, but amendments favorable to the city may be made at any time before passage.

All publications of ordinances granting a franchise or ordinance amending ordinances granting a franchise, both before and after passage shall be made at the expense of the

applicant or proposed grantee. [1965 c 7 § 35.23.400. Prior: 1907 c 241 § 31, part; RRS § 9038, part.]

35.23.410 Leasing of street ends on waterfront. The city council may lease for business purposes portions of the ends of streets terminating in the waterfront or navigable waters of the city with the written consent of all the property owners whose properties abut upon the portion proposed to be leased. The lease may be made for any period not exceeding fifteen years but must provide that at intervals of every five years during the term, the rental to be paid by the lessee shall be readjusted between him and the city by mutual agreement, or if they cannot agree by a board of arbitration, one to be chosen by the city, one by the lessee and the third by the other two, their decision to be final. The vote of two-thirds of all the councilmen elected is necessary to authorize such a lease. [1965 c 7 § 35.23.410. Prior: 1907 c 241 § 67, part; RRS § 9070, part.]

35.23.420 Notice of lease to be published before execution. No lease of a portion of the end of a street terminating in the waterfront or navigable waters of the city shall be made until a notice describing the portion of the street proposed to be leased, to whom and for what purpose leased and the proposed rental to be paid has been published by the city clerk in the official newspaper at least fifteen days prior to the execution of the lease. [1965 c 7 § 35.23.420. Prior: 1907 c 241 § 67, part; RRS § 9070, part.]

35.23.430 Railroads in streets to be assessed for street improvement. If an improvement is made upon a street occupied by a street railway or any railroad enjoying a franchise on the street, the city council shall assess against the railroad its just proportion of making the improvement which shall be not less than the expense of improving the space between the rails of the railroad and for a distance of one foot on each side. The assessment against the railroad shall be made on the rolls of the improvement district the same as against other property in the district and shall be a lien on that portion of the railroad within the district from the time of the equalization of the roll. The lien may be foreclosed by a civil action in superior court and the same period of redemption from any sale on foreclosure shall be allowed as is allowed in cases of sale of real estate upon execution. [1965 c 7 § 35.23.430. Prior: 1907 c 241 § 65; RRS § 9068.]

35.23.440 Specific powers enumerated. The city council of each second class city shall have power and authority:

(1) Ordinances: To make and pass all ordinances, orders, and resolutions not repugnant to the Constitution of the United States or the state of Washington, or the provisions of this title, necessary for the municipal government and management of the affairs of the city, for the execution of the powers vested in said body corporate, and for the carrying into effect of the provisions of this title.

(2) License of shows: To fix and collect a license tax, for the purposes of revenue and regulation, on theatres, melodeons, balls, concerts, dances, theatrical, circus, or other performances, and all performances where an admission fee

is charged, or which may be held in any house or place where wines or liquors are sold to the participators; also all shows, billiard tables, pool tables, bowling alleys, exhibitions, or amusements.

(3) Hotels, etc., licenses: To fix and collect a license tax for the purposes of revenue and regulation on and to regulate all taverns, hotels, restaurants, banks, brokers, manufactories, livery stables, express companies and persons engaged in transmitting letters or packages, railroad, stage, and steamboat companies or owners, whose principal place of business is in such city, or who have an agency therein.

(4) Peddlers', etc., licenses: To license, for the purposes of revenue and regulation, tax, prohibit, suppress, and regulate all raffles, hawkers, peddlers, pawnbrokers, refreshment or coffee stands, booths, or sheds; and to regulate as authorized by state law all tipping houses, dram shops, saloons, bars, and barrooms.

(5) Dance houses: To prohibit or suppress, or to license and regulate all dance houses, fandango houses, or any exhibition or show of any animal or animals.

(6) License vehicles: To license for the purposes of revenue and regulation, and to tax hackney coaches, cabs, omnibuses, drays, market wagons, and all other vehicles used for hire, and to regulate their stands, and to fix the rates to be charged for the transportation of persons, baggage, and property.

(7) Hotel runners: To license or suppress runners for steamboats, taverns, or hotels.

(8) License generally: To fix and collect a license tax for the purposes of revenue and regulation, upon all occupations and trades, and all and every kind of business authorized by law not heretofore specified: PROVIDED, That on any business, trade, or calling not provided by law to be licensed for state and county purposes, the amount of license shall be fixed at the discretion of the city council, as they may deem the interests and good order of the city may require.

(9) Riots: To prevent and restrain any riot or riotous assemblages, disturbance of the peace, or disorderly conduct in any place, house, or street in the city.

(10) Nuisances: To declare what shall be deemed nuisances; to prevent, remove, and abate nuisances at the expense of the parties creating, causing, or committing or maintaining the same, and to levy a special assessment on the land or premises whereon the nuisance is situated to defray the cost or to reimburse the city for the cost of abating the same.

(11) Stock pound: To establish, maintain, and regulate a common pound for estrays, and to appoint a poundkeeper, who shall be paid out of the fines and fees imposed and collected of the owners of any animals impounded, and from no other source; to prevent and regulate the running at large of any and all domestic animals within the city limits or any parts thereof, and to regulate or prevent the keeping of such animals within any part of the city.

(12) Control of certain trades: To control and regulate slaughterhouses, washhouses, laundries, tanneries, forges, and offensive trades, and to provide for their exclusion or removal from the city limits, or from any part thereof.

(13) Street cleaning: To provide, by regulation, for the prevention and summary removal of all filth and garbage in

streets, sloughs, alleys, back yards, or public grounds of such city, or elsewhere therein.

(14) Gambling, etc.: To prohibit and suppress all gaming and all gambling or disorderly houses, and houses of ill fame, and all immoral and indecent amusements, exhibitions, and shows.

(15) Markets: To establish and regulate markets and market places.

(16) Speed of railroad cars: To fix and regulate the speed at which any railroad cars, streetcars, automobiles, or other vehicles may run within the city limits, or any portion thereof.

(17) City commons: To provide for and regulate the commons of the city.

(18) Fast driving: To regulate or prohibit fast driving or riding in any portion of the city.

(19) Combustibles: To regulate or prohibit the loading or storage of gunpowder and combustible or explosive materials in the city, or transporting the same through its streets or over its waters.

(20) Property: To have, purchase, hold, use, and enjoy property of every name or kind whatsoever, and to sell, lease, transfer, mortgage, convey, control, or improve the same; to build, erect, or construct houses, buildings, or structures of any kind needful for the use or purposes of such city.

(21) Fire department: To establish, continue, regulate, and maintain a fire department for such city, to change or reorganize the same, and to disband any company or companies of the said department; also, to discontinue and disband said fire department, and to create, organize, establish, and maintain a paid fire department for such city.

(22) Water supply: To adopt, enter into, and carry out means for securing a supply of water for the use of such city or its inhabitants, or for irrigation purposes therein.

(23) Overflow of water: To prevent the overflow of the city or to secure its drainage, and to assess the cost thereof to the property benefited.

(24) House numbers: To provide for the numbering of houses.

(25) Health board: To establish a board of health; to prevent the introduction and spread of disease; to establish a city infirmary and to provide for the indigent sick; and to provide and enforce regulations for the protection of health, cleanliness, peace, and good order of the city; to establish and maintain hospitals within or without the city limits; to control and regulate interments and to prohibit them within the city limits.

(26) Harbors and wharves: To build, alter, improve, keep in repair, and control the waterfront; to erect, regulate, and repair wharves, and to fix the rate of wharfage and transit of wharf, and levy dues upon vessels and commodities; and to provide for the regulation of berths, landing, stationing, and removing steamboats, sail vessels, rafts, barges, and all other watercraft; to fix the rate of speed at which steamboats and other steam watercraft may run along the waterfront of the city; to build bridges so as not to interfere with navigation; to provide for the removal of obstructions to the navigation of any channel or watercourses or channels.

(27) License of steamers: To license steamers, boats, and vessels used in any watercourse in the city, and to fix and collect a license tax thereon.

(28) Ferry licenses: To license ferries and toll bridges under the law regulating the granting of such license.

(29) Penalty for violation of ordinances: To provide that violations of ordinances constitute a civil violation subject to monetary penalties or to determine and impose fines for forfeitures and penalties that shall be incurred for the breach or violation of any city ordinance, notwithstanding that the act constituting a violation of any such ordinance may also be punishable under the state laws, and also for a violation of the provisions of this chapter, when no penalty is affixed thereto or provided by law, and to appropriate all such fines, penalties, and forfeitures for the benefit of the city; but no penalty to be enforced shall exceed for any offense the amount of five thousand dollars or imprisonment for one year, or both; and every violation of any lawful order, regulation, or ordinance of the city council of such city is hereby declared a misdemeanor or public offense, and all prosecutions for the same may be in the name of the state of Washington: PROVIDED, That violation of an order, regulation, or ordinance relating to traffic including parking, standing, stopping, and pedestrian offenses is a traffic infraction, except that violation of an order, regulation, or ordinance equivalent to those provisions of Title 46 RCW set forth in RCW 46.63.020 remains a misdemeanor.

(30) Police department: To create and establish a city police; to prescribe their duties and their compensation; and to provide for the regulation and government of the same.

(31) Elections: To provide for conducting elections and establishing election precincts when necessary, to be as near as may be in conformity with the state law.

(32) Examine official accounts: To examine, either in open session or by committee, the accounts or doings of all officers or other persons having the care, management, or disposition of moneys, property, or business of the city.

(33) Contracts: To make all appropriations, contracts, or agreements for the use or benefit of the city and in the city's name.

(34) Streets and sidewalks: To provide by ordinance for the opening, laying out, altering, extending, repairing, grading, paving, planking, graveling, macadamizing, or otherwise improving of public streets, avenues, and other public ways, or any portion of any thereof; and for the construction, regulation, and repair of sidewalks and other street improvements, all at the expense of the property to be benefited thereby, without any recourse, in any event, upon the city for any portion of the expense of such work, or any delinquency of the property holders or owners, and to provide for the forced sale thereof for such purposes; to establish a uniform grade for streets, avenues, sidewalks, and squares, and to enforce the observance thereof.

(35) Waterways: To clear, cleanse, alter, straighten, widen, fill up, or close any waterway, drain, or sewer, or any watercourse in such city when not declared by law to be navigable, and to assess the expense thereof, in whole or in part, to the property specially benefited.

(36) Sewerage: To adopt, provide for, establish, and maintain a general system of sewerage, draining, or both, and the regulation thereof; to provide funds by local assessments on the property benefited for the purpose aforesaid

and to determine the manner, terms, and place of connection with main or central lines of pipes, sewers, or drains established, and compel compliance with and conformity to such general system of sewerage or drainage, or both, and the regulations of said council thereto relating, by the infliction of suitable penalties and forfeitures against persons and property, or either, for nonconformity to, or failure to comply with the provisions of such system and regulations or either.

(37) Buildings and parks: To provide for all public buildings, public parks, or squares, necessary or proper for the use of the city.

(38) Franchises: To permit the use of the streets for railroad or other public service purposes.

(39) Payment of judgments: To order paid any final judgment against such city, but none of its lands or property of any kind or nature, taxes, revenue, franchise, or rights, or interest, shall be attached, levied upon, or sold in or under any process whatsoever.

(40) Weighing of fuel: To regulate the sale of coal and wood in such city, and may appoint a measurer of wood and weigher of coal for the city, and define his duties, and may prescribe his term of office, and the fees he shall receive for his services: PROVIDED, That such fees shall in all cases be paid by the parties requiring such service.

(41) Hospitals, etc.: To erect and establish hospitals and pesthouses and to control and regulate the same.

(42) Waterworks: To provide for the erection, purchase, or otherwise acquiring of waterworks within or without the corporate limits of the city to supply such city and its inhabitants with water, and to regulate and control the use and price of the water so supplied.

(43) City lights: To provide for lighting the streets and all public places of the city and for furnishing the inhabitants of the city with gas, electric, or other light, and for the ownership, purchase or acquisition, construction, or maintenance of such works as may be necessary or convenient therefor: PROVIDED, That no purchase of any such water plant or light plant shall be made without first submitting the question of such purchase to the electors of the city.

(44) Parks: To acquire by purchase or otherwise land for public parks, within or without the limits of the city, and to improve the same.

(45) Bridges: To construct and keep in repair bridges, and to regulate the use thereof.

(46) Power of eminent domain: In the name of and for the use and benefit of the city, to exercise the right of eminent domain, and to condemn lands and property for the purposes of streets, alleys, parks, public grounds, waterworks, or for any other municipal purpose and to acquire by purchase or otherwise such lands and property as may be deemed necessary for any of the corporate uses provided for by this title, as the interests of the city may from time to time require.

(47) To provide for the assessment of taxes: To provide for the assessment, levying, and collecting of taxes on real and personal property for the corporate uses and purposes of the city and to provide for the payment of the debts and expenses of the corporation.

(48) Local improvements: To provide for making local improvements, and to levy and collect special assessments on the property benefited thereby and for paying the same or

any portion thereof; to determine what work shall be done or improvements made, at the expense, in whole or in part, of the adjoining, contiguous, or proximate property, and to provide for the manner of making and collecting assessments therefor.

(49) Cemeteries: To regulate the burial of the dead and to establish and regulate cemeteries, within or without the corporate limits, and to acquire lands therefor by purchase or otherwise.

(50) Fire limits: To establish fire limits with proper regulations and to make all needful regulations for the erection and maintenance of buildings or other structures within the corporate limits as safety of persons or property may require, and to cause all such buildings and places as may from any cause be in a dangerous state to be put in a safe condition; to regulate the manner in which stone, brick, and other buildings, party walls, and partition fences shall be constructed and maintained.

(51) Safety and sanitary measures: To require the owners of public halls, theaters, hotels, and other buildings to provide suitable means of exit and proper fire escapes; to provide for the cleaning and purification of watercourses and canals and for the draining and filling up of ponds on private property within its limits when the same shall be offensive to the senses or dangerous to the health, and to charge the expense thereof to the property specially benefited, and to regulate and control and provide for the prevention and punishment of the defilement or pollution of all streams running in or through its corporate limits and a distance of five miles beyond its corporate limits, and of any stream or lake from which the water supply of the city is or may be taken and for a distance of five miles beyond its source of supply, and to make all quarantine and other regulations as may be necessary for the preservation of the public health and to remove all persons afflicted with any contagious disease to some suitable place to be provided for that purpose.

(52) To regulate liquor traffic: To regulate the selling or giving away of intoxicating, spirituous, malt, vinous, mixed, or fermented liquors as authorized by the general laws of the state.

(53) To establish streets on tidelands: To project or extend or establish streets over and across any tidelands within the limits of such city.

(54) To provide for the general welfare. [1986 c 278 § 4. Prior: 1984 c 258 § 803; 1984 c 189 § 5; 1979 ex.s. c 136 § 28; 1977 ex.s. c 316 § 21; 1965 ex.s. c 116 § 7; 1965 c 7 § 35.23.440; prior: 1907 c 241 § 29; 1890 p 148 § 38; RRS § 9034.]

Severability—1986 c 278: See note following RCW 36.01.010.

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

Effective date—Severability—1979 ex.s. c 136: See notes following RCW 46.63.010.

Severability—1977 ex.s. c 316: See note following RCW 70.48.020.

35.23.442 City and town license fees and taxes on financial institutions. See chapter 82.14A RCW.

35.23.443 City license fees or taxes on certain business activities to be at a single uniform rate. See RCW 35.21.710.

35.23.444 Nonpolluting power generation by individual—Exemption from regulation—Authorization to contract with utility. See chapter 80.58 RCW.

35.23.445 Hydroelectric resources—Separate legal authority—Creation by irrigation districts and cities, towns, or public utility districts. See RCW 87.03.825 through 87.03.840.

35.23.450 Additional powers—Eminent domain. The right of eminent domain is hereby extended to any such city for the condemnation of lands and other property, either within or without its corporate limits, for any and all corporate purposes and every such city shall have the right to appropriate real estate or other property, either within or without its corporate limits, for any and all municipal purposes in the same manner and under the same procedure as now is or may hereafter be provided by law in cases of other corporations authorized by the laws of the state of Washington to exercise the right of eminent domain. This section shall be construed as a concurrent and cumulative power conferred on such cities, and shall not be construed as in any wise repealing or affecting any other law conferring the power of eminent domain and the right to appropriate property on any such city, and in particular, this section shall not be construed as in any wise repealing or affecting the powers conferred on any such city by chapter 8.12 RCW. [1965 c 7 § 35.23.450. Prior: 1907 c 241 § 69; RRS § 9072.]

35.23.455 Additional powers—Construction and operation of boat harbors, marinas, docks, etc. The legislative body of any second, third or fourth class municipality which contains, or abuts upon, any bay, lake, sound, river or other navigable waters, may construct, operate and maintain any boat harbor, marina, dock or other public improvement, for the purposes of commerce, recreation or navigation. [1965 c 154 § 1.]

35.23.457 Conveyance or lease of space above real property or structures or improvements. See RCW 35.22.302.

35.23.460 Employees' group insurance—False arrest insurance. Subject to chapter 48.62 RCW, any city of the second or third class or town may contract with an insurance company authorized to do business in this state to provide group insurance for its employees including group false arrest insurance for its law enforcement personnel, and pursuant thereto may use a portion of its revenues to pay an employer's portion of the premium for such insurance, and may make deductions from the payrolls of employees for the amount of the employees' contribution and may apply the amount deducted in payment of the employees' portion of the premium. [1991 sp.s. c 30 § 19; 1965 c 7 § 35.23.460. Prior: 1963 c 127 § 1; 1947 c 162 § 1; RRS § 9592-160.]

Effective date, implementation, application—Severability—1991 sp.s. c 30: See RCW 48.62.900 and 48.62.901.

35.23.470 Publicity fund. Every city of the second class having less than eighteen thousand inhabitants may create a publicity fund to be used exclusively for exploiting and advertising the general advantages and opportunities of the city and its vicinity. After providing by ordinance for a publicity fund the city council may use therefor an annual amount not exceeding sixty-two and one-half cents per thousand dollars of assessed valuation of the taxable property in the city. [1973 1st ex.s. c 195 § 16; 1965 c 7 § 35.23.470. Prior: 1913 c 57 § 1; RRS § 9035.]

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

35.23.480 Publicity board. The publicity board administering the publicity fund shall consist of three members nominated by a recognized commercial organization in the city, then appointed by the mayor and confirmed by at least a two-thirds vote of the city council. The commercial organization must be incorporated, must be representative and public, devoted exclusively to the work usually devolving upon such organizations and have not less than two hundred bona fide dues-paying members; if more than one organization in the city meets the qualifications, the oldest one shall be designated to make the nominations.

Members of the publicity board must be resident property owners and voters in the city and after their appointment and confirmation must qualify by taking the oath of office and filing a bond with the city in the sum of one thousand dollars conditioned upon the faithful performance of their duties. They shall be appointed in December and their terms shall be for one year commencing on the second Monday in January after their appointment and until their successors are appointed and qualified. Any member of the board may be removed by the mayor at the request of the organization which nominated the members after a majority vote of the entire membership of the organization favoring the removal, taken at a regular meeting.

Members of the publicity board shall serve without remuneration. [1965 c 7 § 35.23.480. Prior: 1913 c 57 § 2, part; RRS § 9036, part.]

35.23.490 Limitations on use of publicity fund. All expenditures shall be made under direction of the board of publicity. No part of the publicity fund shall ever be paid to any newspaper, magazine, or periodical published within the city or county in which the city is situated, for advertising, or write-ups or for any other service or purpose and no part of the fund shall be expended for the purpose of making exhibits at any fair, exposition or the like. [1965 c 7 § 35.23.490. Prior: 1913 c 57 § 2, part; RRS § 9036, part.]

35.23.500 Taxation—Property tax levy. Every city of the second class may levy and collect annually, a property tax:

- (1) For the payment of outstanding warrants,
- (2) For the payment of interest on and the creation of sinking funds for the payment of outstanding bonded indebtedness and

(3) For the payment of current expenses. [1965 c 7 § 35.23.500. Prior: 1907 c 241 § 70; 1890 p 162 § 57; RRS § 9073.]

Limitation on levies: State Constitution Art. 7 § 2 (Amendments 55, 59), RCW 84.52.050.

35.23.510 Taxation—Park fund levy. City and town councils in cities of the second and third class and towns are authorized to levy a tax in such an amount as the city or town council or commission shall determine and fix for the purpose of acquiring, maintaining and improving any park or parks: PROVIDED, That the amount of such levy shall be made within the limits and as authorized by law. The proceeds of such levy shall be paid into a special fund to be known as the park fund which shall be disbursed as provided for by ordinance. [1965 c 7 § 35.23.510. Prior: 1941 c 49 § 1; 1927 c 273 § 1; 1907 c 228 § 3; Rem. Supp. 1941 § 9201.]

35.23.530 Wards—Division of city into. At any time not within three months previous to an annual election the city council of a second class city may divide the city into wards, not exceeding six in all, or change the boundaries of existing wards. No change in the boundaries of wards shall affect the term of any councilman, but he shall serve out his term in the ward of his residence at the time of his election: PROVIDED, That if this results in one ward being represented by more councilmen than the number to which it is entitled those having the shortest unexpired terms shall be assigned by the council to wards where there is a vacancy.

The representation of each ward in the city council shall be in proportion to the population as nearly as is practicable.

No person shall be eligible to the office of councilman unless he resides in the ward for which he is elected on the date of his election and removal of his residence from the ward for which he was elected renders his office vacant. [1965 c 7 § 35.23.530. Prior: 1907 c 241 § 14; 1890 p 147 § 35; RRS § 9019.]

35.23.540 Water system—Water improvement fund—Tax levy. Every city of the second class may create a special water improvement fund to be used exclusively for the construction, acquisition, extension, or improvement of the city's waterworks and water system. The city council after causing a general plan of the proposed construction, acquisition, extension, or improvement together with the estimated cost thereof to be filed in the office of the city clerk and published in the city's official newspaper, shall submit the proposition of levying a special water improvement tax upon all of the taxable property within the city for the purpose of raising the special water improvement fund to be used exclusively for the proposed improvement. The proposition submitted must distinctly state the amount of the levy and may contemplate the levying of the special tax for one year or for a succession of years not exceeding ten in all. [1965 c 7 § 35.23.540. Prior: 1907 c 241 § 71, part; RRS § 9074, part.]

35.23.550 Water system—Bonds or warrants. If a majority of the votes cast at the special election favor the proposition the council may proceed to levy the special tax

during the year or series of years for which it was authorized, create the special water improvement fund and issue special water improvement fund warrants or bonds against the fund, the proceeds of which shall be used exclusively for the improving, extension, repair or renewal of the city's water system.

The special water improvement fund warrants or bonds shall not be a general obligation against the city and their payment shall be limited to the special water improvement taxes and the holders thereof shall have recourse only against the funds raised by such taxes.

The special water fund tax must be levied each year as authorized to take care of the warrants and bonds outstanding against the special water improvement fund. [1965 c 7 § 35.23.550. Prior: 1907 c 241 § 71, part; RRS § 9074, part.]

Limitations on indebtedness: State Constitution Art. 8 § 6 (Amendment 27), Art. 7 § 2 (Amendments 55, 59), chapter 39.36 RCW, RCW 84.52.050.

Municipal utilities: Chapter 35.92 RCW.

Municipal water and sewer facilities act: Chapter 35.91 RCW.

35.23.560 Waterworks—Construction by city or by district assessments. All cities and towns within the state, other than cities of the first class, which are empowered to construct waterworks for irrigation and domestic purposes, may do so either by the entire city or by assessment districts as the mayor and council may determine. [1965 c 7 § 35.23.560. Prior: 1901 c 117 § 1; RRS § 9526.]

35.23.570 Waterworks—Plans—Special taxes. Before letting any contract for the construction of any waterworks for irrigation and domestic purposes, the mayor and council shall by ordinance or resolution adopt the plans therefor and shall fix and establish the assessment district, if the same is to be constructed at the expense of the district, and such cities and towns are authorized to charge the expense of such waterworks for irrigation and domestic purposes to all the property included within such district which is contiguous or proximate to any streets in which any main pipe or lateral pipe of such waterworks for irrigation and domestic purposes, is to be placed, and to levy special taxes upon such property to pay therefor, which assessment and tax shall be levied in accordance with the last general assessment of the property within said district for city purposes. [1965 c 7 § 35.23.570. Prior: 1901 c 117 § 2; RRS § 9527.]

35.23.580 Waterworks—Procedure—Bonds. For the purpose of providing for, constructing and maintaining such waterworks for irrigation and domestic purposes and issuing bonds to pay therefor, such cities and towns may proceed in all ways in accordance with, and apply all the provisions of, law relating to local improvement assessments. [1965 c 7 § 35.23.580. Prior: 1901 c 117 § 3; RRS § 9528.]

35.23.595 Criminal code repeals by city operating municipal court—Agreement covering costs of handling resulting criminal cases—Arbitration. A city of the second class operating a municipal court may not repeal in its entirety that portion of its municipal code defining crimes or repeal a provision of its municipal code which defines a

crime equivalent to an offense listed in RCW 46.63.020 unless the municipality has reached an agreement with the appropriate county under chapter 39.34 RCW under which the county is to be paid a reasonable amount for costs associated with prosecution, adjudication, and sentencing in criminal cases filed in district court as a result of the repeal. The agreement shall include provisions for periodic review and renewal of the terms of the agreement. If the municipality and the county are unable to agree on the terms for renewal of the agreement, they shall be deemed to have entered into an agreement to submit the issue to arbitration under chapter 7.04 RCW. Pending conclusion of the arbitration proceeding, the terms of the agreement shall remain in effect. The municipality and the county have the same rights and are subject to the same duties as other parties who have agreed to submit to arbitration under chapter 7.04 RCW. [1984 c 258 § 205.]

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

35.23.680 Cities of ten thousand or more may frame charter without changing classification. See RCW 35.21.600 through 35.21.620, chapter 35.22 RCW.

Chapter 35.24

THIRD CLASS CITIES

Sections

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Taxes, property: State Constitution Art. 7, Art. 11 § 12, Title 84 RCW.

Unclaimed property in hands of city police: Chapter 63.32 RCW.

35.24.010 Rights, powers and privileges. Every city of the third class shall be entitled "City of" (naming it), and by such name shall have perpetual succession; may sue and be sued in all courts and in all proceedings; shall have and use a common seal alterable at pleasure of the city authorities; may purchase, lease, receive, hold, and enjoy real and personal property and may control and dispose of it for the common benefit; and with the consent of the dedicator or donor, his heirs, successors, or assigns, may exchange any property acquired for park purposes for other property or may lease, sell, or otherwise dispose of such property, and may make, execute, and deliver proper conveyances to effect the transaction: PROVIDED, That in any case where owing to death or lapse of time there is neither donor, heir, successor, nor assigns to give consent, then such consent shall be deemed waived. Title to property so conveyed by the city shall vest in the grantee free and clear of any trust in favor of the public arising out of any prior dedication for park purposes. [1965 c 7 § 35.24.010. Prior: 1957 c 56 § 1; 1933 c 83 § 1; 1915 c 184 § 1; 1890 p 176 § 104; RRS § 9114.]

35.24.020 City officers enumerated—Compensation—Appointment and removal. The government of a third class city shall be vested in a mayor, a city council of seven members, a city attorney, a clerk, a treasurer, all elective; and a chief of police, municipal judge, city engineer, street superintendent, health officer and such other appointive officers as may be provided for by statute or ordinance: PROVIDED, That the council may enact an ordinance providing for the appointment of the city clerk, city attorney, and treasurer by the mayor, which appointment shall be subject to confirmation by a majority vote of the city council. Such ordinance shall be enacted and become effective not later than thirty days prior to the first day allowed for filing declarations of candidacy for such offices when such offices are subject to an approaching city primary election. Elective incumbent city clerks, city attorneys, and city treasurers shall serve for the remainder of their unexpired term notwithstanding any appointment made pursuant to RCW 35.24.020 and 35.24.050. If a free public library and reading room is established, five library trustees shall be appointed. The city council by ordinance shall prescribe the duties and fix the compensation of all officers: PROVIDED, That the provisions of any such ordinance shall not be inconsistent with any statute: PROVIDED FURTHER, That

where the city council finds that the appointment of a full time city engineer is unnecessary, it may in lieu of such appointment, by resolution provide for the performance of necessary engineering services on either a part time, temporary or periodic basis by a qualified engineering firm, pursuant to any reasonable contract.

The mayor shall appoint and at his pleasure may remove all appointive officers except as otherwise provided herein: PROVIDED, That municipal judges shall be removed only upon conviction of misconduct or malfeasance in office, or because of physical or mental disability rendering him incapable of performing the duties of his office. Every appointment or removal must be in writing signed by the mayor and filed with the city clerk. [1987 c 3 § 9; 1969 c 116 § 1; 1965 ex.s. c 116 § 9; 1965 c 7 § 35.24.020. Prior: 1961 c 81 § 1; 1955 c 365 § 2; 1955 c 55 § 5; prior: (i) 1915 c 184 § 2; 1891 c 156 § 4; 1890 p 179 § 105; RRS § 9115. (ii) 1929 c 182 § 1, part; 1927 c 159 § 1; 1915 c 184 § 3, part; 1893 c 57 § 1; 1891 c 156 § 1; 1890 p 179 § 106; RRS § 9116, part. (iii) 1915 c 184 § 28; 1890 p 196 § 137; RRS § 9142.]

Severability—1987 c 3: See note following RCW 3.46.020.

35.24.030 Eligibility to hold elective office. No person shall be eligible to hold an elective office in a city of the third class unless he be a citizen of and a legal resident therein. [1965 c 7 § 35.24.030. Prior: 1915 c 184 § 9; 1890 p 181 § 111; RRS § 9122.]

35.24.050 Elections—Terms of office. General municipal elections in third class cities not operating under the commission form of government shall be held biennially in the odd-numbered years as provided in RCW 29.13.020. The term of office of the mayor, city attorney, clerk, and treasurer shall be four years and until their successors are elected and qualified and assume office in accordance with RCW 29.04.170: PROVIDED, That if the offices of city attorney, clerk, and treasurer are made appointive, the city attorney, clerk, and treasurer shall not be appointed for a definite term: PROVIDED FURTHER, That the term of the elected treasurer shall not commence in the same biennium in which the term of the mayor commences, nor in which the terms of the city attorney and clerk commence if they are elected.

A councilman-at-large shall be elected biennially for a two-year term and until his or her successor is elected and qualified and assumes office in accordance with RCW 29.04.170. Of the other six councilmen, three shall be elected in each biennial general municipal election for terms of four years and until their successors are elected and qualified and assume office in accordance with RCW 29.04.170. [1979 ex.s. c 126 § 22; 1969 c 116 § 2; 1965 c 7 § 35.24.050. Prior: 1963 c 200 § 15; 1959 c 86 § 4; 1955 c 365 § 3; 1955 c 55 § 6; prior: (i) 1929 c 182 § 1, part; 1927 c 159 § 1; 1915 c 184 § 3, part; 1893 c 57 § 1; 1891 c 156 § 1; 1890 p 179 § 106; RRS § 9116, part. (ii) 1941 c 108 § 1; 1939 c 87 § 1; Rem. Supp. 1941 § 9116-1.]

Purpose—1979 ex.s. c 126: See RCW 29.04.170(1).

35.24.060 Conduct of elections. All elections shall be held in accordance with the general election laws of the

state insofar as the same are applicable and no person shall be entitled to vote at any election unless he shall be a qualified elector of the county and shall have resided in such city for at least thirty days next preceding such election. [1965 c 7 § 35.24.060. Prior: 1915 c 184 § 8; 1890 p 180 § 110; RRS § 9121.]

Elections: Title 29 RCW.

35.24.070 Contested elections. The city council shall judge of the qualifications of its members and determine contested elections of all the city officers. [1965 c 7 § 35.24.070. Prior: 1915 c 184 § 13, part; 1890 p 182 § 115; RRS § 9126.]

Election contests: Chapter 29.65 RCW.

35.24.080 Oath and bond of officers. In a city of the third class, the treasurer, city attorney, clerk, chief of police, and such other officers as the council may require shall each, before entering upon the duties of his office, take an oath of office and execute and file with the clerk an official bond in such penal sum as the council shall determine, conditioned for the faithful performance of his duties and otherwise conditioned as may be provided by ordinance. The oath of office shall be filed with the county auditor. [1987 c 3 § 10; 1986 c 167 § 18; 1965 c 7 § 35.24.080. Prior: 1915 c 184 § 5; 1893 c 70 § 1; 1890 p 179 § 107; RRS § 9118.]

Severability—1987 c 3: See note following RCW 3.46.020.

Severability—1986 c 167: See note following RCW 29.01.055.

35.24.090 Compensation of officers—Expenses—Nonstate pensions. The mayor and the members of the city council may be reimbursed for actual expenses incurred in the discharge of their official duties, upon presentation of a claim therefor, after allowance and approval thereof, by resolution of the city council; and each city councilmember may be paid for attending council meetings an amount which shall be fixed by ordinance and may be revised from time to time by ordinance, but any increase or reduction in the compensation attaching to an office shall not be applicable to the term then being served by the incumbent.

The city attorney, clerk and treasurer, if elective, shall severally receive at stated times a compensation to be fixed by ordinance by the city council.

The mayor and other officers shall receive such compensation as may be fixed by the city council at the time the estimates are made as provided by law.

Any city that provides a pension for any of its employees under a plan not administered by the state must notify the state auditor of the existence of the plan at the time of an audit of the city by the auditor. No city may establish a pension plan for its employees that is not administered by the state, except that any defined contribution plan in existence as of January 1, 1990, is deemed to have been authorized. No city that provides a defined contribution plan for its employees as authorized by this section may make any material changes in the terms or conditions of the plan after June 7, 1990. [1990 c 212 § 1; 1973 1st ex.s. c 87 § 1; 1969 ex.s. c 270 § 8; 1965 c 105 § 1; 1965 c 7 § 35.24.090. Prior: 1961 c 89 § 7; 1941 c 115 § 1; 1915 c 184 § 7; 1893 c 70 § 2; 1890 p 180 § 109; Rem. Supp. 1941 § 9120.]

35.24.100 Vacancies. In cities of the third class if a member of the city council absents himself for three consecutive regular meetings thereof, unless by permission of the council, his office may be declared vacant by the council.

Vacancies in the city council or in the office of mayor shall be filled by majority vote of the council. Vacancies in offices other than that of mayor or city councilman shall be filled by appointment of the mayor.

If a vacancy occurs in an elective office the appointee shall hold office only until the next regular election at which a person shall be elected to serve for the remainder of the unexpired term.

If there is a temporary vacancy in an appointive office due to illness, absence from the city or other temporary inability to act, the mayor may appoint a temporary appointee to exercise the duties of the office until the temporary disability of the incumbent is removed. [1965 c 7 § 35.24.100. Prior: (i) 1919 c 113 § 1; 1915 c 184 § 6; 1890 p 180 § 108; RRS § 9119. (ii) 1907 c 228 § 5, part; RRS § 9203, part.]

Vacancies in office of mayor to be filled from among city council members: RCW 35.24.190.

35.24.110 City attorney—Duties. The city attorney shall advise the city authorities and officers in all legal matters pertaining to the business of the city and shall approve all ordinances as to form. He shall represent the city in all actions brought by or against the city or against city officials in their official capacity. He shall perform such other duties as the city council by ordinance may direct. [1965 c 7 § 35.24.110. Prior: 1915 c 184 § 26; 1893 c 70 § 11; 1890 p 192 § 132; RRS § 9140.]

Employment of legal interns: RCW 35.21.760.

35.24.120 City clerk—Duties—Deputies. The city clerk shall keep a full and true record of every act and proceeding of the city council and keep such books, accounts and make such reports as may be required by the division of municipal corporations in the office of the state auditor. The city clerk shall record all ordinances, annexing thereto his certificate giving the number and title of the ordinance, stating that the ordinance was published and posted according to law and that the record is a true and correct copy thereof. The record copy with the clerk's certificate shall be prima facie evidence of the contents of the ordinance and of its passage and publication and shall be admissible as such evidence in any court or proceeding.

The city clerk shall be custodian of the seal of the city and shall have authority to acknowledge the execution of all instruments by the city which require acknowledgment.

The city clerk may appoint a deputy for whose acts he and his bondsmen shall be responsible, and he and his deputy shall have authority to take all necessary affidavits to claims against the city and certify them without charge.

The city clerk shall perform such other duties as may be required by statute or ordinance. [1965 c 7 § 35.24.120. Prior: 1915 c 184 § 25; RRS § 9139.]

35.24.130 City treasurer—Duties. The city treasurer shall receive and safely keep all money which comes into his hands as treasurer, for all of which he shall execute triplicate

receipts, one to be filed with the city clerk. He shall receive all money due the city and disburse it on warrants issued by the clerk countersigned by the mayor, and not otherwise. He shall make monthly settlements with the city clerk at which time he shall deliver to the clerk the duplicate receipts for all money received and all canceled warrants as evidence of money paid. [1965 c 7 § 35.24.130. Prior: 1915 c 184 § 24; 1893 c 70 § 8; 1890 p 192 § 132; RRS § 9138.]

35.24.140 Duty of officers collecting moneys. Every officer collecting or receiving any money belonging to or for the use of the city shall settle with the clerk and immediately pay it into the treasury on the order of the clerk to be credited to the fund to which it belongs. [1965 c 7 § 35.24.140. Prior: 1915 c 184 § 30; 1890 p 197 § 139; RRS § 9144.]

35.24.142 Combination of offices of treasurer with clerk—Authorized. The city council of any city of the third class is authorized to provide by ordinance that the office of treasurer shall be combined with that of clerk, or that the office of clerk shall be combined with that of treasurer: PROVIDED, That such ordinance shall not be voted upon until the next regular meeting after its introduction. [1969 c 116 § 3.]

35.24.144 Combination of offices of treasurer with clerk—Powers of clerk. In the event that the office of treasurer is combined with the office of clerk so as to become the office of clerk-treasurer, the clerk shall exercise all the powers vested in and perform all the duties required to be performed by the treasurer, and in cases where the law requires the treasurer to sign or execute any papers or documents, it shall not be necessary for the clerk to sign as treasurer, but shall be sufficient if he signs as clerk. [1969 c 116 § 4.]

35.24.146 Combination of offices of treasurer with clerk—Powers of treasurer. In the event that the office of clerk is combined with the office of treasurer so as to become the office of treasurer-clerk, the treasurer shall exercise all the powers vested in and perform all the duties required to be performed by the clerk. [1969 c 116 § 5.]

35.24.148 Combination of offices of treasurer with clerk—Ordinance—Termination of combined offices. The ordinance provided for combining said offices shall provide the date when the combination shall become effective, which date shall not be less than three months from the date when the ordinance becomes effective; and on and after said date the office of treasurer or clerk, as the case may be, shall be abolished. Any city which as herein provided, combined the office of treasurer with that of clerk or the office of clerk with that of treasurer may terminate such combination by ordinance, fixing the time when the combination shall cease and thereafter the duties of the offices shall be performed by separate officials: PROVIDED, That if the office of treasurer was combined with that of clerk, or an elective office of clerk was combined with the office of treasurer, the mayor shall appoint a treasurer and clerk who shall serve until the next regular municipal

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general election when a treasurer and clerk shall be elected for the term as provided by law unless such city has enacted an ordinance in accordance with RCW 35.24.020. [1969 c 116 § 6.]

35.24.150 Park commissioners. See RCW 35.23.170.

35.24.160 Chief of police and police department. The department of police in a city of the third class shall be under the direction and control of the chief of police subject to the direction of the mayor. He may pursue and arrest violators of city ordinances beyond the city limits.

His lawful orders shall be promptly executed by deputies, police officers and watchmen. Every citizen shall lend him aid, when required, for the arrest of offenders and maintenance of public order. With the concurrence of the mayor, he may appoint additional policemen to serve for one day only under his orders in the preservation of public order.

He shall have the same authority as that conferred upon sheriffs for the suppression of any riot, public tumult, disturbance of the peace, or resistance against the laws or the public authorities in the lawful exercise of their functions and shall be entitled to the same protection.

He shall perform such other services as may be required by statute or ordinances of the city.

He shall execute and return all process issued and directed to him by lawful authority and for his services shall receive the same fees as are paid to constables. [1987 c 3 § 11; 1977 ex.s. c 316 § 22; 1965 c 7 § 35.24.160. Prior: 1915 c 184 § 27; 1893 c 70 § 12; 1890 p 195 § 136; RRS § 9141.]

Severability—1987 c 3: See note following RCW 3.46.020.

Severability—1977 ex.s. c 316: See note following RCW 70.48.020.

Commencement of actions: Chapter 4.28 RCW.

Duties of chief law enforcement officer receiving found property: RCW 63.21.050.

Law enforcement chaplains authorized: Chapter 41.22 RCW.

Unclaimed property in hands of city police: Chapter 63.32 RCW.

35.24.164 Association of sheriffs and police chiefs. See chapter 36.28A RCW.

35.24.180 City council—Oath—Meetings. The city council and mayor shall meet on the first Tuesday in January next succeeding the date of each general municipal election, and shall take the oath of office, and shall hold regular meetings at least once during each month but not to exceed one regular meeting in each week, at such times as may be fixed by ordinance.

Special meetings may be called by the mayor by written notice delivered to each member of the council at least three hours before the time specified for the proposed meeting. No ordinances shall be passed or contract let or entered into, or bill for the payment of money allowed at any special meeting.

All meetings of the city council shall be held within the corporate limits of the city at such place as may be designated by ordinance. All meetings of the city council must be public. [1965 c 7 § 35.24.180. Prior: 1915 c 184 § 10, part; 1893 c 70 § 3; 1890 p 181 § 113; RRS § 9123, part.]

35.24.190 City council—Mayor pro tempore. The members of the city council at their first meeting after each general municipal election and thereafter whenever a vacancy occurs, shall elect from among their number a mayor pro tempore, who shall hold office at the pleasure of the council and in case of the absence of the mayor, perform the duties of mayor except that he shall not have the power to appoint or remove any officer or to veto any ordinance. If a vacancy occurs in the office of mayor, the city council at their next regular meeting shall elect from among their number a mayor, who shall serve until a mayor is elected and certified at the next municipal election.

The mayor and the mayor pro tempore shall have power to administer oaths and affirmations, take affidavits and certify them. The mayor or the mayor pro tempore when acting as mayor, shall sign all conveyances made by the city and all instruments which require the seal of the city. [1969 c 101 § 3; 1965 c 7 § 35.24.190. Prior: (i) 1915 c 184 § 10, part; 1893 c 70 § 3; 1890 p 181 § 113; RRS § 9123, part. (ii) 1915 c 184 § 23; RRS § 9137.]

35.24.200 City council—Quorum—Rules—Journal. At all meetings of the city council, a majority of the councilmen shall constitute a quorum for the transaction of business, but a less number may adjourn from time to time and may compel the attendance of absent members in such manner and under such penalties as may be prescribed by ordinance.

All meetings of the council shall be presided over by the mayor, or, in his absence, by the mayor pro tempore. The mayor shall have a vote only in the case of a tie in the votes of the councilmen. If the clerk is absent from a council meeting the mayor or mayor pro tempore shall appoint one of the members of the council as clerk pro tempore. The appointment of a councilman as mayor pro tempore or clerk pro tempore shall not in any way abridge his right to vote upon all questions coming before the council.

The city council may establish rules for the conduct of their proceedings and punish any member or other person for disorderly behavior at any meeting.

The clerk shall keep a correct journal of all proceedings and at the desire of any member the ayes and noes shall be taken on any question and entered in the journal. [1965 c 107 § 1; 1965 c 7 § 35.24.200. Prior: (i) 1915 c 184 § 13, part; 1890 p 182 § 115; RRS § 9126, part. (ii) 1915 c 184 § 11, part; 1891 c 156 § 2; 1890 p 182 § 114; RRS § 9124, part.]

35.24.210 Ordinances—Style—Requisites—Veto. The enacting clause of all ordinances in a third class city shall be as follows: "The city council of the city of do ordain as follows:"

No ordinance shall contain more than one subject and that must be clearly expressed in its title.

No ordinance or any section thereof shall be revised or amended unless the new ordinance sets forth the revised ordinance or the amended section at full length.

No ordinance and no resolution or order shall have any validity or effect unless passed by the votes of at least four councilmen.

No ordinance shall take effect until five days after the date of its publication unless otherwise provided in this title.

Every ordinance which passes the council in order to become valid must be presented to the mayor; if he approves it, he shall sign it, but if not, he shall return it with his written objections to the council and the council shall cause his objections to be entered at large upon the journal and proceed to a reconsideration thereof. If upon reconsideration five members of the council voting upon a call of yeas and nays favor its passage, the ordinance shall become valid notwithstanding the mayor's veto. If the mayor fails for ten days to either approve or veto an ordinance, it shall become valid without his approval.

Every ordinance shall be signed by the mayor and attested by the clerk. [1965 c 7 § 35.24.210. Prior: (i) 1915 c 184 § 11, part; 1891 c 156 § 2; 1890 p 182 § 114; RRS § 9124, part. (ii) 1915 c 184 § 12, part; 1893 c 70 § 4; 1890 p 182 § 116; RRS § 9125, part. (iii) 1915 c 184 § 18, part; 1890 p 186 § 118; RRS § 9132, part.]

Codification of city or town ordinances: RCW 35.21.500 through 35.21.570.

35.24.220 Ordinances—Publication—Public notice of hearings and meeting agendas. Promptly after adoption, the text of each ordinance or a summary of the content of each ordinance shall be published at least once in the city's official newspaper.

For purposes of this section, a summary shall mean a brief description which succinctly describes the main points of the ordinance. When the city publishes a summary, the publication shall include a statement that the full text of the ordinance will be mailed upon request.

An inadvertent mistake or omission in publishing the text or a summary of the content of an ordinance shall not render the ordinance invalid.

In addition to the requirement that a city publish the text or a summary of the content of each adopted ordinance, every city shall establish a procedure for notifying the public of upcoming hearings and the preliminary agenda for the forthcoming council meeting. Such procedure may include, but not be limited to, written notification to the city's official newspaper, publication of a notice in the official newspaper, posting of upcoming council meeting agendas, or such other processes as the city determines will satisfy the intent of this requirement. [1988 c 168 § 4; 1987 c 400 § 1; 1985 c 469 § 25; 1965 c 7 § 35.24.220. Prior: (i) 1915 c 184 § 18, part; 1890 p 186 § 118; RRS § 9132, part. (ii) 1915 c 184 § 12, part; 1893 c 70 § 4; 1890 p 182 § 116; RRS § 9125, part.]

35.24.230 Ordinances—Prosecution for violations. The violation of any ordinance of a city of the third class shall be a misdemeanor and may be prosecuted as a criminal action in the name of the people of the state of Washington or may be redressed by a civil action, at the option of the authorities.

Any person sentenced to imprisonment for the violation of an ordinance may be imprisoned in the city jail or in the

county jail of the county in which the city is situated if the council by ordinance shall so prescribe; in which case the expense of such imprisonment shall be a charge in favor of the county and against the city. [1965 c 7 § 35.24.230. Prior: 1915 c 184 § 20; 1890 p 187 § 122; RRS § 9134.]

35.24.250 Ordinances granting franchises—Requisites. No ordinance or resolution granting any franchise for any purpose shall be passed by the city council on the day of its introduction, nor for five days thereafter, nor at any other than a regular meeting nor without first being submitted to the city attorney.

No franchise or valuable privilege shall be granted unless by the vote of at least five members of the city council.

The city council may require a bond in a reasonable amount for any person or corporation obtaining a franchise from the city conditioned for the faithful performance of the conditions and terms of the franchise and providing a recovery on the bond in case of failure to perform the terms and conditions of franchise. [1965 c 7 § 35.24.250. Prior: (i) 1915 c 184 § 12, part; 1893 c 70 § 4; 1890 p 182 § 116; RRS § 9125, part. (ii) 1907 c 228 § 1, part; RRS § 9199, part.]

35.24.260 Audit and allowance of demands against city. All demands against the city shall be presented to and audited by the city council in accordance with such regulations as it may by ordinance prescribe; and upon the allowance of a demand, the clerk shall draw a warrant upon the treasurer for it, which warrant shall be countersigned by the mayor and shall specify for what purpose it is drawn and out of which fund it is to be paid. [1965 c 7 § 35.24.260. Prior: 1915 c 184 § 19; 1890 p 186 § 119; RRS § 9133.]

35.24.272 Contracts, purchases, advertising—Call for bids—Exceptions. See RCW 35.23.352.

35.24.274 Contracts with cemetery districts and fire protection districts for public facilities and services—Joint purchasing. Third or fourth class cities and towns may contract, for terms not to exceed five years each term, to provide or have provided public facilities or services with any cemetery district or fire protection district, each of which is separately authorized to operate or provide under terms mutually agreed upon by the governing bodies of such public agencies. The governing body of a third or fourth class city may join with the governing body of any of the other public agencies in buying supplies, equipment, and services collectively, by establishing and maintaining a joint purchasing agency or otherwise, as may be necessary under the circumstances. [1965 c 7 § 35.24.274. Prior: 1963 c 72 § 2.]

Cemetery districts, cooperation with public or private agencies as to public cemetery facilities or services: RCW 68.52.192, 68.52.193.

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

35.24.275 Contracts with cemetery districts and fire protection districts for public facilities and services—"Public agency" defined. As used in RCW 35.24.274,

"public agency" means third or fourth class cities and towns, cemetery districts and fire protection districts. [1965 c 7 § 35.24.275. Prior: 1963 c 72 § 1.]

35.24.290 Specific powers enumerated. The city council of each third class city shall have power:

(1) To pass ordinances not in conflict with the Constitution and laws of this state or of the United States;

(2) To prevent and regulate the running at large of any or all domestic animals within the city limits or any part thereof and to cause the impounding and sale of any such animals;

(3) To establish, build and repair bridges, to establish, lay out, alter, keep open, open, widen, vacate, improve and repair streets, sidewalks, alleys, squares and other public highways and places within the city, and to drain, sprinkle and light the same; to remove all obstructions therefrom; to establish and reestablish the grades thereof; to grade, plank, pave, macadamize, gravel and curb the same, in whole or in part; to construct gutters, culverts, sidewalks and crosswalks therein or upon any part thereof; to cultivate and maintain parking strips therein, and generally to manage and control all such highways and places; to provide by local assessment for the leveling up and surfacing and oiling or otherwise treating for the laying of dust, all streets within the city limits;

(4) To establish, construct and maintain drains and sewers, and shall have power to compel all property owners on streets and alleys or within two hundred feet thereof along which sewers shall have been constructed to make proper connections therewith and to use the same for proper purposes, and in case the owners of the property on such streets and alleys or within two hundred feet thereof fail to make such connections within the time fixed by such council, it may cause such connections to be made and assess against the property served thereby the costs and expenses thereof;

(5) To provide fire engines and all other necessary or proper apparatus for the prevention and extinguishment of fires;

(6) To impose and collect an annual license on every dog within the limits of the city, to prohibit dogs running at large and to provide for the killing of all dogs not duly licensed found at large;

(7) To license, for the purposes of regulation and revenue, all and every kind of business authorized by law, and transacted and carried on in such city, and all shows, exhibitions and lawful games carried on therein and within one mile of the corporate limits thereof, to fix the rate of license tax upon the same, and to provide for the collection of the same by suit or otherwise;

(8) To improve rivers and streams flowing through such city, or adjoining the same; to widen, straighten and deepen the channel thereof, and remove obstructions therefrom; to improve the water-front of the city, and to construct and maintain embankments and other works to protect such city from overflow; to prevent the filling of the water of any bay, except such filling over tide or shorelands as may be provided for by order of the city council; to purify and prevent the pollution of streams of water, lakes or other sources of supply, and for this purpose shall have jurisdic-

tion over all streams, lakes or other sources of supply, both within and without the city limits. Such city shall have power to provide by ordinance and to enforce such punishment or penalty as the city council may deem proper for the offense of polluting or in any manner obstructing or interfering with the water supply of such city or source thereof;

(9) To erect and maintain buildings for municipal purposes;

(10) To permit, under such restrictions as it may deem proper, and to grant franchises for, the laying of railroad tracks, and the running of cars propelled by electric, steam or other power thereon, and the laying of gas and water pipes and steam mains and conduits for underground wires, and to permit the construction of tunnels or subways in the public streets, and to construct and maintain and to permit the construction and maintenance of telegraph, telephone and electric lines therein;

(11) In its discretion to divide the city by ordinance, into a convenient number of wards, not exceeding six, to fix the boundaries thereof, and to change the same from time to time: **PROVIDED**, That no change in the boundaries of any ward shall be made within sixty days next before the date of a general municipal election, nor within twenty months after the wards have been established or altered. Whenever such city is so divided into wards, the city council shall designate by ordinance the number of councilmen to be elected from each ward, apportioning the same in proportion to the population of the wards. Thereafter the councilmen so designated shall be elected by the qualified electors resident in such ward, or by general vote of the whole city as may be designated in such ordinance. When additional territory is added to the city it may by act of the council, be annexed to contiguous wards without affecting the right to redistrict at the expiration of twenty months after last previous division. The removal of a councilman from the ward for which he was elected shall create a vacancy in such office;

(12) To impose fines, penalties and forfeitures for any and all violations of ordinances, and for any breach or violation of any ordinance to fix the penalty by fine or imprisonment, or both, but no such fine shall exceed five thousand dollars nor the term of such imprisonment exceed the term of one year; or to provide that violations of ordinances constitute a civil violation subject to monetary penalty;

(13) To establish fire limits, with proper regulations;

(14) To establish and maintain a free public library;

(15) To establish and regulate public markets and market places;

(16) To punish the keepers and inmates and lessors of houses of ill fame, gamblers and keepers of gambling tables, patrons thereof or those found loitering about such houses and places;

(17) To make all such ordinances, bylaws, rules, regulations and resolutions, not inconsistent with the Constitution and laws of the state of Washington, as may be deemed expedient to maintain the peace, good government and welfare of the corporation and its trade, commerce and manufactures, and to do and perform any and all other acts and things necessary or proper to carry out the provisions of this chapter, and to enact and enforce within the limits of such city all other local, police, sanitary and other regulations as do not conflict with general laws;

(18) To license steamers, boats and vessels used in any bay or other watercourse in the city and to fix and collect such license; to provide for the regulation of berths, landings, and stations, and for the removing of steamboats, sail boats, sail vessels, rafts, barges and other watercraft; to provide for the removal of obstructions to navigation and of structures dangerous to navigation or to other property, in or adjoining the waterfront, except in municipalities in counties in which there is a city of the first class. [1986 c 278 § 5; 1984 c 258 § 804; 1977 ex.s. c 316 § 23; 1965 ex.s. c 116 § 10; 1965 c 7 § 35.24.290. Prior: 1915 c 184 § 14; 1893 c 70 § 3; 1891 c 56 § 3; 1890 p 183 § 17; RRS § 9127.]

Severability—1986 c 278: See note following RCW 36.01.010.

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

Severability—1977 ex.s. c 316: See note following RCW 70.48.020.

35.24.292 City and town license fees and taxes on financial institutions. See chapter 82.14A RCW.

35.24.293 City license fees or taxes on certain business activities to be at a single uniform rate. See RCW 35.21.710.

35.24.294 Nonpolluting power generation by individual—Exemption from regulation—Authorization to contract with utility. See chapter 80.58 RCW.

35.24.295 Hydroelectric resources—Separate legal authority—Creation by irrigation districts and cities, towns, or public utility districts. See RCW 87.03.825 through 87.03.840.

35.24.300 Additional powers—Acquisition, control, and disposition of property. The city council of such city shall have power to purchase, lease, or otherwise acquire real estate and personal property necessary or proper for municipal purposes and to control, lease, sublease, convey or otherwise dispose of the same; to acquire and plat land for cemeteries and parks and provide for the regulation thereof, including but not limited to the right to lease any waterfront and other lands adjacent thereto owned by it for manufacturing, commercial or other business purposes; including but not limited to the right to lease for wharf, dock and other purposes of navigation and commerce such portions of its streets which bound upon or terminate in its waterfront or the navigable waters of such city, subject, however, to the written consent of the lessees of a majority of the square feet frontage of the harbor area abutting on any street proposed to be so leased. No lease of streets or waterfront shall be for longer than ten years and the rental therefor shall be fixed by the city council. Every such lease shall contain a clause that at intervals of every five years during the term thereof the rental to be paid by the lessee shall be readjusted between the lessee and the city by mutual agreement, or in default of such mutual agreement that the rental shall be fixed by arbitrators to be appointed one by the city council, one by the lessee and the third by the two thus appointed. No such lease shall be made until the city council has first caused notice thereof to be published in the official newspaper of such city at least fifteen days and in one issue thereof

each week prior to the making of such lease, which notice shall describe the portion of the street proposed to be leased, to whom, for what purpose, and the rental to be charged therefor. The city may improve part of such waterfront or street extensions by building inclines, wharves, gridirons and other accommodations for shipping, commerce and navigation and may charge and collect for service and use thereof reasonable rates and tolls. [1965 c 7 § 35.24.300. Prior: 1963 c 155 § 1; 1915 c 184 § 15; RRS § 9128.]

35.24.305 Additional powers—Parking meter revenue for revenue bonds. All cities of the third class, regardless of their form of government, and all municipal corporations of the fourth class (towns), are hereby authorized to use parking meter revenue as a base for obtaining revenue bonds for use in improvement of streets, roads, alleys, and such other related public works. [1965 c 7 § 35.24.305. Prior: 1957 c 166 § 1.]

35.24.306 Additional powers—Ambulances and first aid equipment. In incorporated cities of the third class where commercial ambulance service is not readily available, the city shall have the power:

(1) To authorize the operation of municipally-owned ambulances which may serve the city and may serve for emergencies surrounding rural areas;

(2) To authorize the operation of other municipally-owned first aid equipment which may serve the city and surrounding rural areas;

(3) To contract with the county or with another municipality for emergency use of city-owned ambulances or other first aid equipment: PROVIDED, That the county or other municipality shall contribute at least the cost of maintenance and operation of the equipment attributable to its use thereof; and

(4) To provide that such ambulance service may be used to transport persons in need of emergency hospital care to hospitals beyond the city limits.

The council may, in its discretion, make a charge for the service authorized by this section: PROVIDED, That such ambulance service shall not enter into competition or competitive bidding where private ambulance service is available. [1965 c 7 § 35.24.306. Prior: 1963 c 131 § 1.]

35.24.307 Additional powers—Construction and operation of boat harbors, marinas, docks, etc. See RCW 35.23.455.

35.24.310 Eminent domain. Whenever it shall become necessary for the city to take or damage private property for the purpose of establishing, laying out, extending and widening streets and other public highways and places within the city, or for the purpose of securing rights-of-way for drains, sewers and aqueducts, and for the purpose of widening, straightening or diverting the channels of streams and the improvement of waterfronts, or any other public purpose, and the city council cannot agree with the owner thereof as to the price to be paid, the city council may proceed to acquire, take or damage the same in the manner provided by chapter 8.12 RCW or by chapter 8.20 RCW.

[1965 c 7 § 35.24.310. Prior: 1915 c 184 § 22; RRS § 9136.]

35.24.320 Employees' group insurance—False arrest insurance. See RCW 35.23.460.

35.24.330 Nuisances. Every act or thing done or being within the limits of a third class city which is declared by law or by ordinance to be a nuisance shall be a nuisance and shall be so considered in all actions and proceedings. All remedies given by law for the prevention and abatement of nuisances shall apply thereto. [1965 c 7 § 35.24.330. Prior: 1915 c 184 § 21; 1890 p 187 § 123; RRS § 9135.]

Public nuisances: Chapter 9.66 RCW.

35.24.340 Taxation—Levy for current expense fund. Every city of the third class shall maintain a current expense fund. For each year it shall levy a tax upon the property in the city for the payment of current expenses in an amount equal to the estimate by the city council of the current expenses for the ensuing year less the amount of revenues from all other sources payable into the current expense fund. [1965 c 7 § 35.24.340. Prior: 1915 c 186 § 3; RRS § 9153.]

35.24.350 Taxation—Allocation for special improvement or purpose. If by unanimous vote the city council so decides, every city of the third class may use fifty cents per thousand dollars of assessed value of its regular levy for the purpose of creating a fund for any special improvement or purpose authorized by law. The resolution creating the fund must specifically designate its purpose, and the fund so created shall not be used for any purpose other than that designated in the resolution creating it except by unanimous vote of the city council. [1973 1st ex.s. c 195 § 17; 1965 c 7 § 35.24.350. Prior: 1919 c 167 § 2; RRS § 9131.]

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

35.24.360 Taxation—Park fund levy. See RCW 35.23.510.

35.24.370 Taxation—Street poll tax. A third class city may impose upon and collect from every inhabitant of the city over the age of eighteen years an annual street poll tax not exceeding two dollars and no other road poll tax shall be collected within the limits of the city. [1973 1st ex.s. c 154 § 51; 1971 ex.s. c 292 § 61; 1965 c 7 § 35.24.370. Prior: 1905 c 75 § 1, part; 1890 p 201 § 154; RRS § 9210, part.]

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

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

35.24.380 Taxation—Sinking funds—Investment. Every city of the third class may provide by ordinance and levy taxes for sinking funds for the payment of indebtedness and for the investment thereof in county, city, and school district warrants and in securities of its own municipal utilities and local improvement districts and those of other

municipal corporations, all subject to the approval of the division of municipal corporations in the office of the state auditor. [1965 c 7 § 35.24.380. Prior: 1915 c 184 § 33; RRS § 9147.]

35.24.390 Reserve funds—Investment in city's own bonds. The city treasurer of any third class city, by and with the consent of the city's finance committee, may invest any portion of the money which has accumulated in its various reserve funds in the city's own general obligation bonds or in the city's own utility revenue bonds. The interest received shall be credited to the funds which supplied the money for the investment. [1965 c 7 § 35.24.390. Prior: 1941 c 145 § 1; RRS § 9138-1.]

35.24.400 Local improvement guaranty fund—Investment in city's own guaranteed bonds. The city treasurer of any third class city, by and with the consent of the city's finance committee, may invest any portion of its local improvement guaranty fund in the city's own guaranteed local improvement bonds in an amount not to exceed ten percent of the total issue of bonds in any one local improvement district: PROVIDED, That no such investment shall be made in an amount which will affect the ability of the local improvement guaranty fund to meet its obligations as they accrue, and that if all the bonds have the same maturity, the bonds having the highest numbers shall be purchased.

The interest received shall be credited to the local improvement guaranty fund. [1965 c 7 § 35.24.400. Prior: 1941 c 145 § 2; RRS § 9138-2.]

Local improvements

bonds and warrants: Chapter 35.45 RCW.

nonguaranteed bonds: Chapter 35.48 RCW.

35.24.410 Utilities—City may contract for service or construct own facilities. The city council of every city of the third class may contract for supplying the city with water, light, power, and heat for municipal purposes; and within or without the city may acquire, construct, repair, and manage pumps, aqueducts, reservoirs, plants, or other works necessary or proper for irrigation purposes or for supplying water, light, power, or heat or any byproduct thereof for the use of the city and any person within the city and dispose of any excess of its supply to any person without the city. [1965 c 7 § 35.24.410. Prior: 1917 c 124 § 1, part; 1915 c 184 § 16, part; RRS § 9129, part.]

35.24.420 Utilities—Method of acquisition. To pay the original cost of water, light, power, or heat systems, every city of the third class may issue:

(1) General bonds to be retired by general tax levies against all the property within the city limits then existing or as they may thereafter be extended; or

(2) Utility bonds under the general authority given to all cities for the acquisition or construction of public utilities.

Extensions to plants may be made either

(1) By general bond issue,

(2) By general tax levies, or

(3) By creating local improvement districts in accordance with statutes governing their establishment. [1965 c

7 § 35.24.420. Prior: 1917 c 124 § 1, part; 1915 c 184 § 16, part; RRS § 9129, part.]

35.24.430 Utilities—Maintenance and operation—Rates. No taxes shall be imposed for maintenance and operating charges of city owned water, light, power, or heating works or systems.

Rates shall be fixed by ordinance for supplying water, light, power, or heat for commercial, domestic, or irrigation purposes sufficient to pay for all operating and maintenance charges. If the rates in force produce a greater amount than is necessary to meet operating and maintenance charges, the rates may be reduced or the excess income may be transferred to the city's current expense fund.

Complete separate accounts for municipal utilities must be kept under the system and on forms prescribed by the division of municipal corporations in the office of the state auditor.

The term "maintenance and operating charges," as used in this section includes all necessary repairs, replacement, interest on any debts incurred in acquiring, reconstructing, repairing and operating plants and departments and all depreciation charges. This term shall also include an annual charge equal to four percent on the cost of the plant or system, as determined by the division of municipal corporations in the office of the state auditor to be paid into the current expense fund, except that where utility bonds have been or may hereafter be issued and are unpaid no payment shall be required into the current expense fund until such bonds are paid. [1965 c 7 § 35.24.430. Prior: 1917 c 124 § 1, part; 1915 c 184 § 16, part; RRS § 9129, part.]

35.24.440 Procedure to attack consolidation or annexation of territory. Proceedings attacking the validity of the consolidation of a city of the third class or the annexation of territory to a city of the third class shall be by quo warranto only, instituted by the prosecuting attorney of the county in which the city is located or by a person interested in the proceedings whose interest must clearly be shown. The quo warranto proceedings must be commenced within one year after the consolidation or annexation proceedings complained of and no error, irregularity, or defect of any kind shall be the basis for invalidating a consolidation or annexation after one year. [1965 c 7 § 35.24.440. Prior: 1923 c 153 § 1; RRS § 8913-1.]

Validating—1923 c 153: "All proceedings for the consolidation of cities of the third class and for the annexation of any unincorporated territory described in any abstract filed with the secretary of state in any such annexation proceeding to a city of the third class heretofore had, or attempted to be had, and over which such consolidated cities or annexed territory such city has exercised jurisdiction for a period of one year after the filing of such abstract with the secretary of state, are hereby ratified and validated as of the date of filing such abstract, irrespective of the fact that such consolidated cities, or any part thereof, are separated by a body of navigable water or that such annexed territory, or any part thereof, is separated from such city by a body of navigable water, and irrespective of any failure to file a petition for such consolidation or annexation, or to give proper notice of election or of any other defect occurring in such consolidation or annexation proceedings, and all territory so sought to be annexed is hereby declared to be a part of such annexing city as of the date of filing such abstract, and such cities so consolidated are hereby declared to be one municipal corporation as of the date of filing such abstract. All proceedings since the date of the filing of such abstract heretofore had or attempted to be had by any such city within or including such annexed territory, or any part thereof, in the creation of local improvement districts and the making

of local improvements, the levying of special assessments and the issuance of bonds therein and also in the levy of taxes, making of contracts, incurring of indebtedness and the issuance of bonds therefor are hereby ratified, validated and confirmed. PROVIDED, That nothing in this act contained shall affect the rights of any parties in any proceedings now pending in any court of record in this state and the rights of such parties therein shall be determined and adjudicated as the same existed prior to the passage of this act." [1923 c 153 § 2.] This applies to RCW 35.24.440.

35.24.455 Criminal code repeals by city operating municipal court—Agreement covering costs of handling resulting criminal cases—Arbitration. A city of the third class operating a municipal court may not repeal in its entirety that portion of its municipal code defining crimes or repeal a provision of its municipal code which defines a crime equivalent to an offense listed in RCW 46.63.020 unless the municipality has reached an agreement with the appropriate county under chapter 39.34 RCW under which the county is to be paid a reasonable amount for costs associated with prosecution, adjudication, and sentencing in criminal cases filed in district court as a result of the repeal. The agreement shall include provisions for periodic review and renewal of the terms of the agreement. If the municipality and the county are unable to agree on the terms for renewal of the agreement, they shall be deemed to have entered into an agreement to submit the issue to arbitration under chapter 7.04 RCW. Pending conclusion of the arbitration proceeding, the terms of the agreement shall remain in effect. The municipality and the county have the same rights and are subject to the same duties as other parties who have agreed to submit to arbitration under chapter 7.04 RCW. [1984 c 258 § 206.]

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

35.24.490 Cities of ten thousand or more may frame charter without changing classification. See RCW 35.21.600 through 35.21.620, chapter 35.22 RCW.

Chapter 35.27

TOWNS

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Accident claims against: RCW 35.31.040, 35.31.050.

Acquisition of interests in land for conservation, protection, preservation, or open space purposes by towns: RCW 64.04.130.

Actions against

public corporations: RCW 4.08.120.
state: Chapter 492 RCW.

Actions by in corporate name: RCW 4.08.110.

Advancement in classification: RCW 35.06.010.

Classification as: RCW 35.01.040.

Code of ethics for public officers and employees: Chapters 42.22, 42.23 RCW.

Corporate stock or bonds not to be owned by: State Constitution Art. 8 § 7.

Credit not to be loaned, exception: State Constitution Art. 8 § 7.

Fire protection districts, contracts with to provide or receive services authorized: RCW 35.24.274.

Group false arrest insurance: RCW 35.23.460.

Incorporation and annexation restrictions as to area: RCW 35.21.010.

Inhabitants at time of organization: RCW 35.01.040.

Insurance, group for employees: RCW 35.23.460.

Joint purchasing of supplies, equipment, and services with other public agencies authorized: RCW 35.24.274.

Judgment against public corporations, enforcement: RCW 6.17.080.

Limitation upon actions by public corporations: RCW 4.16.160.

Limitations on indebtedness: State Constitution Art. 7 § 2 (Amendments 55, 59), Art. 8 § 6 (Amendment 27), chapter 39.36 RCW, RCW 84.52.050.

Lost and found property: Chapter 63.21 RCW.

Metropolitan park districts, withdrawal from: RCW 35.61.010, 35.61.320 through 35.61.340.

Municipal utilities: Chapter 35.92 RCW.

Municipal water and sewer facilities act: Chapter 35.91 RCW.

Organization under general laws required: State Constitution Art. 11 § 10 (Amendment 40).

Park commissioners: RCW 35.23.170.

Parking meter revenue, basis for revenue bonds: RCW 35.24.305.

Plats
regulation of surveys and plats: RCW 58.10.040.
resurvey and correction of: RCW 58.10.030.

Purchasing, joint purchasing of supplies, equipment, and services with other public agencies authorized: RCW 35.24.274.

Revenue bonds, parking meter revenue as basis for: RCW 35.24.305.

School districts, educational service districts, agreements with other governmental entities for transportation of students or the public, or for other noncommon school purposes—Limitations: RCW 28A.160.120.

Service of summons on, personal service: RCW 4.28.080.

Sidewalks, construction, initial: Chapter 35.70 RCW.

Taxes, power of municipalities: State Constitution Art. 11 § 12.

Unclaimed property in hands of city police: Chapter 63.32 RCW.

35.27.010 Rights, powers and privileges. Every municipal corporation of the fourth class shall be entitled the "Town of" (naming it), and by such name shall have perpetual succession, may sue, and be sued in all courts and places, and in all proceedings whatever; shall have and use a common seal, alterable at the pleasure of the town authorities, and may purchase, lease, receive, hold, and enjoy real and personal property and control and dispose of the same for the common benefit. [1965 c 7 § 35.27.010. Prior: 1890 p 198 § 142; RRS § 9163.]

35.27.030 Uncertain boundaries—Petition—Request for examination. Whenever a petition is presented to the council of any incorporated town in this state, signed by not less than five electors of such town, setting forth that in the belief of the petitioners, the boundaries of said town are indefinite and uncertain and that on account of such indefiniteness and uncertainty the legality of the taxes levied within such town are in danger of being affected, and setting forth the particular causes or reasons of such alleged indefiniteness or uncertainty, it shall be the duty of the town council to cause the petition to be filed and recorded by the clerk, and to cause a copy of the same to be made and certified by the clerk and the corporate seal of such town to be attached to said certificate, and the mayor of such town shall forthwith present said certified copy of the petition to the board of county commissioners of the county wherein said town is situated, with a written request to be signed by him as such mayor that the said board of county commissioners proceed to examine the boundaries of such town or city, and make the same definite and certain. [1965 c 7 § 35.27.030. Prior: 1899 c 79 § 1; RRS § 9195.]

35.27.040 Duty of county commissioners. The board of county commissioners upon receipt of the certified copy of said petition, and the request aforesaid, shall cause the same to be filed in the office of the county auditor and forthwith proceed to examine the boundaries of the town and make the same definite and certain. For this purpose they may employ a competent surveyor, and shall commence at some recognized and undisputed point on the boundary line of the town, if such there be, and if there is no such recognized and undisputed point, they shall establish a starting point from the best data at their command and from such starting point they shall run a boundary line by courses and distances around such town, in one tract or body. [1965 c 7 § 35.27.040. Prior: 1899 c 79 § 2; RRS § 9196.]

35.27.050 Report of survey. The board of county commissioners, without unnecessary delay, shall make and file a report of their doings in the premises in the office of the county auditor, who shall transmit a certified copy thereof under the seal of the county, to the clerk of the town, and the clerk shall record the same in the records of the town, and keep the copy on file in his office. The report shall contain the description of the boundary of the town, as fixed by the board, written in plain words and figures and the boundaries so made and fixed shall be the boundaries of the town, and all the territory included within the boundary lines so established shall be included in the town, and be a part thereof. [1965 c 7 § 35.27.050. Prior: 1899 c 79 § 3; RRS § 9197.]

35.27.060 Expense of proceedings. The expense of such proceedings shall be paid by the town at whose request the same is incurred. The county commissioners shall each receive as compensation, an amount not exceeding the amount allowed by law for their usual services as commissioners, and, any surveyor or other assistants employed by them, a reasonable compensation to be fixed and certified by said commissioners. [1965 c 7 § 35.27.060. Prior: 1899 c 79 § 4; RRS § 9198.]

35.27.070 Town officers enumerated. The government of a town shall be vested in a mayor and a council consisting of five members and a treasurer, all elective; the mayor shall appoint a clerk and a marshal; and may appoint a town attorney, pound master, street superintendent, a civil engineer, and such police and other subordinate officers as may be provided for by ordinance. All appointive officers shall hold office at the pleasure of the mayor and shall not be subject to confirmation by the town council. [1987 c 3 § 12; 1965 ex.s. c 116 § 14; 1965 c 7 § 35.27.070. Prior: 1961 c 89 § 3; prior: (i) 1903 c 113 § 4; 1890 p 198 § 143; RRS § 9164. (ii) 1941 c 108 § 2; 1939 c 87 § 2; Rem. Supp. 1941 § 9165-1a. (iii) 1943 c 183 § 1, part; 1941 c 91 § 1, part; 1911 c 33 § 1, part; 1903 c 113 § 5, part; 1890 p 198 § 144, part; Rem. Supp. 1943 § 9165.]

Severability—1987 c 3: See note following RCW 3.46.020.

35.27.080 Eligibility to hold elective office. No person shall be eligible to or hold an elective office in a town unless he is a resident and elector therein. [1965 c 7 § 35.27.080. Prior: 1890 p 200 § 149; RRS § 9170.]

35.27.090 Elections—Terms of office. All general municipal elections in towns shall be held biennially in the odd-numbered years as provided in RCW 29.13.020. The term of office of the mayor and treasurer shall be four years and until their successors are elected and qualified and assume office in accordance with RCW 29.04.170: PROVIDED, That the term of the treasurer shall not commence in the same biennium in which the term of the mayor commences. Councilmen shall be elected for four year terms and until their successors are elected and qualified and assume office in accordance with RCW 29.04.170; three at one election and two at the next succeeding biennial election. [1979 ex.s. c 126 § 23; 1965 c 7 § 35.27.090. Prior: 1963 c 200 § 16; 1961 c 89 § 4; prior: 1955 c 55 § 7; 1943 c 183 § 1, part; 1941 c 91 § 1, part; 1911 c 33 § 1, part; 1903 c 113 § 5, part; 1890 p 198 § 144, part; Rem. Supp. 1943 § 9165, part.]

Purpose—1979 ex.s. c 126: See RCW 29.04.170(1).

35.27.100 Conduct of elections. All elections in towns shall be held in accordance with the general election laws of the state, so far as the same may be applicable; and no person shall be entitled to vote at such election, unless he is a qualified elector of the county, and has resided in the town for at least thirty days next preceding the election. [1965 c 7 § 35.27.100. Prior: 1890 p 200 § 148; RRS § 9169.]

Elections: Title 29 RCW.

35.27.110 Contested elections. The council shall judge of the qualifications of its members, and determine contested elections of all town officers. [1965 c 7 § 35.27.110. Prior: 1890 p 201 § 152, part; RRS § 9173, part.]

Election contests: Chapter 29.65 RCW.

35.27.120 Oath and bond of officers. Every officer of a town before entering upon the duties of his office shall take and file with the county auditor his oath of office. The clerk, treasurer, and marshal before entering upon their respective duties shall also each execute a bond approved by the council in such penal sum as the council by ordinance may determine, conditioned for the faithful performance of his duties including in the same bond the duties of all offices of which he is made ex officio incumbent.

All bonds, when approved, shall be filed with the town clerk, except the bonds of the clerk which shall be filed with the mayor. [1986 c 167 § 19; 1965 c 7 § 35.27.120. Prior: 1890 p 199 § 145; RRS § 9166.]

Severability—1986 c 167: See note following RCW 29.01.055.

35.27.130 Compensation of officers—Expenses—Nonstate pensions. The mayor and members of the town council may be reimbursed for actual expenses incurred in the discharge of their official duties upon presentation of a claim therefor and its allowance and approval by resolution of the town council. The mayor and members of the council may also receive such salary as the council may fix by ordinance.

The treasurer and treasurer-clerk shall severally receive at stated times a compensation to be fixed by ordinance.

The compensation of all other officers shall be fixed from time to time by the council.

Any town that provides a pension for any of its employees under a plan not administered by the state must notify the state auditor of the existence of the plan at the time of an audit of the town by the auditor. No town may establish a pension plan for its employees that is not administered by the state, except that any defined contribution plan in existence as of January 1, 1990, is deemed to have been authorized. No town that provides a defined contribution plan for its employees as authorized by this section may make any material changes in the terms or conditions of the plan after June 7, 1990. [1990 c 212 § 2; 1973 1st ex.s. c 87 § 2; 1969 ex.s. c 270 § 9; 1965 c 105 § 2; 1965 c 7 § 35.27.130. Prior: 1961 c 89 § 5; prior: (i) 1941 c 115 § 2; 1890 p 200 § 147; Rem. Supp. 1941 § 9168. (ii) 1921 c 24 § 1, part; 1890 p 209 § 168, part; RRS § 9187, part. (iii) 1890 p 214 § 173; RRS § 9191. (iv) 1943 c 183 § 1, part; 1941 c 91 § 1, part; 1911 c 33 § 1, part; 1903 c 113 § 5, part; 1890 p 198 § 144, part; RRS § 9165, part.]

35.27.140 Vacancies. If a member of the council is absent from the town for three consecutive meetings unless by permission of the council his office shall be declared vacant by the council. A vacancy in the office of mayor and vacancies in the council shall be filled by a majority vote of the council. A vacancy in any other office shall be filled by appointment by the mayor. An appointee filling the vacancy in an elective office shall hold office only until the next general election at which time a person shall be elected to serve for the remainder of the unexpired term except that the person appointed to fill a vacancy in the office of mayor shall serve for the unexpired term. [1965 c 7 § 35.27.140. Prior: (i) 1903 c 113 § 6; 1890 p 199 § 146; RRS § 9167. (ii) 1907 c 228 § 5, part; RRS § 9203, part.]

35.27.160 Mayor—Duties—Powers—Mayor pro tempore. The mayor shall preside over all meetings of the council at which he or she is present. A mayor pro tempore may be chosen by the council for a specified period of time, not to exceed six months, to act as the mayor in the absence of the mayor. The mayor shall sign all warrants drawn on the treasurer and shall sign all written contracts entered into by the town. The mayor may administer oaths and affirmations, and take affidavits and certify them. The mayor shall sign all conveyances made by the town and all instruments which require the seal of the town.

The mayor is authorized to acknowledge the execution of all instruments executed by the town which require acknowledgment. [1988 c 196 § 1; 1965 c 7 § 35.27.160. Prior: 1890 p 209 § 167; RRS § 9186.]

35.27.170 Town treasurer—Duties. The town treasurer shall receive and safely keep all money which comes into his hands as treasurer, for all of which he shall give duplicate receipts, one of which shall be filed with the clerk. He shall pay out the money on warrants signed by the mayor and countersigned by the clerk and not otherwise. He shall make monthly settlements with the clerk. [1965 c 7 § 35.27.170. Prior: 1961 c 89 § 6; prior: 1921 c 24 § 1, part; 1890 p 209 § 168, part; RRS § 9187, part.]

35.27.180 Treasurer and clerk may be combined. The council of every town may provide by ordinance that the office of treasurer be combined with that of clerk or that the office of clerk be combined with that of treasurer. This ordinance shall not be voted upon until the next regular meeting after its introduction and shall require the vote of at least two-thirds of the council. The ordinance shall provide the date when the consolidation shall take place which date shall be not less than three months from the date the ordinance goes into effect. [1965 c 7 § 35.27.180. Prior: (i) 1945 c 58 § 1; Rem. Supp. 1945 § 9177-1. (ii) 1945 c 58 § 4, part; Rem. Supp. 1945 § 9177-4, part.]

35.27.190 Effect of consolidation of offices. Upon the consolidation of the office of treasurer with that of clerk, the office of treasurer shall be abolished and the clerk shall exercise all the powers and perform all the duties required by statute or ordinance to be performed by the treasurer; in the execution of any papers his designation as clerk shall be sufficient.

Upon the consolidation of the office of clerk with that of treasurer, the treasurer shall exercise all the powers vested in and perform all the duties required to be performed by the clerk. [1965 c 7 § 35.27.190. Prior: (i) 1945 c 58 § 2; Rem. Supp. 1945 § 9177-2. (ii) 1945 c 58 § 3; Rem. Supp. 1945 § 9177-3.]

35.27.200 Abandonment of consolidation. Every town which has combined the office of treasurer with that of clerk or the office of clerk with that of treasurer may terminate the combination by ordinance, fixing the time when the combination shall cease and providing that the duties thereafter be performed by separate officials. If the office of treasurer was combined with that of clerk, the mayor shall appoint a treasurer who shall serve until the next town election when a treasurer shall be elected for the term as provided by law. [1965 c 7 § 35.27.200. Prior: 1945 c 58 § 4, part; Rem. Supp. 1945 § 9177-4, part.]

35.27.210 Duty of officers collecting moneys. Every officer collecting or receiving any money belonging to a town shall settle for it with the clerk on the first Monday of each month and immediately pay it into the treasury on the order of the clerk to be credited to the fund to which it belongs. [1965 c 7 § 35.27.210. Prior: 1890 p 214 § 175; RRS § 9193.]

35.27.220 Town clerk—Duties. The town clerk shall be custodian of the seal of the town. He may appoint a deputy for whose acts he and his bondsmen shall be responsible; he and his deputy may administer oaths or affirmations and certify to them, and may take affidavits and depositions to be used in any court or proceeding in the state.

He shall make a quarterly statement in writing showing the receipts and expenditures of the town for the preceding quarter and the amount remaining in the treasury.

At the end of every fiscal year he shall make a full and detailed statement of receipts and expenditures of the preceding year and a full statement of the financial condition of the town which shall be published.

He shall perform such other services as may be required by statute or by ordinances of the town council.

He shall keep a full and true account of all the proceedings of the council. [1965 c 7 § 35.27.220. Prior: 1890 p 210 § 170, part; RRS § 9188, part.]

35.27.230 Records to be kept by clerk. The proceedings of the town council shall be kept in a book marked "records of council."

The town clerk shall keep a book marked "town accounts," in which shall be entered on the debit side all moneys received by the town including but not limited to proceeds from licenses and general taxes and in which shall be entered on the credit side all warrants drawn on the treasury.

He shall also keep a book marked "marshal's account" in which he shall charge the marshal with all licenses delivered to him and credit him with all money collected and paid in.

He shall also keep a book marked "treasurer's account" in which he shall keep a full account of the transactions of the town with the treasurer.

He shall also keep a book marked "licenses" in which he shall enter all licenses issued by him—the date thereof, to whom issued, for what, the time they expire, and the amount paid.

Each of the foregoing books, except the records of the council, shall have a general index sufficiently comprehensive to enable a person readily to ascertain matters contained therein.

He shall also keep a book marked "demands and warrants" in which he shall enter every demand against the town at the time of filing it. He shall state therein the final disposition of each demand and if it is allowed and a warrant drawn, he shall state the number of the warrant and its date. This book shall contain an index in which reference shall be made to each demand. [1965 c 7 § 35.27.230. Prior: 1890 p 210 § 170, part; RRS § 9188, part.]

35.27.240 Town marshal—Police department. The department of police in a town shall be under the direction and control of the marshal subject to the direction of the mayor. He may pursue and arrest violators of town ordinances beyond the town limits.

His lawful orders shall be promptly executed by deputies, police officers and watchmen. Every citizen shall lend him aid, when required, for the arrest of offenders and maintenance of public order. He may appoint, subject to the approval of the mayor, one or more deputies, for whose acts he and his bondsmen shall be responsible, whose compensation shall be fixed by the council. With the concurrence of the mayor, he may appoint additional policemen for one day only when necessary for the preservation of public order.

He shall have the same authority as that conferred upon sheriffs for the suppression of any riot, public tumult, disturbance of the peace, or resistance against the laws or public authorities in the lawful exercise of their functions and shall be entitled to the same protection.

He shall execute and return all process issued and directed to him by any legal authority and for his services shall receive the same fees as are paid to constables. He

shall perform such other services as the council by ordinance may require. [1987 c 3 § 13; 1977 ex.s. c 316 § 24; 1965 c 125 § 1; 1965 c 7 § 35.27.240. Prior: 1963 c 191 § 1; 1890 p 213 § 172; RRS § 9190.]

Severability—1987 c 3: See note following RCW 3.46.020.

Severability—1977 ex.s. c 316: See note following RCW 70.48.020.

35.27.250 Town attorney—Duties. The town attorney shall advise the town authorities and officers in all legal matters pertaining to the business of the town. [1965 c 7 § 35.27.250. Prior: 1890 p 212 § 171; RRS § 9189.]

Employment of legal interns: RCW 35.21.760.

35.27.260 Park commissioners. See RCW 35.23.170.

35.27.270 Town council—Oath—Meetings. The town council shall meet on the second Tuesday in January succeeding the date of the general municipal election, shall take the oath of office, and shall hold regular meetings at least once each month at such times as may be fixed by ordinance. Special meetings may be called at any time by the mayor or by three councilmen, by written notice delivered to each member at least three hours before the time specified for the proposed meeting. No resolution or order for the payment of money shall be passed at any other than a regular meeting. No such resolution or order shall be valid unless passed by the votes of at least three councilmen.

All meetings of the council shall be held within the corporate limits of the town, at such places as may be designated by ordinance and shall be public. [1965 c 7 § 35.27.270. Prior: (i) 1890 p 200 § 150; RRS § 9171. (ii) 1890 p 201 § 153, part; RRS § 9174, part.]

Times for holding elections: Chapter 29.13 RCW.

35.27.280 Town council—Quorum—Rules—Journal. A majority of the councilmen shall constitute a quorum for the transaction of business, but a lesser number may adjourn from time to time and may compel the attendance of absent members in such manner and under such penalties as may be prescribed by ordinance.

The mayor shall preside at all meetings of the council. The mayor shall have a vote only in case of a tie in the votes of the councilmen. In the absence of the mayor the council may appoint a president pro tempore; in the absence of the clerk, the mayor or president pro tempore, shall appoint one of the council members as clerk pro tempore. The council may establish rules for the conduct of its proceedings and punish any members or other person for disorderly behavior at any meeting. At the desire of any member, the ayes and noes shall be taken on any question and entered in the journal. [1965 c 107 § 2; 1965 c 7 § 35.27.280. Prior: (i) 1890 p 201 § 151; RRS § 9172. (ii) 1890 p 201 § 152, part; RRS § 9173, part.]

35.27.290 Ordinances—Style—Signatures. The enacting clause of all ordinances shall be as follows: "Be it ordained by the council of the town of"

Every ordinance shall be signed by the mayor and attested by the clerk. [1965 c 7 § 35.27.290. Prior: 1917 c 99 § 1, part; 1890 p 204 § 155, part; RRS § 9178, part.]

35.27.300 Ordinances—Publication—Public notice of hearings and meeting agendas. Promptly after adoption, the text of each ordinance or a summary of the content of each ordinance shall be published at least once in the official newspaper of the town.

For purposes of this section, a summary shall mean a brief description which succinctly describes the main points of the ordinance. When the town publishes a summary, the publication shall include a statement that the full text of the ordinance will be mailed upon request.

An inadvertent mistake or omission in publishing the text or a summary of the content of an ordinance shall not render the ordinance invalid.

In addition to the requirement that a town publish the text or a summary of the content of each adopted ordinance, every town shall establish a procedure for notifying the public of upcoming hearings and the preliminary agenda for the forthcoming council meeting. Such procedure may include, but not be limited to, written notification to the town's official newspaper, publication of a notice in the official newspaper, posting of upcoming council meeting agendas, or such other processes as the town determines will satisfy the intent of this requirement. [1988 c 168 § 5; 1987 c 400 § 2; 1985 c 469 § 26; 1965 c 7 § 35.27.300. Prior: 1917 c 99 § 1, part; 1890 p 204 § 155, part; RRS § 9178, part.]

35.27.310 Ordinances—Clerk to keep book of ordinances. The town clerk shall keep a book marked "ordinances" into which he shall copy all town ordinances, with his certificate annexed to said copy stating that the foregoing ordinance is a true and correct copy of an ordinance of the town, and giving the number and title of the ordinance, and stating that it has been published or posted according to law. Such record copy, with the clerk's certificate, shall be prima facie evidence of the contents of the ordinance and of its passage and publication, and shall be admissible as such in any court or proceeding. Such record shall not be filed in any case but shall be returned to the custody of the clerk. Nothing herein shall be construed to prevent the proof of the passage and publication of ordinances in the usual way. The book of ordinances shall have a general index sufficiently comprehensive to enable a person readily to ascertain matters contained therein. [1965 c 7 § 35.27.310. Prior: 1890 p 210 § 170, part; RRS § 9188, part.]

35.27.320 Ordinances—Prosecution for violations. The violation of an ordinance of a town shall be a misdemeanor, and may be prosecuted by the authorities thereof in the name of the people of the state of Washington or may be redressed by civil action.

Any person sentenced to imprisonment may be imprisoned in the town jail, or if the council by ordinance shall so prescribe and if the county commissioners have consented thereto, he may be imprisoned in the county jail, the expense thereof to be a charge against the town and in favor of the county. [1965 c 7 § 35.27.320. Prior: 1890 p 205 § 159; RRS § 9180.]

35.27.330 Ordinances granting franchises—Requisites. No ordinance or resolution granting any franchise for any purpose shall be passed by the council on the day of its introduction, nor within five days thereafter, nor at any other than a regular meeting, and no such ordinance or resolution shall have any validity or effect unless passed by the vote of at least three councilmen. The town council may require a bond in a reasonable amount from any persons and corporations obtaining a franchise from the town conditioned for the faithful performance of the conditions and terms of the franchise and providing a recovery on the bond in case of failure to perform the terms and conditions of the franchise. [1965 c 7 § 35.27.330. Prior: (i) 1890 p 201 § 153, part; RRS § 9174, part. (ii) 1907 c 228 § 1, part; RRS § 9199, part.]

35.27.340 Audit and allowance of demands against town. All demands against a town shall be presented to and audited by the council in accordance with such regulations as they may by ordinance prescribe. Upon allowance of a demand the mayor shall draw a warrant therefor upon the treasurer; the warrant shall be countersigned by the clerk and shall specify the purpose for which it is drawn.

The town clerk and his deputy shall take all necessary affidavits to claims against the town and certify them. [1965 c 7 § 35.27.340. Prior: (i) 1890 p 210 § 170, part; RRS § 9188, part. (ii) 1890 p 204 § 156; RRS § 9179.]

35.27.350 Contract for town printing. Every town may designate any daily or weekly newspaper published or of general circulation therein as its official newspaper and all notices published in that newspaper for the period and in the manner provided by law or the ordinances of the town shall be due and legal notice. [1965 c 7 § 35.27.350. Prior: 1903 c 120 § 1; RRS § 9177.]

35.27.362 Contracts, purchases, advertising—Call for bids—Exceptions. See RCW 35.23.352.

35.27.364 Contracts with cemetery districts and fire protection districts for public facilities and services—Joint purchasing. See RCW 35.24.274 and 35.24.275.

35.27.370 Specific powers enumerated. The council of said town shall have power:

(1) To pass ordinances not in conflict with the Constitution and laws of this state, or of the United States;

(2) To purchase, lease or receive such real estate and personal property as may be necessary or proper for municipal purposes, and to control, dispose of and convey the same for the benefit of the town; to acquire, own, and hold real estate for cemetery purposes either within or without the corporate limits, to sell and dispose of such real estate, to plat or replat such real estate into cemetery lots and to sell and dispose of any and all lots therein, and to operate, improve and maintain the same as a cemetery;

(3) To contract for supplying the town with water for municipal purposes, or to acquire, construct, repair and manage pumps, aqueducts, reservoirs, or other works necessary or proper for supplying water for use of such town or its inhabitants, or for irrigating purposes therein;

(4) To establish, build and repair bridges, to establish, lay out, alter, widen, extend, keep open, improve, and repair streets, sidewalks, alleys, squares and other public highways and places within the town, and to drain, sprinkle and light the same; to remove all obstructions therefrom; to establish the grades thereof; to grade, pave, plank, macadamize, gravel and curb the same, in whole or in part, and to construct gutters, culverts, sidewalks and crosswalks therein, or on any part thereof; to cause to be planted, set out and cultivated trees therein, and generally to manage and control all such highways and places;

(5) To establish, construct and maintain drains and sewers, and shall have power to compel all property owners on streets along which sewers are constructed to make proper connections therewith, and to use the same for proper purposes when such property is improved by the erection thereon of a building or buildings; and in case the owners of such improved property on such streets shall fail to make such connections within the time fixed by such council, they may cause such connections to be made, and to assess against the property in front of which such connections are made the costs and expenses thereof;

(6) To provide fire engines and all other necessary or proper apparatus for the prevention and extinguishment of fires;

(7) To impose and collect an annual license on every dog within the limits of the town, to prohibit dogs running at large, and to provide for the killing of all dogs found at large and not duly licensed;

(8) To levy and collect annually a property tax, for the payment of current expenses and for the payment of indebtedness (if any indebtedness exists) within the limits authorized by law;

(9) To license, for purposes of regulation and revenue, all and every kind of business, authorized by law and transacted and carried on in such town; and all shows, exhibitions and lawful games carried on therein and within one mile of the corporate limits thereof; to fix the rate of license tax upon the same, and to provide for the collection of the same, by suit or otherwise; to regulate, restrain, or prohibit the running at large of any and all domestic animals within the city limits, or any part or parts thereof, and to regulate the keeping of such animals within any part of the city; to establish, maintain and regulate a common pound for estrays, and to appoint a poundkeeper, who shall be paid out of the fines and fees imposed on, and collected from, the owners of any impounded stock;

(10) To improve the rivers and streams flowing through such town or adjoining the same; to widen, straighten and deepen the channels thereof, and to remove obstructions therefrom; to prevent the pollution of streams or water running through such town, and for this purpose shall have jurisdiction for two miles in either direction; to improve the waterfront of the town, and to construct and maintain embankments and other works to protect such town from overflow;

(11) To erect and maintain buildings for municipal purposes;

(12) To grant franchises or permits to use and occupy the surface, the overhead and the underground of streets, alleys and other public ways, under such terms and conditions as it shall deem fit, for any and all purposes, including

but not being limited to the construction, maintenance and operation of railroads, street railways, transportation systems, water, gas and steam systems, telephone and telegraph systems, electric lines, signal systems, surface, aerial and underground tramways;

(13) To punish the keepers and inmates and lessors of houses of ill fame, and keepers and lessors of gambling houses and rooms and other places where gambling is carried on or permitted, gamblers and keepers of gambling tables;

(14) To impose fines, penalties and forfeitures for any and all violations of ordinances, and for any breach or violation of any ordinance, to fix the penalty by fine or imprisonment, or both; but no such fine shall exceed five thousand dollars, nor the term of imprisonment exceed one year; or to provide that violations of ordinances constitute a civil violation subject to a monetary penalty;

(15) To operate ambulance service which may serve the town and surrounding rural areas and, in the discretion of the council, to make a charge for such service;

(16) To make all such ordinances, bylaws, rules, regulations and resolutions not inconsistent with the Constitution and laws of the state of Washington, as may be deemed expedient to maintain the peace, good government and welfare of the town and its trade, commerce and manufacturers, and to do and perform any and all other acts and things necessary or proper to carry out the provisions of this chapter. [1986 c 278 § 6; 1984 c 258 § 805; 1977 ex.s. c 316 § 25; 1965 ex.s. c 116 § 15; 1965 c 127 § 1; 1965 c 7 § 35.27.370. Prior: 1955 c 378 § 4; 1949 c 151 § 1; 1945 c 214 § 1; 1941 c 74 § 1; 1927 c 207 § 1; 1925 ex.s. c 159 § 1; 1895 c 32 § 1; 1890 p 201 § 154; Rem. Supp. 1949 § 9175.]

Severability—1986 c 278: See note following RCW 36.01.010.

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

Severability—1977 ex.s. c 316: See note following RCW 70.48.020.

Validating—1925 ex.s. c 159: "All franchises, permits and rights of way heretofore granted by any municipality of the fourth class to any person, firm or corporation, to construct, maintain or operate surface, underground and aerial tramways and other means of conveyance over, above, across, upon and along its streets, highways and alleys are hereby validated, ratified and confirmed." [1925 ex.s. c 159 § 2.]

35.27.372 City and town license fees and taxes on financial institutions. See chapter 82.14A RCW.

35.27.373 City license fees or taxes on certain business activities to be at a single uniform rate. See RCW 35.21.710.

35.27.375 Additional powers—Parking meter revenue for revenue bonds. See RCW 35.24.305.

35.27.376 Nonpolluting power generation by individual—Exemption from regulation—Authorization to contract with utility. See chapter 80.58 RCW.

35.27.377 Hydroelectric resources—Separate legal authority—Creation by irrigation districts and cities,

towns, or public utility districts. See RCW 87.03.825 through 87.03.840.

35.27.380 Additional powers—Eminent domain. Whenever it becomes necessary for a town to take or damage private property for the purpose of establishing, laying out, extending, and widening streets and other public highways and places within the town, or for the purpose of rights-of-way for drains, sewers, and aqueducts, and for the purpose of widening, straightening, or diverting the channels of streams and the improvement of waterfronts, and the council cannot agree with the owner thereof as to the price to be paid, the council may direct proceedings to be taken under the general laws of the state to procure the same. [1965 c 7 § 35.27.380. Prior: 1890 p 207 § 162; RRS § 9182.]

Eminent domain: Chapter 8.12 RCW.

35.27.385 Additional powers—Construction and operation of boat harbors, marinas, docks, etc. See RCW 35.23.455.

35.27.390 Employees' group insurance. See RCW 35.23.460.

35.27.400 Fire limits—Parks. Towns are hereby given the power to establish fire limits with proper regulations; to acquire by purchase or otherwise, lands for public parks within or without the limits of the town, and to improve the same. [1965 c 7 § 35.27.400. Prior: 1961 c 58 § 1; 1899 c 103 § 1; RRS § 9176.]

35.27.410 Nuisances. Every act or thing done or being within the limits of a town, which is declared by law or by ordinance to be a nuisance shall be a nuisance and shall be so considered in all actions and proceedings. All remedies given by law for the prevention and abatement of nuisances shall apply thereto. [1965 c 7 § 35.27.410. Prior: 1890 p 205 § 160; RRS § 9181.]

Nuisances: Chapter 9.66 RCW.

35.27.490 Taxation—Park fund levy. See RCW 35.23.510.

35.27.500 Taxation—Street poll tax. A town may impose upon and collect from every inhabitant of the town over eighteen years of age an annual street poll tax not exceeding two dollars and no other road poll tax shall be collected within the limits of the town. [1973 1st ex.s. c 154 § 52; 1971 ex.s. c 292 § 62; 1965 c 7 § 35.27.500. Prior: 1905 c 75 § 1, part; RRS § 9210, part.]

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

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

35.27.510 Utilities—Transfer of part of net earnings to current expense fund. When any special fund of a public utility department of a town has retired all bond and warrant indebtedness and is on a cash basis, if a reserve or depreciation fund has been created in an amount satisfactory

to the division of municipal corporations in the office of the state auditor and if the fixing of the rates of the utility is governed by contract with the supplier of water, electrical energy, or other commodity sold by the town to its inhabitants, and the rates are at the lowest possible figure, the town council may set aside such portion of the net earnings of the utility as it may deem advisable and transfer it to the town's current expense fund: PROVIDED, That no amount in excess of fifty percent of the net earnings shall be so set aside and transferred except with the unanimous approval of the council and mayor. [1965 c 7 § 35.27.510. Prior: 1939 c 96 § 1; 1929 c 98 § 1; RRS § 9185-1.]

35.27.515 Criminal code repeals by town operating municipal court—Agreement covering costs of handling resulting criminal cases—Arbitration. A town operating a municipal court may not repeal in its entirety that portion of its municipal code defining crimes or repeal a provision of its municipal code which defines a crime equivalent to an offense listed in RCW 46.63.020 unless the municipality has reached an agreement with the appropriate county under chapter 39.34 RCW under which the county is to be paid a reasonable amount for costs associated with prosecution, adjudication, and sentencing in criminal cases filed in district court as a result of the repeal. The agreement shall include provisions for periodic review and renewal of the terms of the agreement. If the municipality and the county are unable to agree on the terms for renewal of the agreement, they shall be deemed to have entered into an agreement to submit the issue to arbitration under chapter 7.04 RCW. Pending conclusion of the arbitration proceeding, the terms of the agreement shall remain in effect. The municipality and the county have the same rights and are subject to the same duties as other parties who have agreed to submit to arbitration under chapter 7.04 RCW. [1984 c 258 § 207.]

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

35.27.550 Off-street parking space and facilities—Authorized—Declared public use. Towns of the fourth class are authorized to provide off-street parking space and facilities for motor vehicles, and the use of real property for such purpose is declared to be a public use. [1965 c 7 § 35.27.550. Prior: 1961 c 33 § 1.]

Off-street parking facilities, cities of the first, second and third classes: Chapter 35.86 RCW.

35.27.560 Off-street parking space and facilities—Financing. In order to provide for off-street parking space and/or facilities, such towns are authorized, in addition to their powers for financing public improvements, to finance their acquisition through the issuance and sale of revenue bonds and general obligation bonds. Any bonds issued by such towns pursuant to this section shall be issued in the manner and within the limitations prescribed by the Constitution and the laws of this state. In addition local improvement districts may be created and their financing procedures used for this purpose in accordance with the provisions of Title 35 RCW, as now or hereafter amended. Such towns may finance from their general budget, costs of land acquisition, planning, engineering, location, design and construction

to the off-street parking. [1965 c 7 § 35.27.560. Prior: 1961 c 33 § 2.]

35.27.570 Off-street parking space and facilities—Acquisition and disposition of real property. Such towns are authorized to obtain by lease, purchase, donation and/or gift, or by eminent domain in the manner provided by law for the exercise of this power by cities, such real property for off-street parking as the legislative bodies thereof determine to be necessary by ordinance. Such property may be sold, transferred, exchanged, leased, or otherwise disposed of by the town when its legislative body has determined by ordinance such property is no longer necessary for off-street parking purposes. [1965 c 7 § 35.27.570. Prior: 1961 c 33 § 3.]

Eminent domain: Chapter 8.12 RCW.

35.27.580 Off-street parking space and facilities—Operation—Lease. Such towns are authorized to establish the methods of operation of off-street parking space and/or facilities by ordinance, which may include leasing or municipal operation. [1965 c 7 § 35.27.580. Prior: 1961 c 33 § 4.]

35.27.590 Off-street parking space and facilities—Hearing prior to establishment. Before the establishment of any off-street parking space and/or facilities, the town shall hold a public hearing thereon, prior to the adoption of any ordinance relating to the leasing or acquisition of property, and for the financing thereof for this purpose. [1965 c 7 § 35.27.590. Prior: 1961 c 33 § 5.]

35.27.600 Off-street parking space and facilities—Construction. Insofar as the provisions of RCW 35.27.550 through 35.27.600 are inconsistent with the provisions of any other law, the provisions of RCW 35.27.550 through 35.27.600 shall be controlling. [1965 c 7 § 35.27.600. Prior: 1961 c 33 § 7.]

Chapter 35.30

UNCLASSIFIED CITIES

Sections

35.30.010	Additional powers.
35.30.011	Nonpolluting power generation by individual—Exemption from regulation—Authorization to contract with utility.
35.30.014	Hydroelectric resources—Separate legal authority—Creation by irrigation districts and cities, towns, or public utility districts.
35.30.018	Publication of ordinances—Public notice of hearings and meeting agendas.
35.30.020	Sewer systems—Sewer fund.
35.30.030	Assessment, levy and collection of taxes.
35.30.040	Limitation of indebtedness.
35.30.050	Additional indebtedness with popular vote.
35.30.060	Additional indebtedness for municipal utilities.
35.30.100	Criminal code repeal by city operating municipal court—Agreement covering costs of handling resulting criminal cases—Arbitration.

35.30.010 Additional powers. The council, or other legislative body, of all cities within the state of Washington which were created by special charter prior to the adoption

of the state Constitution, and which have not since reincorporated under any general statute, shall have, in addition to the powers specially granted by the charter of such cities, the following powers:

(1) To construct, establish and maintain drains and sewers.

(2) To impose and collect an annual license not exceeding two dollars on every dog owned or harbored within the limits of the city.

(3) To levy and collect annually a property tax on all property within such city.

(4) To license all shows, exhibitions and lawful games carried on therein; and to fix the rates of license tax upon the same, and to provide for the collection of the same by suit or otherwise.

(5) To permit, under such restrictions as they may deem proper, the construction and maintenance of telephone, telegraph and electric light lines therein.

(6) To impose fines, penalties and forfeitures for any and all violations of ordinances; and for any breach or violation of any ordinance, to fix the penalty by fine or imprisonment or both, but no such fine shall exceed five thousand dollars nor the term of imprisonment exceed one year.

(7) To cause all persons imprisoned for violation of any ordinance to labor on the streets or other public property or works within the city.

(8) To make all such ordinances, bylaws and regulations, not inconsistent with the Constitution and laws of the state of Washington, as may be deemed expedient to maintain the peace, good government and welfare of the city, and to do and perform any and all other acts and things necessary and proper to carry out the purposes of the municipal corporation. [1984 c 258 § 806; 1965 c 7 § 35.30.010. Prior: 1899 c 69 § 1; RRS § 8944.]

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

35.30.011 Nonpolluting power generation by individual—Exemption from regulation—Authorization to contract with utility. See chapter 80.58 RCW.

35.30.014 Hydroelectric resources—Separate legal authority—Creation by irrigation districts and cities, towns, or public utility districts. See RCW 87.03.825 through 87.03.840.

35.30.018 Publication of ordinances—Public notice of hearings and meeting agendas. Promptly after adoption, the text of each ordinance or a summary of the content of each ordinance shall be published at least once in the official newspaper of the city.

For purposes of this section, a summary shall mean a brief description which succinctly describes the main points of the ordinance. When the city publishes a summary, the publication shall include a statement that the full text of the ordinance will be mailed upon request.

An inadvertent mistake or omission in publishing the text or a summary of the content of an ordinance shall not render the ordinance invalid.

In addition to the requirement that a city publish the text or a summary of the content of each adopted ordinance, every city shall establish a procedure for notifying the public of upcoming hearings and the preliminary agenda for the forthcoming council meeting. Such procedure may include, but not be limited to, written notification to the city's official newspaper, publication of a notice in the official newspaper, posting of upcoming council meeting agendas, or such other processes as the city determines will satisfy the intent of this requirement. [1988 c 168 § 6; 1985 c 469 § 101.]

35.30.020 Sewer systems—Sewer fund. The city council of all unclassified cities in this state are authorized to construct a sewer or system of sewers and to keep the same in repair; the cost of such sewer or sewers shall be paid from a special fund to be known as the "sewer fund" to be provided by the city council, which fund shall be created by a tax on all the property within the limits of such city: PROVIDED, That such tax shall not exceed one dollar and twenty-five cents per thousand dollars of the assessed value of all real and personal property within such city for any one year. Whenever it shall become necessary for the city to take or damage private property for the purpose of making or repairing sewers, and the city council cannot agree with the owner as to the price to be paid, the city council may direct proceedings to be taken by law for the condemnation of such property for such purpose. [1973 1st ex.s. c 195 § 18; 1965 c 7 § 35.30.020. Prior: 1899 c 69 § 2; RRS § 8945.]

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

35.30.030 Assessment, levy and collection of taxes. The city council shall have power to provide by ordinance a complete system for the assessment, levy, and collection of all city taxes. All taxes assessed together with any percentage imposed for delinquency and the cost of collection, shall constitute liens on the property assessed from and after the first day of November each year; which liens may be enforced by a summary sale of such property, and the execution and delivery of all necessary certificates and deeds therefor, under such regulations as may be prescribed by ordinance or by action in any court of competent jurisdiction to foreclose such liens: PROVIDED, That any property sold for taxes shall be subject to redemption within the time and within the manner provided or that may hereafter be provided by law for the redemption of property sold for state and county taxes. [1965 c 7 § 35.30.030. Prior: 1899 c 69 § 3; RRS § 8946.]

35.30.040 Limitation of indebtedness. Whenever it is deemed advisable to do so by the city council thereof, any city having a corporate existence in this state at the time of the adoption of the Constitution thereof is hereby authorized and empowered to borrow money and to contract indebtedness in any other manner for general municipal purposes, not exceeding in amount, together with the existing general indebtedness of the city, the amount of indebtedness authorized by chapter 39.36 RCW, as now or hereafter amended, to be incurred without the assent of the voters. [1965 c 7 § 35.30.040. Prior: 1890 p 225 § 1; RRS § 9532.]

Construction—1890 p 227: "That when this act comes in conflict with any provision, limitation or restriction in any local or special law or charter existing at the time that the Constitution of the State of Washington was adopted, this statute shall govern and control." [1890 p 227 § 6.] This applies to RCW 35.30.040 through 35.30.060.

Limitations upon indebtedness: *State Constitution Art. 7 § 2 (Amendments 55, 59), Art. 8 § 6 (Amendment 27), chapter 39.36 RCW, RCW 84.52.050.*

35.30.050 Additional indebtedness with popular vote. Any such city may borrow money or contract indebtedness for strictly municipal purposes over the amount specified in RCW 35.30.040, but not exceeding in amount, together with existing general indebtedness, the amount of indebtedness authorized by chapter 39.36 RCW as now or hereafter amended, to be incurred with the assent of the voters, through the council of the city, whenever three-fifths of the voters assent thereto, at an election to be held for that purpose, at such time, upon such reasonable notice, and in the manner presented by the city council, not inconsistent with the general election laws. [1965 c 7 § 35.30.050. Prior: 1890 p 225 § 2; RRS § 9533.]

Elections: Title 29 RCW.

35.30.060 Additional indebtedness for municipal utilities. In addition to the powers granted in RCW 35.30.040 and 35.30.050, any such city, through its council may borrow money or contract indebtedness not exceeding in amount the amount of indebtedness authorized by chapter 39.36 RCW, as now or hereafter amended, for the purpose of supplying the city with water, artificial light, or sewers, when the plants used therefor are owned and controlled by the city, whenever three-fifths of the voters assent thereto at an election to be held for that purpose, according to the provisions of RCW 35.30.050. [1965 c 7 § 35.30.060. Prior: 1890 p 225 § 3; RRS § 9534.]

35.30.100 Criminal code repeal by city operating municipal court—Agreement covering costs of handling resulting criminal cases—Arbitration. A city operating a municipal court may not repeal in its entirety that portion of its municipal code defining crimes unless the municipality has reached an agreement with the appropriate county under chapter 39.34 RCW under which the county is to be paid a reasonable amount for costs associated with prosecution, adjudication, and sentencing in criminal cases filed in district court as a result of the repeal. The agreement shall include provisions for periodic review and renewal of the terms of the agreement. If the municipality and the county are unable to agree on the terms for renewal of the agreement, they shall be deemed to have entered into an agreement to submit the issue to arbitration under chapter 7.04 RCW. Pending conclusion of the arbitration proceeding, the terms of the agreement shall remain in effect. The municipality and the county have the same rights and are subject to the same duties as other parties who have agreed to submit to arbitration under chapter 7.04 RCW. [1984 c 258 § 208.]

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

Chapter 35.31

ACCIDENT CLAIMS AND FUNDS

Sections

- 35.31.010 Charter cities—Statement of residence required.
- 35.31.020 Charter cities—Time for filing—Claims by relatives or agents.
- 35.31.030 Compliance mandatory.
- 35.31.040 Noncharter cities and towns—Presentment and filing of claim, time limitation—Verification—Report—Requisites of claim.
- 35.31.050 Accident fund—Warrants for judgments.
- 35.31.060 Tax levy for fund.
- 35.31.070 Surplus to current expense fund.

Actions against

public corporations: RCW 4.08.120.

state: Chapter 4.92 RCW.

Claims, reports, etc., filing: RCW 1.12.070.

Tortious conduct of political subdivision, municipal corporations and quasi municipal corporations, liability for damages: Chapter 4.96 RCW.

35.31.010 Charter cities—Statement of residence required. Whenever a claim for damages sounding in tort against any city permitted by law to have a charter is presented to and filed with the city clerk or other proper officer of the city, in compliance with valid charter provisions thereof, not inconsistent with the provisions of chapter 35.31 RCW, such claim must contain in addition to the valid requirements of the city charter relating thereto, a statement of the actual residence of the claimant, by street and number, at the date of presenting and filing such claim; and also a statement of the actual residence of the claimant for six months immediately prior to the time the claim for damages accrued. [1967 c 164 § 11; 1965 c 7 § 35.31.010. Prior: 1957 c 224 § 2; 1909 c 83 § 1; RRS § 9478.]

Purpose—Severability—1967 c 164: See notes following RCW 4.96.010.

Tortious conduct of political subdivisions and municipal corporations, liability for damages: Chapter 4.96 RCW.

35.31.020 Charter cities—Time for filing—Claims by relatives or agents. The provisions of chapter 35.31 RCW shall be applied notwithstanding any provisions to the contrary in any charter of any city permitted by law to have a charter; however, charter provisions not inconsistent herewith shall continue to apply. All claims for damages against a charter city shall be filed within one hundred and twenty days from the date that the damage occurred or the injury was sustained: PROVIDED, That if the claimant is incapacitated from verifying and filing his claim for damages within the time prescribed, or if the claimant is a minor, or in case the claim is for damages to real or personal property, and if the owner of such property is a nonresident of such city or is absent therefrom during the time within which a claim for damages to said property is required to be filed, then the claim may be verified and presented on behalf of the claimant by any relative or attorney or agency representing the injured person, or in case of damages to property, representing the owner thereof. [1967 c 164 § 12; 1965 c 7 § 35.31.020. Prior: 1957 c 224 § 3; 1917 c 96 § 1; 1915 c 148 § 1; 1909 c 83 § 2; RRS § 9479.]

Purpose—Severability—1967 c 164: See notes following RCW 4.96.010.

Tortious conduct of political subdivisions and municipal corporations, liability for damages: Chapter 4.96 RCW.

35.31.030 Compliance mandatory. Compliance with the provisions of RCW 35.31.010 and 35.31.020 is hereby declared to be mandatory upon all such claimants presenting and filing any such claims for damages. [1965 c 7 § 35.31.030. Prior: 1909 c 83 § 3; RRS § 9480.]

35.31.040 Noncharter cities and towns—Presentment and filing of claim, time limitation—Verification—Report—Requisites of claim. All claims for damages against noncharter cities and towns must be presented to the city or town council and filed with the city or town clerk within the period specified in the appropriate statute of limitations.

No ordinance or resolution shall be passed allowing such claim or any part thereof, or appropriating any money or other property to pay or satisfy the same or any part thereof, until the claim has first been referred to the proper department or committee, nor until such department or committee has made its report to the council thereon pursuant to such reference.

All such claims for damages must accurately locate and describe the defect that caused the injury, reasonably describe the injury and state the time when it occurred, give the residence for six months last past of claimant, contain the item of damages claimed and be sworn to by the claimant or a relative, attorney or agent of the claimant.

No action shall be maintained against any such city or town for any claim for damages until the same has been presented to the council and sixty days have elapsed after such presentation. [1989 c 74 § 1; 1967 c 164 § 13; 1965 c 7 § 35.31.040. Prior: 1957 c 224 § 4; 1915 c 148 § 2; 1909 c 167 § 1; RRS § 9481.]

Purpose—Severability—1967 c 164: See notes following RCW 4.96.010.

Actions against political subdivisions, municipal corporations, and quasi municipal corporations: Chapter 4.96 RCW.

Limitation of actions: Chapter 4.16 RCW.

35.31.050 Accident fund—Warrants for judgments. Every city of the second or third class and town may create an accident fund upon which the clerk shall draw warrants for the full amount of any judgment including interest and costs against the city or town on account of personal injuries suffered by any person as shown by a transcript of the judgment duly certified to the clerk. The warrants shall be issued in denominations not less than one hundred dollars nor more than five hundred dollars; they shall draw interest at the rate of six percent per annum, shall be numbered consecutively and be paid in the order of their issue. [1965 c 7 § 35.31.050. Prior: (i) 1909 c 128 § 1; RRS § 9482. (ii) 1909 c 128 § 2; RRS § 9483. (iii) 1909 c 128 § 5; RRS § 9486.]

35.31.060 Tax levy for fund. The city or town council after the drawing of warrants against the accident fund shall estimate the amount necessary to pay the warrants with accrued interest thereon, and shall levy a tax sufficient to pay that amount not exceeding seventy-five cents per

thousand dollars of assessed value. If a single levy of seventy-five cents per thousand dollars of assessed value is not sufficient, an annual levy of seventy-five cents per thousand dollars of assessed value shall be made until the warrants and interest are fully paid. [1973 1st ex.s. c 195 § 19; 1965 c 7 § 35.31.060. Prior: 1909 c 128 § 3; RRS § 9484.]

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

35.31.070 Surplus to current expense fund. If there is no judgment outstanding against the city or town for personal injuries the money remaining in the accident fund after the payment of the warrants drawn on that fund and interest in full shall be transferred to the current expense fund. [1965 c 7 § 35.31.070. Prior: 1909 c 128 § 4; RRS § 9485.]

Chapter 35.32A

BUDGETS IN CITIES OVER 300,000

Sections

- 35.32A.010 Budget to be enacted—Exempted functions or programs.
- 35.32A.020 Budget director.
- 35.32A.030 Estimates of revenues and expenditures—Preparation of proposed budget—Submission to city council—Copies—Publication.
- 35.32A.040 Consideration by city council—Hearings—Revision by council.
- 35.32A.050 Adoption of budget—Expenditure allowances constitute appropriations—Reappropriations—Transfers of allowances.
- 35.32A.060 Emergency fund.
- 35.32A.070 Utilities—Exemption from budgetary control.
- 35.32A.080 Unexpended appropriations—Annual—Operating and maintenance—Capital and betterment outlays.
- 35.32A.090 Budget mandatory—Other expenditures void—Liability of public officials—Penalty.
- 35.32A.900 Short title.
- 35.32A.910 Severability—1967 c 7.

Budgets

- expenditures for streets: RCW 35.76.060.*
- leases with or without option to purchase, budget to provide for payment of rentals: RCW 35.42.220.*

Limitations upon indebtedness: State Constitution Art. 7 § 2 (Amendments 55, 59), Art. 8 § 6 (Amendment 27), chapter 39.36 RCW, RCW 84.52.050.

State auditor's division of municipal corporations: RCW 43.09.190 through 43.09.285.

35.32A.010 Budget to be enacted—Exempted functions or programs. In each city of over three hundred thousand population, there shall be enacted annually by the legislative authority a budget covering all functions or programs of such city except in those cities in which an ordinance has been adopted under RCW 35.34.040 providing for a biennial budget, in which case this chapter does not apply. In addition, this chapter shall not apply to any municipal transportation system managed by a separate commission, the making of expenditures from proceeds of general obligation and revenue bond sales, or the expenditure of moneys derived from grants, gifts, bequests or devises for specified purposes. [1985 c 175 § 3; 1967 c 7 § 3.]

35.32A.020 Budget director. There shall be a budget director, appointed by the mayor without regard to civil service rules and regulations and subject to confirmation by a majority of the members of the city council, who shall be in charge of the city budget office and, under the direction of the mayor, shall be responsible for preparing the budget and supervising its execution. The budget director may be removed by the mayor upon filing with the city council a statement of his reasons therefor. [1967 c 7 § 4.]

35.32A.030 Estimates of revenues and expenditures—Preparation of proposed budget—Submission to city council—Copies—Publication. The heads of all departments, divisions or agencies of the city government, including the library department, and departments headed by commissions or elected officials shall submit to the mayor estimates of revenues and necessary expenditures for the ensuing fiscal year in such detail, in such form and at such time as the mayor shall prescribe.

The budget director shall assemble all estimates of revenues; necessary departmental expenditures; interest and redemption requirements for any city debt; and other pertinent budgetary information as may be required by uniform regulations of the state auditor; and, under the direction of the mayor, prepare a proposed budget for presentation to the city council.

The revenue estimates shall be based primarily on the collection experience of the first six months of the current fiscal year and the last six months of the preceding fiscal year and shall not include revenue from any source in excess of the amount so collected unless it shall be reasonably anticipated that such excess amounts will in fact be realized. The estimated revenues shall include sources previously established by law and unencumbered fund balances estimated to be available at the close of the current fiscal year. The estimated expenditures in the proposed budget shall, in no event, exceed such estimated revenues: PROVIDED, That the mayor may recommend expenditures exceeding the estimated revenues when accompanied by proposed legislation to raise at least an equivalent amount of additional revenue.

The mayor shall submit the proposed budget to the city council not later than ninety days prior to the beginning of the ensuing fiscal year.

The budget director shall cause sufficient copies of the proposed budget to be prepared and made available to all interested persons and shall cause a summary of the proposed budget to be published at least once in the city official newspaper. [1985 c 175 § 62; 1967 c 7 § 5.]

35.32A.040 Consideration by city council—Hearings—Revision by council. The city council shall forthwith consider the proposed budget submitted by the mayor and shall cause such public hearings to be scheduled on two or more days to allow all interested persons to be heard. Such hearings shall be announced by public notice published in the city official newspaper as well as provided to general news media.

The city council may insert new expenditure allowances, increase or decrease expenditure allowances recommended by the mayor, or revise estimates of revenues subject to the

same restrictions as are herein imposed on the mayor; but may not adopt a budget in which the total expenditure allowances exceed the total estimated revenues as defined in RCW 35.32A.030 for the ensuing fiscal year. [1985 c 175 § 63; 1967 c 7 § 6.]

35.32A.050 Adoption of budget—Expenditure allowances constitute appropriations—Reappropriations—Transfers of allowances. Not later than thirty days prior to the beginning of the ensuing fiscal year the city council shall, by ordinance adopt the budget submitted by the mayor as modified by the city council.

The expenditure allowances as set forth in the enacted budget shall constitute the budget appropriations for the ensuing fiscal year. The city council by ordinance may, during the fiscal year covered by the enacted budget, abrogate or decrease any unexpended allowance contained within the budget and reappropriate such unexpended allowances for other functions or programs. Transfers between allowances in the budget of any department, division or agency may be made upon approval by the budget director pursuant to such regulations as may be prescribed by ordinance. [1967 c 7 § 7.]

35.32A.060 Emergency fund. Every city having a population of over three hundred thousand may maintain an emergency fund, which fund balance shall not exceed thirty-seven and one-half cents per thousand dollars of assessed value. Such fund shall be maintained by an annual budget allowance. When the necessity therefor arises transfers may be made to the emergency fund from any tax-supported fund except bond interest and redemption funds.

The city council by an ordinance approved by two-thirds of all of its members may authorize the expenditure of sufficient money from the emergency fund, or other designated funds, to meet the expenses or obligations:

(1) Caused by fire, flood, explosion, storm, earthquake, epidemic, riot, insurrection, act of God, act of the public enemy or any other such happening that could not have been anticipated; or

(2) For the immediate preservation of order or public health or for the restoration to a condition of usefulness of public property the usefulness of which has been destroyed by accident; or

(3) In settlement of approved claims for personal injuries or property damages, exclusive of claims arising from the operation of a public utility owned by the city; or

(4) To meet mandatory expenditures required by laws enacted since the last budget was adopted.

The city council by an ordinance approved by three-fourths of all its members may appropriate from the emergency fund, or other designated funds, an amount sufficient to meet the actual necessary expenditures of the city for which insufficient or no appropriations have been made due to causes which could not reasonably have been foreseen at the time of the making of the budget.

An ordinance authorizing an emergency expenditure shall become effective immediately upon being approved by the mayor or upon being passed over his veto as provided by the city charter. [1985 c 175 § 64; 1973 1st ex.s. c 195 § 20; 1967 c 7 § 8.]

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

35.32A.070 Utilities—Exemption from budgetary control. Notwithstanding the provisions of this chapter, the public utilities owned by a city having a population of over three hundred thousand supported wholly by revenues derived from sources other than taxation, may make expenditures for utility purposes not contemplated in the annual budget, as the legislative authority by ordinance shall allow. [1967 c 7 § 9.]

35.32A.080 Unexpended appropriations—Annual—Operating and maintenance—Capital and betterment outlays. The whole or any part of any appropriation provided in the budget for operating and maintenance expenses of any department or activity remaining unexpended or unencumbered at the close of the fiscal year shall automatically lapse, except any such appropriation as the city council shall continue by ordinance. The whole or any part of any appropriation provided in the budget for capital or betterment outlays of any department or activity remaining unexpended or unencumbered at the close of the fiscal year shall remain in full force and effect and shall be held available for the following year, except any such appropriation as the city council by ordinance may have abandoned. [1967 c 7 § 10.]

35.32A.090 Budget mandatory—Other expenditures void—Liability of public officials—Penalty. There shall be no orders, authorizations, allowances, contracts or payments made or attempted to be made in excess of the expenditure allowances authorized in the final budget as adopted or modified as provided in this chapter, and any such attempted excess expenditure shall be void and shall never be the foundation of a claim against the city.

Any public official authorizing, auditing, allowing, or paying any claims or demands against the city in violation of the provisions of this chapter shall be jointly and severally liable to the city in person and upon their official bonds to the extent of any payments upon such claims or demands.

Any person violating any of the provisions of this chapter, in addition to any other liability or penalty provided therefor, shall be guilty of a misdemeanor. [1967 c 7 § 11.]

35.32A.900 Short title. This chapter shall be known and may be cited as the budget act for cities over three hundred thousand population. [1967 c 7 § 2.]

35.32A.910 Severability—1967 c 7. 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 7 § 12.]

Chapter 35.33

BUDGETS IN SECOND AND THIRD CLASS CITIES, TOWNS AND FIRST CLASS CITIES UNDER 300,000

Sections

35.33.011	Definitions.
35.33.020	Applicability of chapter.
35.33.031	Budget estimates.
35.33.041	Budget estimates—Classification and segregation.
35.33.051	Budget—Preliminary.
35.33.055	Budget—Preliminary—Filing—Copies.
35.33.057	Budget message—Hearings.
35.33.061	Budget—Notice of hearing on final.
35.33.071	Budget—Final—Hearing.
35.33.075	Budget—Final—Adoption—Appropriations.
35.33.081	Emergency expenditures—Nondebatable emergencies.
35.33.091	Emergency expenditures—Other emergencies—Hearing.
35.33.101	Emergency warrants.
35.33.106	Registered warrants—Payment.
35.33.107	Adjustment of wages, hours and conditions of employment.
35.33.111	Forms—Accounting—Supervision by state.
35.33.121	Funds—Limitations on expenditures—Transfers.
35.33.123	Administration, oversight, or supervision of utility—Reimbursement from utility budget authorized.
35.33.125	Liabilities incurred in excess of budget.
35.33.131	Funds received from sale of bonds and warrants—Expenditure program.
35.33.135	Revenue estimates—Amount to be raised by ad valorem taxes.
35.33.141	Report of expenditures and liabilities against budget appropriations.
35.33.145	Contingency fund—Creation—Purpose—Support—Lapse.
35.33.147	Contingency fund—Withdrawals.
35.33.151	Unexpended appropriations.
35.33.170	Violations and penalties.

Budgets

expenditures for streets: RCW 35.76.060.

leases with or without option to purchase, budget to provide for payment of rentals: RCW 35.42.220.

Limitations upon indebtedness: State Constitution Art. 8 § 6 (Amendment 27), Art. 7 § 2 (Amendments 55, 59), chapter 39.36 RCW, RCW 84.52.050.

State auditor's division of municipal corporations: RCW 43.09.190 through 43.09.285.

35.33.011 Definitions. Unless the context clearly indicates otherwise, the following words as used in this chapter shall have the meaning herein prescribed:

(1) "Clerk" as used in this chapter includes the officer performing the functions of a finance or budget director, comptroller, auditor, or by whatever title he may be known in any city or town.

(2) "Department" as used in this chapter includes each office, division, service, system or institution of the city or town for which no other statutory or charter provision is made for budgeting and accounting procedures or controls.

(3) "Legislative body" as used in this chapter includes council, commission or any other group of officials serving as the legislative body of a city or town.

(4) "Chief administrative officer" as used in this chapter includes the mayor of cities or towns having a mayor-council form of government, the commissioners in cities or towns having a commission form of government, the city manager, or any other city or town official designated by the charter or ordinances of such city or town under the plan of government governing the same, or the budget or finance officer designated by the mayor, manager or commissioners, to

perform the functions, or portions thereof, contemplated by this chapter.

(5) "Fiscal year" as used in this chapter means that fiscal period set by the city or town pursuant to authority given under RCW 1.16.030.

(6) "Fund", as used in this chapter and "funds" where clearly used to indicate the plural of "fund", shall mean the budgeting or accounting entity authorized to provide a sum of money for specified activities or purposes.

(7) "Funds" as used in this chapter where not used to indicate the plural of "fund" shall mean money in hand or available for expenditure or payment of a debt or obligation.

(8) Except as otherwise defined herein, municipal accounting terms used in this chapter shall have the meaning prescribed by the state auditor pursuant to RCW 43.09.200. [1981 c 40 § 1; 1969 ex.s. c 95 § 1.]

35.33.020 Applicability of chapter. The provisions of this chapter apply to cities of the first class which have a population of less than three hundred thousand, to all cities of the second and third classes, and to all towns, except those cities and towns which have adopted an ordinance under RCW 35.34.040 providing for a biennial budget. [1985 c 175 § 4; 1969 ex.s. c 95 § 2; 1965 c 7 § 35.33.020. Prior: 1923 c 158 § 8; RRS § 9000-8.]

35.33.031 Budget estimates. On or before the second Monday of the fourth month prior to the beginning of the city's or town's next fiscal year, or at such other time as the city or town may provide by ordinance or charter, the clerk shall notify in writing the head of each department of a city or town to file with the clerk within fourteen days of the receipt of such notification, detailed estimates of the probable revenue from sources other than ad valorem taxation and of all expenditures required by his department for the ensuing fiscal year. The notice shall be accompanied by the proper forms provided by the clerk, prepared in accordance with the requirements and classification established by the division of municipal corporations in the office of the state auditor. The clerk shall prepare the estimates for interest and debt redemption requirements and all other estimates, the preparation of which falls properly within the duties of his office. The chief administrative officers of the city or town shall submit to the clerk detailed estimates of all expenditures proposed to be financed from the proceeds of bonds or warrants not yet authorized, together with a statement of the proposed method of financing them. In the absence or disability of the official or person regularly in charge of a department, the duties herein required shall devolve upon the person next in charge of such department. [1969 ex.s. c 95 § 3.]

35.33.041 Budget estimates—Classification and segregation. All estimates of receipts and expenditures for the ensuing year shall be fully detailed in the annual budget and shall be classified and segregated according to a standard classification of accounts to be adopted and prescribed by the state auditor through the division of municipal corporations after consultation with the Washington finance officers association, the association of Washington cities and

the association of Washington city managers. [1969 ex.s. c 95 § 4.]

35.33.051 Budget—Preliminary. On or before the first business day in the third month prior to the beginning of the fiscal year of a city or town or at such other time as the city or town may provide by ordinance or charter, the clerk or other person designated by the charter, by ordinance, or by the chief administrative officer of the city or town shall submit to the chief administrative officer a proposed preliminary budget which shall set forth the complete financial program of the city or town for the ensuing fiscal year, showing the expenditure program requested by each department and the sources of revenue by which each such program is proposed to be financed.

The revenue section shall set forth in comparative and tabular form for each fund the actual receipts for the last completed fiscal year, the estimated receipts for the current fiscal year and the estimated receipts for the ensuing fiscal year, which shall include the amount to be raised from ad valorem taxes and unencumbered fund balances estimated to be available at the close of the current fiscal year.

The expenditure section shall set forth in comparative and tabular form for each fund and every department operating within each fund the actual expenditures for the last completed fiscal year, the appropriations for the current fiscal year and the estimated expenditures for the ensuing fiscal year. The salary or salary range for each office, position or job classification shall be set forth separately together with the title or position designation thereof: PROVIDED, That salaries may be set out in total amounts under each department if a detailed schedule of such salaries and positions be attached to and made a part of the budget document. [1969 ex.s. c 95 § 5.]

35.33.055 Budget—Preliminary—Filing—Copies. The chief administrative officer shall prepare the preliminary budget in detail, making any revisions or additions to the reports of the department heads deemed advisable by such chief administrative officer and at least sixty days before the beginning of the city's or town's next fiscal year he shall file it with the clerk as the recommendation of the chief administrative officer for the final budget. The clerk shall provide a sufficient number of copies of such preliminary budget and budget message to meet the reasonable demands of taxpayers therefor and have them available for distribution not later than six weeks before the beginning of the city's or town's next fiscal year. [1969 ex.s. c 95 § 6.]

35.33.057 Budget message—Hearings. In every city or town a budget message prepared by or under the direction of the city's or town's chief administrative officer shall be submitted as a part of the preliminary budget to the city's or town's legislative body at least sixty days before the beginning of the city's or town's next fiscal year and shall contain the following:

- (1) An explanation of the budget document;
- (2) An outline of the recommended financial policies and programs of the city for the ensuing fiscal year;
- (3) A statement of the relation of the recommended appropriation to such policies and programs;

(4) A statement of the reason for salient changes from the previous year in appropriation and revenue items;

(5) An explanation for any recommended major changes in financial policy.

Prior to the final hearing on the budget, the legislative body or a committee thereof, shall schedule hearings on the budget or parts thereof, and may require the presence of department heads to give information regarding estimates and programs. [1969 ex.s. c 95 § 7.]

35.33.061 Budget—Notice of hearing on final. Immediately following the filing of the preliminary budget with the clerk, the clerk shall publish a notice once each week for two consecutive weeks stating that the preliminary budget for the ensuing fiscal year has been filed with the clerk; that a copy thereof will be furnished to any taxpayer who will call at the clerk's office therefor and that the legislative body of the city or town will meet on or before the first Monday of the month next preceding the beginning of the ensuing fiscal year for the purpose of fixing the final budget, designating the date, time and place of the legislative budget meeting and that any taxpayer may appear thereat and be heard for or against any part of the budget. The publication of the notice shall be made in the official newspaper of the city or town. [1985 c 469 § 27; 1973 c 67 § 2; 1969 ex.s. c 95 § 8.]

35.33.071 Budget—Final—Hearing. The council shall meet on the day fixed by RCW 35.33.061 for the purpose of fixing the final budget of the city or town at the time and place designated in the notice thereof. Any taxpayer may appear and be heard for or against any part of the budget. The hearing may be continued from day to day but not later than the twenty-fifth day prior to commencement of the city's or town's fiscal year. [1969 ex.s. c 95 § 9.]

35.33.075 Budget—Final—Adoption—Appropriations. Following conclusion of the hearing, and prior to the beginning of the fiscal year, the legislative body shall make such adjustments and changes as it deems necessary or proper and after determining the allowance in each item, department, classification and fund, and shall by ordinance, adopt the budget in its final form and content. Appropriations shall be limited to the total estimated revenues contained therein including the amount to be raised by ad valorem taxes and the unencumbered fund balances estimated to be available at the close of the current fiscal year. Such ordinances may adopt the final budget by reference: PROVIDED, That the ordinance adopting such budget shall set forth in summary form the totals of estimated revenues and appropriations for each separate fund and the aggregate totals for all such funds combined.

A complete copy of the final budget as adopted shall be transmitted to the division of municipal corporations in the office of the state auditor, and to the association of Washington cities. [1969 ex.s. c 95 § 10.]

35.33.081 Emergency expenditures—Nondebatable emergencies. Upon the happening of any emergency caused by violence of nature, casualty, riot, insurrection, war, or

other unanticipated occurrence requiring the immediate preservation of order or public health, or for the restoration to a condition of usefulness of any public property which has been damaged or destroyed by accident, or for public relief from calamity, or in settlement of approved claims for personal injuries or property damages, or to meet mandatory expenditures required by laws enacted since the last annual budget was adopted, or to cover expenses incident to preparing for or establishing a new form of government authorized or assumed after adoption of the current budget, including any expenses incident to selection of additional or new officials required thereby, or incident to employee recruitment at any time, the city or town legislative body, upon the adoption of an ordinance, by the vote of one more than the majority of all members of the legislative body, stating the facts constituting the emergency and the estimated amount required to meet it, may make the expenditures therefor without notice or hearing. [1969 ex.s. c 95 § 11.]

35.33.091 Emergency expenditures—Other emergencies—Hearing. If a public emergency which could not reasonably have been foreseen at the time of filing the preliminary budget requires the expenditure of money not provided for in the annual budget, and if it is not one of the emergencies specifically enumerated in RCW 35.33.081, the city or town legislative body before allowing any expenditure therefor shall adopt an ordinance stating the facts constituting the emergency and the estimated amount required to meet it and declaring that an emergency exists.

Such ordinance shall not be voted on until five days have elapsed after its introduction, and for passage shall require the vote of one more than the majority of all members of the legislative body of the city or town.

Any taxpayer may appear at the meeting at which the emergency ordinance is to be voted on and be heard for or against the adoption thereof. [1969 ex.s. c 95 § 12.]

35.33.101 Emergency warrants. All expenditures for emergency purposes as provided in this chapter shall be paid by warrants from any available money in the fund properly chargeable with such expenditures. If, at any time, there is insufficient money on hand in a fund with which to pay such warrants as presented, the warrants shall be registered, bear interest and be called in the same manner as other registered warrants as prescribed in RCW 35.33.111. [1969 ex.s. c 95 § 13.]

Warrants—Interest rate—Payment: RCW 35.21.320.

35.33.106 Registered warrants—Payment. In adopting the final budget for any fiscal year, the legislative body shall appropriate from estimated revenue sources available, a sufficient amount to pay the principal and interest on all outstanding registered warrants issued since the adoption of the last preceding budget except those issued and identified as revenue warrants and except those for which an appropriation previously has been made: PROVIDED, That no portion of the revenues which are restricted in use by law may be appropriated for the redemption of warrants issued against a utility or other special purpose fund of a self-supporting nature: PROVIDED FURTHER, That all or any portion of the city's or town's outstanding

registered warrants may be funded into bonds in any manner authorized by law. [1969 ex.s. c 95 § 14.]

35.33.107 Adjustment of wages, hours and conditions of employment. Notwithstanding the appropriations for any salary, or salary range of any employee or employees adopted in a final budget, the legislative body of any city or town may, by ordinance, change the wages, hours, and conditions of employment of any or all of its appointive employees if sufficient funds are available for appropriation to such purposes. [1969 ex.s. c 95 § 15.]

35.33.111 Forms—Accounting—Supervision by state. The division of municipal corporations in the office of the state auditor is empowered to make and install the forms and classifications required by this chapter to define what expenditures are chargeable to each budget class and to establish the accounting and cost systems necessary to secure accurate budget information. [1969 ex.s. c 95 § 16.]

35.33.121 Funds—Limitations on expenditures—Transfers. The expenditures as classified and itemized in the final budget shall constitute the city's or town's appropriations for the ensuing fiscal year. Unless otherwise ordered by a court of competent jurisdiction, and subject to further limitations imposed by ordinance of the city or town, the expenditure of city or town funds or the incurring of current liabilities on behalf of the city or town shall be limited to the following:

(1) The total amount appropriated for each fund in the budget for the current fiscal year, without regard to the individual items contained therein, except that this limitation shall not apply to wage adjustments authorized by RCW 35.33.107; and

(2) The unexpended appropriation balances of a preceding budget which may be carried forward from prior fiscal years pursuant to RCW 35.33.151; and

(3) Funds received from the sale of bonds or warrants which have been duly authorized according to law; and

(4) Funds received in excess of estimated revenues during the current fiscal year, when authorized by an ordinance amending the original budget; and

(5) Expenditures required for emergencies, as authorized in RCW 35.33.081 and 35.33.091.

Transfers between individual appropriations within any one fund may be made during the current fiscal year by order of the city's or town's chief administrative officer subject to such regulations, if any, as may be imposed by the city or town legislative body. Notwithstanding the provisions of RCW 43.09.210 or of any statute to the contrary, transfers, as herein authorized, may be made within the same fund regardless of the various offices, departments or divisions of the city or town which may be affected.

The city or town legislative body, upon a finding that it is to the best interests of the city or town to decrease, revoke or recall all or any portion of the total appropriations provided for any one fund, may, by ordinance, approved by the vote of one more than the majority of all members thereof, stating the facts and findings for doing so, decrease, revoke or recall all or any portion of an unexpended fund balance, and by said ordinance, or a subsequent ordinance

adopted by a like majority, the moneys thus released may be reappropriated for another purpose or purposes, without limitation to department, division or fund, unless the use of such moneys is otherwise restricted by law, charter, or ordinance. [1969 ex.s. c 95 § 17.]

35.33.123 Administration, oversight, or supervision of utility—Reimbursement from utility budget authorized. Whenever any city or town apportions a percentage of the city manager's, administrator's, or supervisor's time, or the time of other management or general government staff, for administration, oversight, or supervision of a utility operated by the city or town, or to provide services to the utility, the utility budget may identify such services and budget for reimbursement of the city's or town's current expense fund for the value of such services. [1991 c 152 § 1.]

35.33.125 Liabilities incurred in excess of budget. Liabilities incurred by any officer or employee of the city or town in excess of any budget appropriations shall not be a liability of the city or town. The clerk shall issue no warrant and the city or town legislative body or other authorized person shall approve no claim for an expenditure in excess of the total amount appropriated for any individual fund, except upon an order of a court of competent jurisdiction or for emergencies as provided in this chapter. [1969 ex.s. c 95 § 18.]

35.33.131 Funds received from sale of bonds and warrants—Expenditure program. Moneys received from the sale of bonds or warrants shall be used for no other purpose than that for which they were issued and no expenditure shall be made for that purpose until the bonds have been duly authorized. If any unexpended fund balance remains from the proceeds realized from the bonds or warrants after the accomplishment of the purpose for which they were issued it shall be used for the redemption of such bond or warrant indebtedness. Where a budget contains an expenditure program to be financed from a bond issue to be authorized thereafter, no such expenditure shall be made or incurred until after the bonds have been duly authorized. [1969 ex.s. c 95 § 19.]

35.33.135 Revenue estimates—Amount to be raised by ad valorem taxes. At a time fixed by the city's or town's ordinance or city charter, not later than the first Monday in October of each year, the chief administrative officer shall provide the city's or town's legislative body with current information on estimates of revenues from all sources as adopted in the budget for the current year, together with estimates submitted by the clerk under RCW 35.33.051. The city's or town's legislative body and the city's or town's administrative officer or his designated representative shall consider the city's or town's total anticipated financial requirements for the ensuing fiscal year, and the legislative body shall determine and fix by ordinance the amount to be raised by ad valorem taxes. Upon adoption of the ordinance fixing the amount of ad valorem taxes to be levied, the clerk shall certify the same to the board of county

commissioners as required by RCW 84.52.020. [1969 ex.s. c 95 § 20.]

35.33.141 Report of expenditures and liabilities against budget appropriations. At such intervals as may be required by city charter or city or town ordinance, however, being not less than quarterly, the clerk shall submit to the city's or town's legislative body and chief administrative officer a report showing the expenditures and liabilities against each separate budget appropriation incurred during the preceding reporting period and like information for the whole of the current fiscal year to the first day of the current reporting period together with the unexpended balance of each appropriation. The report shall also show the receipts from all sources. [1969 ex.s. c 95 § 21.]

35.33.145 Contingency fund—Creation—Purpose—Support—Lapse. Every city or town may create and maintain a contingency fund to provide moneys with which to meet any municipal expense, the necessity or extent of which could not have been foreseen or reasonably evaluated at the time of adopting the annual budget, or from which to provide moneys for those emergencies described in RCW 35.33.081 and 35.33.091. Such fund may be supported by a budget appropriation from any tax or other revenue source not restricted in use by law, or also may be supported by a transfer from other unexpended or decreased funds made available by ordinance as set forth in RCW 35.33.121: PROVIDED, That the total amount accumulated in such fund at any time shall not exceed the equivalent of thirty-seven and one-half cents per thousand dollars of assessed valuation of property within the city or town at such time. Any moneys in the contingency fund at the end of the fiscal year shall not lapse except upon reappropriation by the council to another fund in the adoption of a subsequent budget. [1973 1st ex.s. c 195 § 21; 1969 ex.s. c 95 § 22.]

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

35.33.147 Contingency fund—Withdrawals. No money shall be withdrawn from the contingency fund except by transfer to the appropriate operating fund authorized by a resolution or ordinance of the legislative body of the city or town, adopted by a majority vote of the entire legislative body, clearly stating the facts constituting the reason for the withdrawal or the emergency as the case may be, specifying the fund to which the withdrawn money shall be transferred. [1969 ex.s. c 95 § 23.]

35.33.151 Unexpended appropriations. All appropriations in any current operating fund shall lapse at the end of each fiscal year: PROVIDED, That this shall not prevent payments in the following year upon uncompleted programs or improvements in progress or on orders subsequently filled or claims subsequently billed for the purchase of material, equipment and supplies or for personal or contractual services not completed or furnished by the end of the fiscal year, all of which have been properly budgeted and contracted for prior to the close of such fiscal year but furnished or completed in due course thereafter.

All appropriations in a special fund authorized by ordinance or by state law to be used only for the purpose or purposes therein specified, including any cumulative reserve funds lawfully established in specific or general terms for any municipal purpose or purposes, or a contingency fund as authorized by RCW 35.33.145, shall not lapse, but shall be carried forward from year to year until fully expended or the purpose has been accomplished or abandoned, without necessity of reappropriation.

The accounts for budgetary control for each fiscal year shall be kept open for twenty days after the close of such fiscal year for the purpose of paying and recording claims for indebtedness incurred during such fiscal year; any claim presented after the twentieth day following the close of the fiscal year shall be paid from appropriations lawfully provided for the ensuing period, including those made available by provisions of this section, and shall be recorded in the accounts for the ensuing fiscal year. [1969 ex.s. c 95 § 24.]

35.33.170 Violations and penalties. Upon the conviction of any city or town official, department head or other city or town employee of knowingly failing, or refusing, without just cause, to perform any duty imposed upon such officer or employee by this chapter, or city charter or city or town ordinance, in connection with the giving of notice, the preparing and filing of estimates of revenues or expenditures or other information required for preparing a budget report in the time and manner required, or of knowingly making expenditures in excess of budget appropriations, he shall be guilty of a misdemeanor and shall be fined not more than five hundred dollars for each separate violation. [1969 ex.s. c 95 § 25.]

Chapter 35.34 BIENNIAL BUDGETS

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35.34.010 Legislative intent. The legislature hereby recognizes that the development and adoption of a budget by a city or town is a lengthy and intense process designed to provide adequate opportunities for public input and sufficient time for deliberation and enactment by the legislative authority. The legislature also recognizes that there are limited amounts of time available and that time committed for budgetary action reduces opportunities for deliberating other issues. It is, therefore, the intent of the legislature to authorize cities and towns to establish by ordinance a biennial budget and to provide the means for modification of such budget. This chapter and chapter 35A.34 RCW shall be known as the municipal biennial budget act. [1985 c 175 § 1.]

35.34.020 Application of chapter. This chapter applies to all cities of the first, second, and third classes and towns which have by ordinance adopted this chapter authorizing the adoption of a fiscal biennium budget. [1985 c 175 § 5.]

35.34.030 Definitions. Unless the context clearly indicates otherwise, the definitions in this section apply throughout this chapter.

(1) "Clerk" includes the officer performing the functions of a finance or budget director, comptroller, auditor, or by whatever title the officer may be known in any city or town. However, for cities over three hundred thousand, "clerk" means the budget director as authorized under RCW 35.32A.020.

(2) "Department" includes each office, division, service, system, or institution of the city or town for which no other statutory or charter provision is made for budgeting and accounting procedures or controls.

(3) "Legislative body" includes the council, commission, or any other group of officials serving as the legislative body of a city or town.

(4) "Chief administrative officer" includes the mayor of cities or towns having a mayor-council form of government, the commissioners in cities or towns having a commission form of government, the manager, or any other city or town official designated by the charter or ordinances of such city or town under the plan of government governing the same, or the budget or finance officer designated by the mayor, manager, or commissioners, to perform the functions, or portions thereof, contemplated by this chapter.

(5) "Fiscal biennium" means the period from January 1 of each odd-numbered year through December 31 of the next succeeding even-numbered year.

(6) "Fund" and "funds" where clearly used to indicate the plural of "fund" means the budgeting or accounting entity authorized to provide a sum of money for specified activities or purposes.

(7) "Funds" where not used to indicate the plural of "fund" means money in hand or available for expenditure or payment of a debt or obligation.

(8) Except as otherwise defined in this chapter, municipal accounting terms used in this chapter have the meaning prescribed by the state auditor pursuant to RCW 43.09.200. [1985 c 175 § 6.]

"Fiscal biennium" defined: RCW 1.16.020.

35.34.040 Biennial budget authorized—Limitations. All first, second, and third class cities and towns are authorized to establish by ordinance a two-year fiscal biennium budget. The ordinance shall be enacted at least six months prior to commencement of the fiscal biennium and this chapter applies to all cities and towns which utilize a fiscal biennium budget. Cities and towns which establish a fiscal biennium budget are authorized to repeal such ordinance and provide for reversion to a fiscal year budget. The ordinance may only be repealed effective as of the conclusion of a fiscal biennium. However, the city or town shall comply with chapter 35.32A or 35.33 RCW, whichever the case may be, in developing and adopting the budget for the first fiscal year following repeal of the ordinance. [1985 c 175 § 7.]

35.34.050 Budget estimates—Submittal. On or before the second Monday of the fourth month prior to the beginning of the city's or town's next fiscal biennium, or at such other time as the city or town may provide by ordinance or charter, the clerk shall notify in writing the head of each department of a city or town to file with the clerk within fourteen days of the receipt of such notification, detailed estimates of the probable revenue from sources other than ad valorem taxation and of all expenditures required by the department for the ensuing fiscal biennium. The notice shall be accompanied by the proper forms provided by the clerk, prepared in accordance with the requirements and classification established by the division of municipal corporations in the office of the state auditor. The clerk shall prepare the estimates for interest and debt redemption requirements and all other estimates, the preparation of which falls properly within the duties of the clerk's office. The chief administrative officers of the city or town shall submit to the clerk detailed estimates of all expenditures proposed to be financed from the proceeds of bonds or warrants not yet authorized, together with a statement of the proposed method of financing them. In the absence or disability of the official or person regularly in charge of a department, the duties required by this section shall devolve upon the person next in charge of such department. [1985 c 175 § 8.]

35.34.060 Budget estimates—Classification and segregation. All estimates of receipts and expenditures for the ensuing fiscal biennium shall be fully detailed in the biennial budget and shall be classified and segregated according to a standard classification of accounts to be adopted and prescribed by the state auditor through the division of municipal corporations after consultation with the Washington finance officers association, the association of Washington cities, and the association of Washington city managers. [1985 c 175 § 9.]

35.34.070 Proposed preliminary budget. On or before the first business day in the third month prior to the

beginning of the biennium of a city or town or at such other time as the city or town may provide by ordinance or charter, the clerk or other person designated by the charter, by ordinances, or by the chief administrative officer of the city or town shall submit to the chief administrative officer a proposed preliminary budget which shall set forth the complete financial program of the city or town for the ensuing fiscal biennium, showing the expenditure program requested by each department and the sources of revenue by which each such program is proposed to be financed.

The revenue section shall set forth in comparative and tabular form for each fund the actual receipts for the last completed fiscal biennium, the estimated receipts for the current fiscal biennium, and the estimated receipts for the ensuing fiscal biennium, which shall include the amount to be raised from ad valorem taxes and unencumbered fund balances estimated to be available at the close of the current fiscal biennium. However, if the city or town was not utilizing a fiscal biennium budget for the previous three years, it shall set forth its fiscal years' revenues to reflect actual and estimated receipts as if it had previously utilized a biennial budgetary process.

The expenditure section shall set forth in comparative and tabular form for each fund and every department operating within each fund the actual expenditures for the last completed fiscal biennium, the appropriations for the current fiscal biennium, and the estimated expenditures for the ensuing fiscal biennium. However, if the city or town was not utilizing a fiscal biennium budget for the previous three years, it shall set forth its fiscal years' expenditures to reflect actual and estimated levels as if it had previously utilized a biennial budgetary process. The expenditure section shall further set forth separately the salary or salary range for each office, position, or job classification together with the title or position designation thereof. However, salaries may be set out in total amounts under each department if a detailed schedule of such salaries and positions be attached and made a part of the budget document. [1985 c 175 § 10.]

35.34.080 Preliminary budget. The chief administrative officer shall prepare the preliminary budget in detail, making any revisions or additions to the reports of the department heads deemed advisable by such chief administrative officer. At least sixty days before the beginning of the city's or town's next fiscal biennium the chief administrative officer shall file it with the clerk as the recommendation of the chief administrative officer for the final budget. The clerk shall provide a sufficient number of copies of such preliminary budget and budget message to meet the reasonable demands of taxpayers therefor and have them available for distribution not later than six weeks before the beginning of the city's or town's next fiscal biennium. [1985 c 175 § 11.]

35.34.090 Budget message—Hearings. (1) In every city or town, a budget message prepared by or under the direction of the city's or town's chief administrative officer shall be submitted as a part of the preliminary budget to the city's or town's legislative body at least sixty days before

the beginning of the city's or town's next fiscal biennium and shall contain the following:

- (a) An explanation of the budget document;
- (b) An outline of the recommended financial policies and programs of the city or town for the ensuing fiscal biennium;
- (c) A statement of the relation of the recommended appropriation to such policies and programs;
- (d) A statement of the reason for salient changes from the previous biennium in appropriation and revenue items; and
- (e) An explanation for any recommended major changes in financial policy.

(2) Prior to the final hearing on the budget, the legislative body or a committee thereof shall schedule hearings on the budget or parts thereof, and may require the presence of department heads to give information regarding estimates and programs. [1985 c 175 § 12.]

35.34.100 Budget—Notice of hearing. Immediately following the filing of the preliminary budget with the clerk, the clerk shall publish a notice once a week for two consecutive weeks stating that the preliminary budget for the ensuing fiscal biennium has been filed with the clerk, that a copy thereof will be made available to any taxpayer who will call at the clerk's office therefor, that the legislative body of the city or town will meet on or before the first Monday of the month next preceding the beginning of the ensuing fiscal biennium for the purpose of fixing the final budget, designating the date, time, and place of the legislative budget meeting, and that any taxpayer may appear thereat and be heard for or against any part of the budget. The publication of the notice shall be made in the official newspaper of the city or town if there is one, otherwise in a newspaper of general circulation in the city or town. If there is no newspaper of general circulation in the city or town, then notice may be made by posting in three public places fixed by ordinance as the official places for posting the city's or town's official notices. [1985 c 175 § 13.]

35.34.110 Budget—Hearing. The legislative body shall meet on the day fixed by RCW 35.34.100 for the purpose of fixing the final budget of the city or town at the time and place designated in the notice thereof. Any taxpayer may appear and be heard for or against any part of the budget. The hearing may be continued from day to day but not later than the twenty-fifth day prior to commencement of the city's or town's fiscal biennium. [1985 c 175 § 14.]

35.34.120 Budget—Adoption. Following conclusion of the hearing, and prior to the beginning of the fiscal biennium, the legislative body shall make such adjustments and changes as it deems necessary or proper and, after determining the allowance in each item, department, classification, and fund, shall by ordinance adopt the budget in its final form and content. Appropriations shall be limited to the total estimated revenues contained therein including the amount to be raised by ad valorem taxes and the unencumbered fund balances estimated to be available at the close of the current fiscal biennium. Such ordinances may adopt the

final budget by reference. However, the ordinance adopting the budget shall set forth in summary form the totals of estimated revenues and appropriations for each separate fund and the aggregate totals for all such funds combined.

A complete copy of the final budget as adopted shall be transmitted to the division of municipal corporations in the office of the state auditor and to the association of Washington cities. [1985 c 175 § 15.]

35.34.130 Budget—Mid-biennial review and modification. The legislative authority of a city or town having adopted the provisions of this chapter shall provide by ordinance for a mid-biennial review and modification of the biennial budget. The ordinance shall provide that such review and modification shall occur no sooner than eight months after the start nor later than conclusion of the first year of the fiscal biennium. The chief administrative officer shall prepare the proposed budget modification and shall provide for publication of notice of hearings consistent with publication of notices for adoption of other city or town ordinances. City or town ordinances providing for a mid-biennium review and modification shall establish procedures for distribution of the proposed modification to members of the city or town legislative authority, procedures for making copies available to the public, and shall provide for public hearings on the proposed budget modification. The budget modification shall be by ordinance approved in the same manner as are other ordinances of the city or town.

A complete copy of the budget modification as adopted shall be transmitted to the division of municipal corporations in the office of the state auditor and to the association of Washington cities. [1985 c 175 § 16.]

35.34.140 Emergency expenditures—Nondebatable emergencies. Upon the happening of any emergency caused by violence of nature, casualty, riot, insurrection, war, or other unanticipated occurrence requiring the immediate preservation of order or public health, or for the property which has been damaged or destroyed by accident, or for public relief from calamity, or in settlement of approved claims for personal injuries or property damages, or to meet mandatory expenditures required by law enacted since the last budget was adopted, or to cover expenses incident to preparing for or establishing a new form of government authorized or assumed after adoption of the current budget, including any expenses incident to selection of additional or new officials required thereby, or incident to employee recruitment at any time, the city or town legislative body, upon the adoption of an ordinance, by the vote of one more than the majority of all members of the legislative body, stating the facts constituting the emergency and the estimated amount required to meet it, may make the expenditures therefor without notice or hearing. [1985 c 175 § 17.]

35.34.150 Emergency expenditures—Other emergencies—Hearing. If a public emergency which could not reasonably have been foreseen at the time of filing the preliminary budget requires the expenditure of money not provided for in the budget, and if it is not one of the emergencies specifically enumerated in RCW 35.34.140, the city or town legislative body before allowing any expendi-

ture therefor shall adopt an ordinance stating the facts constituting the emergency and the estimated amount required to meet it and declaring that an emergency exists.

The ordinance shall not be voted on until five days have elapsed after its introduction, and for passage shall require the vote of one more than the majority of all members of the legislative body of the city or town.

Any taxpayer may appear at the meeting at which the emergency ordinance is to be voted on and be heard for or against the adoption thereof. [1985 c 175 § 18.]

35.34.160 Emergency expenditures—Warrants—Payment. All expenditures for emergency purposes as provided in this chapter shall be paid by warrants from any available money in the fund properly chargeable with such expenditures. If, at any time, there is insufficient money on hand in a fund with which to pay such warrants as presented, the warrants shall be registered, bear interest, and be called in the same manner as other registered warrants as prescribed in RCW 35.21.320. [1985 c 175 § 19.]

35.34.170 Registered warrants—Payment. In adopting the final budget for any fiscal biennium, the legislative body shall appropriate from estimated revenue sources available, a sufficient amount to pay the principal and interest on all outstanding registered warrants issued since the adoption of the last preceding budget except those issued and identified as revenue warrants and except those for which an appropriation previously has been made. However, no portion of the revenues which are restricted in use by law may be appropriated for the redemption of warrants issued against a utility or other special purpose fund of a self-supporting nature. In addition, all or any portion of the city's or town's outstanding registered warrants may be funded into bonds in any manner authorized by law. [1985 c 175 § 20.]

35.34.180 Adjustment of wages, hours, and conditions of employment. Notwithstanding the appropriations for any salary or salary range of any employee or employees adopted in a final budget, the legislative body of any city or town may, by ordinance, change the wages, hours, and conditions of employment of any or all of its appointive employees if sufficient funds are available for appropriation to such purposes. [1985 c 175 § 21.]

35.34.190 Forms—Accounting—Supervision by state. The division of municipal corporations in the office of the state auditor is empowered to make and install the forms and classifications required by this chapter to define what expenditures are chargeable to each budget class and to establish the accounting and cost systems necessary to secure accurate budget information. [1985 c 175 § 22.]

35.34.200 Funds—Limitations on expenditures—Transfers and adjustments. (1) The expenditures as classified and itemized in the final budget shall constitute the city's or town's appropriations for the ensuing fiscal biennium. Unless otherwise ordered by a court of competent jurisdiction, and subject to further limitations imposed by ordinance of the city or town, the expenditure of city or

town funds or the incurring of current liabilities on behalf of the city or town shall be limited to the following:

(a) The total amount appropriated for each fund in the budget for the current fiscal biennium, without regard to the individual items contained therein, except that this limitation does not apply to wage adjustments authorized by RCW 35.34.180;

(b) The unexpended appropriation balances of a preceding budget which may be carried forward from prior fiscal periods pursuant to RCW 35.34.270;

(c) Funds received from the sale of bonds or warrants which have been duly authorized according to law;

(d) Funds received in excess of estimated revenues during the current fiscal biennium, when authorized by an ordinance amending the original budget; and

(e) Expenditures authorized by budget modification as provided by RCW 35.34.130 and those required for emergencies, as authorized by RCW 35.34.140 and 35.34.150.

(2) Transfers between individual appropriations within any one fund may be made during the current fiscal biennium by order of the city's or town's chief administrative officer subject to such regulations, if any, as may be imposed by the city or town legislative body. Notwithstanding the provisions of RCW 43.09.210 or of any statute to the contrary, transfers, as authorized in this section, may be made within the same fund regardless of the various offices, departments, or divisions of the city or town which may be affected.

(3) The city or town legislative body, upon a finding that it is to the best interests of the city or town to decrease, revoke, or recall all or any portion of the total appropriations provided for any one fund, may, by ordinance, approved by the vote of one more than the majority of all members thereof, stating the facts and findings for doing so, decrease, revoke, or recall all or any portion of an unexpended fund balance, and by said ordinance, or a subsequent ordinance adopted by a like majority, the moneys thus released may be reappropriated for another purpose or purposes, without limitation to department, division, or fund, unless the use of such moneys is otherwise restricted by law, charter, or ordinance. [1985 c 175 § 23.]

35.34.205 Administration, oversight, or supervision of utility—Reimbursement from utility budget authorized. Whenever any city or town apportions a percentage of the city manager's, administrator's, or supervisor's time, or the time of other management or general government staff, for administration, oversight, or supervision of a utility operated by the city or town, or to provide services to the utility, the utility budget may identify such services and budget for reimbursement of the city's or town's current expense fund for the value of such services. [1991 c 152 § 2.]

35.34.210 Liabilities incurred in excess of budget. Liabilities incurred by any officer or employee of the city or town in excess of any budget appropriations shall not be a liability of the city or town. The clerk shall issue no warrant and the city or town legislative body or other authorized person shall approve no claim for an expenditure in excess of the total amount appropriated for any individual fund,

except upon an order of a court of competent jurisdiction or for emergencies as provided in this chapter. [1985 c 175 § 24.]

35.34.220 Funds received from sales of bonds and warrants—Expenditures. Moneys received from the sale of bonds or warrants shall be used for no other purpose than that for which they were issued and no expenditure shall be made for that purpose until the bonds have been duly authorized. If any unexpended fund balance remains from the proceeds realized from the bonds or warrants after the accomplishment of the purpose for which they were issued, it shall be used for the redemption of such bond or warrant indebtedness. Where a budget contains an expenditure program to be financed from a bond issue to be authorized thereafter, no such expenditure shall be made or incurred until after the bonds have been duly authorized. [1985 c 175 § 25.]

35.34.230 Revenue estimates—Amount to be raised by ad valorem taxes. At a time fixed by the city's or town's ordinance or city charter, not later than the first Monday in October of the second year of each fiscal biennium, the chief administrative officer shall provide the city's or town's legislative body with current information on estimates of revenues from all sources as adopted in the budget for the current biennium, together with estimates submitted by the clerk under RCW 35.34.070. The city's or town's legislative body and the city's or town's administrative officer or the officer's designated representative shall consider the city's or town's total anticipated financial requirements for the ensuing fiscal biennium, and the legislative body shall determine and fix by ordinance the amount to be raised the first year of the biennium by ad valorem taxes. The legislative body shall review such information as is provided by the chief administrative officer and shall adopt an ordinance establishing the amount to be raised by ad valorem taxes during the second year of the biennium. Upon adoption of the ordinance fixing the amount of ad valorem taxes to be levied, the clerk shall certify the same to the county legislative authority as required by RCW 84.52.020. [1985 c 175 § 26.]

35.34.240 Funds—Quarterly report of status. At such intervals as may be required by city charter or city or town ordinance, however, being not less than quarterly, the clerk shall submit to the city's or town's legislative body and chief administrative officer a report showing the expenditures and liabilities against each separate budget appropriation incurred during the preceding reporting period and like information for the whole of the current fiscal biennium to the first day of the current reporting period together with the unexpended balance of each appropriation. The report shall also show the receipts from all sources. [1985 c 175 § 27.]

35.34.250 Contingency fund—Creation. Every city or town may create and maintain a contingency fund to provide moneys with which to meet any municipal expense, the necessity or extent of which could not have been foreseen or reasonably evaluated at the time of adopting the annual budget, or from which to provide moneys for those

emergencies described in RCW 35.34.140 and 35.34.150. Such fund may be supported by a budget appropriation from any tax or other revenue source not restricted in use by law, or also may be supported by a transfer from other unexpended or decreased funds made available by ordinance as set forth in RCW 35.34.200. However, the total amount accumulated in such fund at any time shall not exceed the equivalent of thirty-seven and one-half cents per thousand dollars of assessed valuation of property within the city or town at such time. Any moneys in the emergency fund at the end of the fiscal biennium shall not lapse except upon reappropriation by the council to another fund in the adoption of a subsequent budget. [1985 c 175 § 28.]

35.34.260 Contingency fund—Withdrawals. No money shall be withdrawn from the contingency fund except by transfer to the appropriate operating fund authorized by a resolution or ordinance of the legislative body of the city or town, adopted by a majority vote of the entire legislative body, clearly stating the facts constituting the reason for the withdrawal or the emergency as the case may be, specifying the fund to which the withdrawn money shall be transferred. [1985 c 175 § 29.]

35.34.270 Unexpended appropriations. All appropriations in any current operating fund shall lapse at the end of each fiscal biennium. However, this shall not prevent payments in the following biennium upon uncompleted programs or improvements in progress or on orders subsequently filled or claims subsequently billed for the purchase of material, equipment, and supplies or for personal or contractual services not completed or furnished by the end of the fiscal biennium, all of which have been properly budgeted and contracted for prior to the close of such fiscal biennium, but furnished or completed in due course thereafter.

All appropriations in a special fund authorized by ordinance or by state law to be used only for the purpose or purposes therein specified, including any cumulative reserve funds lawfully established in specific or general terms for any municipal purpose or purposes, or a contingency fund as authorized by RCW 35.34.250, shall not lapse, but shall be carried forward from biennium to biennium until fully expended or the purpose has been accomplished or abandoned, without necessity of reappropriation.

The accounts for budgetary control for each fiscal biennium shall be kept open for twenty days after the close of such fiscal biennium for the purpose of paying and recording claims for indebtedness incurred during such fiscal biennium; any claim presented after the twentieth day following the close of the fiscal biennium shall be paid from appropriations lawfully provided for the ensuing period, including those made available by provisions of this section, and shall be recorded in the accounts for the ensuing fiscal biennium. [1985 c 175 § 30.]

35.34.280 Violations and penalties. Upon the conviction of any city or town official, department head, or other city or town employee of knowingly failing, or refusing, without just cause, to perform any duty imposed upon such officer or employee by this chapter, or city

charter or city or town ordinance, in connection with the giving of notice, the preparing and filing of estimates of revenues or expenditures or other information required for preparing a budget report in the time and manner required, or of knowingly making expenditures in excess of budget appropriations, the official or employee shall be guilty of a misdemeanor and shall be fined not more than five hundred dollars for each separate violation. [1985 c 175 § 31.]

Chapter 35.35

RETAIL SALES AND USE TAXES

City and county retail sales and use taxes: Chapter 82.14 RCW.

Chapter 35.36

EXECUTION OF BONDS BY PROXY—FIRST CLASS CITIES

Sections

35.36.010	Appointment of proxies.
35.36.020	Coupons—Printing facsimile signatures.
35.36.030	Deputies—Exemptions.
35.36.040	Designation of bonds to be signed.
35.36.050	Liability of officer.
35.36.060	Notice to council.
35.36.070	Revocation of proxy.

35.36.010 Appointment of proxies. The mayor, city comptroller and city clerk of every city of the first class may each severally designate one or more bonded persons to affix his signature to any bond or bonds requiring his signature.

If the signature of one of these officers is affixed to a bond during his continuance in office by a proxy designated by him whose authority has not been revoked, the bond shall be as binding upon the city and all concerned as though the officer had signed the bond in person.

This chapter shall apply to all bonds, whether they constitute obligations of the city as a whole or of any local improvement or other district or subdivision thereof, whether they call for payment from the general funds of the city or from a local, special or other fund, and whether negotiable or otherwise. [1965 c 7 § 35.36.010. Prior: 1929 c 212 § 1; RRS § 9005-5.]

35.36.020 Coupons—Printing facsimile signatures. A facsimile reproduction of the signature of the mayor, city comptroller, or city clerk in every city of the first class may be printed, engraved, or lithographed upon bond coupons with the same effect as though the particular officer had signed the coupon in person. [1965 c 7 § 35.36.020. Prior: 1929 c 212 § 4; RRS § 9005-8.]

35.36.030 Deputies—Exemptions. Nothing in this chapter shall be construed as requiring the appointment of deputy comptrollers or deputy city clerks in first class cities to be made in accordance herewith so far as concerns signatures or other doings which may be lawfully made or done by such deputy under the provisions of any other law. [1965 c 7 § 35.36.030. Prior: 1929 c 212 § 5; RRS § 9005-9.]

Chapter 35.37

FISCAL—CITIES UNDER 20,000 AND CITIES
OTHER THAN FIRST CLASS—BONDS

35.36.040 Designation of bonds to be signed. The officer whose duty it is to cause any bonds to be printed, engraved, or lithographed, shall specify in a written order or requisition to the printer, engraver, or lithographer the number of bonds to be printed, engraved, or lithographed and the manner of numbering them.

Every printer, engraver, or lithographer who prints, engraves, or lithographs a greater number of bonds than that specified or who prints, engraves, or lithographs more than one bond bearing the same number shall be guilty of a felony. [1965 c 7 § 35.36.040. Prior: 1929 c 212 § 6; RRS § 9005-10.]

35.36.050 Liability of officer. A mayor, comptroller, or clerk authorizing the affixing of his signature to a bond by a proxy shall be subject to the same liability personally and on his bond for any signature so affixed and to the same extent as if he had affixed his signature in person. [1965 c 7 § 35.36.050. Prior: 1929 c 212 § 3; RRS § 9005-7.]

35.36.060 Notice to council. In order to designate a proxy to affix his signature to bonds, a mayor, comptroller, or clerk shall address a written notice to the governing body of the city giving the name of the person whom he has selected therefor and stating generally or specifically what bonds are to be so signed.

Attached to or included in the notice shall be a written signature of the officer making the designation executed by the proposed proxy followed by the word "by" and his own signature; or, if the notice so states, the specimen signatures may consist of a facsimile reproduction of the officer's signature impressed by some mechanical process followed by the word "by" and the proxy's own signature.

If the authority is intended to include the signature upon bonds bearing an earlier date than the effective date of the notice, the prior dated bonds must be specifically described by reasonable reference thereto.

The notice designating a proxy shall be filed with the city comptroller or city clerk, together with the specimen signatures attached thereto and a record of the filing shall be made in the journal of the governing body. This record shall note the date and hour of filing and may be made by the official who keeps the journal at any time after filing of the notice, even during a period of recess or adjournment of the governing body. The notice shall be effective from the time of its recording. [1965 c 7 § 35.36.060. Prior: 1929 c 212 § 2, part; RRS § 9005-6, part.]

35.36.070 Revocation of proxy. Any designation of a proxy may be revoked by written notice addressed to the governing body of the city signed by the officer who made the designation and filed and recorded in the same manner as the notice of designation. It shall be effective from the time of its recording but shall not affect the validity of any signature theretofore made. [1965 c 7 § 35.36.070. Prior: 1929 c 212 § 2, part; RRS § 9005-6, part.]

Sections

35.37.010	Accounting—Funds.
35.37.020	Accounting—Surplus and deficit in utility accounts.
35.37.027	Validation of preexisting obligations by former city.
35.37.030	Applicability of chapter.
35.37.040	Authority to contract debts—Limits.
35.37.050	Excess indebtedness—Authority to contract.
35.37.090	General indebtedness bonds—Issuance and sale.
35.37.110	General indebtedness bonds—Taxation to pay.
35.37.120	General indebtedness bonds—Taxation—Failure to levy—Remedy.

Limitations upon indebtedness: State Constitution Art. 7 § 2 (Amendments 55, 59), Art. 8 § 6 (Amendment 27), chapter 39.36 RCW, RCW 84.52.050.

State auditor's division of municipal corporations: RCW 43.09.190 through 43.09.285.

35.37.010 Accounting—Funds. Every city and town having less than twenty thousand inhabitants shall maintain a current expense fund out of which it must pay current expenses. It shall also maintain an "indebtedness fund," and if it has outstanding general indebtedness bonds, it must maintain a sinking fund therefor. If it maintains waterworks, lighting plant, cemetery, or other public works or institutions from which rent or other revenue is derived it must maintain a separate fund for each utility or institution. All moneys collected by such cities and towns from licenses shall be credited to the current expense fund. [1965 c 7 § 35.37.010. Prior: (i) 1897 c 84 § 1; RRS § 5635. (ii) 1897 c 84 § 2; RRS § 5636. (iii) 1897 c 84 § 9; RRS § 5643. (iv) 1897 c 84 § 10, part; RRS § 5644, part.]

35.37.020 Accounting—Surplus and deficit in utility accounts. Any deficit for operation and maintenance of utilities and institutions owned and controlled by cities and towns having less than twenty thousand inhabitants, over and above the revenue therefrom, shall be paid out of the current expense fund. Any surplus in the waterworks fund, lighting fund, cemetery fund, or other like funds at the end of the fiscal year shall be paid into the current expense fund except such part as the council by a finding entered into the record of the proceedings may conclude to be necessary for the purpose of:

- (1) Extending or repairing the particular utility or institution; or
- (2) Paying interest or principal of any indebtedness incurred in the construction or purchase of the particular utility or institution; or
- (3) Creating or adding to a sinking fund for the payment of any indebtedness incurred in the construction or purchase of the particular utility or institution. [1965 c 7 § 35.37.020. Prior: 1897 c 84 § 10, part; RRS § 5644, part.]

35.37.027 Validation of preexisting obligations by former city. All elections for the validation of any debt created by any city or town which has since become consolidated with any other city or town shall be by ballot, and the vote shall be taken in the new consolidated city as constitut-

ed at the time of the election. [1965 c 7 § 35.37.027. Prior: 1897 c 84 § 12; RRS § 5646.]

Elections: Title 29 RCW.

35.37.030 Applicability of chapter. The provisions of the remainder of this chapter shall not be applied to cities of the first class nor to borrowing money and issuing bonds by any city or town for the purpose of supplying it with water, artificial light, or sewers if the works for supplying the water, artificial light, or sewers are to be owned and controlled by the city or town. [1965 c 7 § 35.37.030. Prior: (i) 1891 c 128 § 10; RRS § 9548. (ii) 1891 c 128 § 11; RRS § 9549.]

35.37.040 Authority to contract debts—Limits. Every city and town, may, without a vote of the people, contract indebtedness or borrow money for strictly municipal purposes on the credit of the city or town and issue negotiable bonds therefor in an amount which when added to its existing nonvoter approved indebtedness will not exceed the amount of indebtedness authorized by chapter 39.36 RCW, as now or hereafter amended, to be incurred without the assent of the voters.

When bonds are issued under this section the ordinance providing therefor shall contain a statement showing the value of the taxable property in the city or town, as the term "value of the taxable property" is defined in RCW 39.36.015, together with the amount of the existing nonvoter approved and total indebtedness of the city or town, which indebtedness shall include the amount for which such bonds are issued. [1984 c 186 § 15; 1970 ex.s. c 42 § 12; 1965 c 7 § 35.37.040. Prior: (i) 1891 c 128 § 1; RRS § 9538. (ii) 1891 c 128 § 6, part; RRS § 9544, part.]

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.

Limitations upon indebtedness: State Constitution Art. 7 § 2 (Amendments 55, 59), Art. 8 § 6 (Amendment 27), chapter 39.36 RCW, RCW 84.52.050.

35.37.050 Excess indebtedness—Authority to contract. Every city and town may, when authorized by the voters of the city or town pursuant to Article VIII, section 6 of the state Constitution at an election held pursuant to RCW 39.36.050, contract indebtedness or borrow money for strictly municipal purposes on the credit of the city or town and issue negotiable bonds therefor in an amount which when added to its existing indebtedness will exceed the amount of indebtedness authorized by chapter 39.36 RCW, as now or hereafter amended, to be incurred without the assent of the voters but will not exceed the amounts of indebtedness authorized by chapter 39.36 RCW, as now or hereafter amended, to be incurred with the assent of the voters. [1984 c 186 § 16; 1965 c 7 § 35.37.050. Prior: (i) 1891 c 128 § 2; RRS § 9539. (ii) 1891 c 128 § 4, part; RRS § 9542, part.]

Purpose—1984 c 186: See note following RCW 39.46.110.

Validation—1969 ex.s. c 191: "Any city or town, which has prior to the effective date of this act [April 25, 1969], submitted to the voters thereof for their ratification or rejection the proposition of incurring indebtedness by the issuance of negotiable bonds in an amount when added to its existing indebtedness will exceed the amount of indebtedness

authorized to be incurred without the assent of the voters, but will not exceed the amount of indebtedness authorized by chapter 39.36 RCW, as now or hereafter amended, to be incurred with the assent of the voters, may incur such indebtedness and issue such bonds even though the amount of money desired to be borrowed and the amount of negotiable bonds to be issued therefor were stated in a resolution adopted by the city or town council submitting such proposition to the voters, instead of in an ordinance passed by such council, if all other requirements of law, including, but not limited to the other provisions of RCW 35.37.050 are complied with." [1969 ex.s. c 191 § 1.]

35.37.090 General indebtedness bonds—Issuance and sale. All general indebtedness bonds shall be issued and sold in accordance with chapter 39.46 RCW. [1984 c 186 § 17; 1983 c 167 § 36; 1965 c 7 § 35.37.090. Prior: (i) 1891 c 128 § 5, part; RRS § 9543, part. (ii) 1891 c 128 § 6, part; RRS § 9544, part.]

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.

35.37.110 General indebtedness bonds—Taxation to pay. So long as any general indebtedness bonds are outstanding an amount sufficient to pay the interest upon them as it accrues shall be included in each annual levy for municipal purposes and a sufficient amount shall be included in each annual levy for payment of principal so that all bonds may be paid serially as they mature. [1965 c 7 § 35.37.110. Prior: 1891 c 128 § 8; RRS § 9546.]

35.37.120 General indebtedness bonds—Taxation—Failure to levy—Remedy. If the council of any city or town which has issued general indebtedness bonds fails to make any levy necessary to make principal or interest payments due on the bonds, the owner of any bond or interest payment which has been presented to the treasurer and payment thereof refused because of the failure to make a levy may file the bond together with any unpaid coupons with the county auditor, taking his receipt therefor.

The county auditor shall register bonds so filed, and the county legislative authority at its next session at which it levies the annual county tax shall add to the city's or town's levy a sum sufficient to realize the amount of principal and interest past due and to become due prior to the next annual levy to be collected and held by the county treasurer and paid out only upon warrants drawn by the county auditor as the payments mature in favor of the owner of the bond as shown by the auditor's register. Similar levies shall be made in each succeeding year until the bonds and any coupons or interest payments are fully satisfied.

This remedy is alternative and in addition to any other remedy which the owner of such a bond or coupon may have. [1983 c 167 § 38; 1965 c 7 § 35.37.120. Prior: 1891 c 128 § 9; RRS § 9547.]

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

Chapter 35.38
FISCAL—DEPOSITARIES

Sections

- 35.38.010 Designation of depositaries.
 35.38.040 Segregation of collateral.
 35.38.050 Treasurer's official bond not affected.
 35.38.055 City official as officer, employee or stockholder of depositary.
 35.38.060 Definition—"Financial institution."

Deposit of public funds: State Constitution Art. 11 § 15.

State fiscal agencies: Chapter 43.80 RCW.

35.38.010 Designation of depositaries. The treasurer in all cities and towns shall annually at the end of each fiscal year, or at such other times as may be deemed necessary, designate one or more financial institutions which are qualified public depositaries as set forth by the public deposit protection commission as depositary or depositaries for the moneys required to be kept by the treasurer. [1984 c 177 § 1; 1973 c 126 § 1; 1969 ex.s. c 193 § 22; 1965 c 7 § 35.38.010. Prior: 1905 c 103 § 1; RRS § 5568.]

Construction—Severability—1969 ex.s. c 193: See notes following RCW 39.58.010.

Liability of treasurers, public deposits: RCW 39.58.140.

Public depositaries, deposit and investment of public funds: Chapter 39.58 RCW.

35.38.040 Segregation of collateral. Before any such designation shall entitle the treasurer to make deposits in any financial institution, each financial institution so designated shall segregate eligible securities as collateral as provided by RCW 39.58.050 as now or hereafter amended. [1984 c 177 § 2; 1973 c 126 § 3; 1969 ex.s. c 193 § 25; 1967 c 132 § 6; 1965 c 7 § 35.38.040. Prior: 1945 c 240 § 2; 1935 c 45 § 3; 1931 c 87 § 5; 1909 c 40 § 1; 1907 c 22 § 2; Rem. Supp. 1945 § 5572.]

Construction—Severability—1969 ex.s. c 193: See notes following RCW 39.58.010.

35.38.050 Treasurer's official bond not affected. The foregoing provisions of this chapter shall in no way affect the duty of a city or town treasurer to give bond to the city or town for the faithful performance of his duties in such amount as may be fixed by the city or town council or other governing body by ordinance. [1965 c 7 § 35.38.050. Prior: (i) 1905 c 103 § 3; RRS § 5570. (ii) 1907 c 22 § 3; RRS § 5573.]

35.38.055 City official as officer, employee or stockholder of depositary. Whenever a financial institution is designated by the treasurer in accordance with the provisions of this chapter, as a depositary for funds to be kept by the treasurer of such city or town and such financial institution has filed and had approved a contract with such city or town and complied with chapter 39.58 RCW, such contract shall not be invalid by reason of any official of the city being also an officer, employee, or stockholder of such financial institution. [1984 c 177 § 3; 1965 c 7 § 35.38.055. Prior: 1955 c 81 § 1.]

35.38.060 Definition—"Financial institution." "Financial institution," as used in the foregoing provisions of this chapter, means a branch of a bank engaged in banking in this state in accordance with RCW 30.04.300, and any state bank or trust company, national banking association, stock savings bank, mutual savings bank, or savings and loan association, which institution is located in this state and lawfully engaged in business. [1984 c 177 § 4; 1965 c 7 § 35.38.060. Prior: 1907 c 22 § 4; RRS § 5574.]

Chapter 35.39

FISCAL—INVESTMENT OF FUNDS

Sections

- 35.39.030 Excess or inactive funds—Investment.
 35.39.032 Approval of legislative authority—Delegation of authority—Reports.
 35.39.034 Investment by individual fund or commingling of funds—Investment in United States securities—Validation.
 35.39.050 Construction—1965 c 7.
 35.39.060 Investment of pension funds.
 35.39.070 City retirement system—Registration and custody of securities.
 35.39.080 City retirement system—Investment advisory committee.
 35.39.090 City retirement system—Investment advisory committee—Powers and duties.
 35.39.100 City retirement system—Investment advisory committee—Employment of members.
 35.39.110 City retirement system—Investment advisory committee—Liability of members.

Investment of

municipal funds in savings and loan associations by county or other municipal corporation treasurer: RCW 36.29.020.

public and trust funds in federal agency bonds: Chapter 39.60 RCW.

Municipal revenue bond act: Chapter 35.41 RCW.

State auditor's division of municipal corporations: RCW 43.09.190 through 43.09.285.

35.39.030 Excess or inactive funds—Investment. Every city and town may invest any portion of the moneys in its inactive funds or in other funds in excess of current needs in:

- (1) United States bonds;
- (2) United States certificates of indebtedness;
- (3) Bonds or warrants of this state;
- (4) General obligation or utility revenue bonds or warrants of its own or of any other city or town in the state;
- (5) Its own bonds or warrants of a local improvement district which are within the protection of the local improvement guaranty fund law; and
- (6) In any other investments authorized by law for any other taxing districts. [1975 1st ex.s. c 11 § 1; 1969 ex.s. c 33 § 1; 1965 ex.s. c 46 § 1; 1965 c 7 § 35.39.030. Prior: 1943 c 92 § 1; Rem. Supp. 1943 § 5646-13.]

Effective date—1969 ex.s. c 33: "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 political subdivisions; and shall take effect July 1, 1969." [1969 ex.s. c 33 § 4.] This applies to RCW 35.39.030 through 35.39.034.

Construction—1965 c 7: See RCW 35.39.050.

35.39.032 Approval of legislative authority—Delegation of authority—Reports. No investment shall be made without the approval of the legislative authority of the city or town expressed by ordinance: PROVIDED, That

except as otherwise provided by law, the legislative authority may by ordinance authorize a city official or a committee composed of several city officials to determine the amount of money available in each fund for investment purposes and make the investments authorized as indicated in RCW 35.39.030 as now or hereafter amended and the provisions of RCW 35.39.034, without the consent of the legislative authority for each investment. The responsible official or committee shall make a monthly report of all investment transactions to the city legislative authority. The legislative authority of a city or town or city official or committee authorized to invest city or town funds may at any time convert any of its investment securities, or any part thereof, into cash. [1969 ex.s. c 33 § 2.]

35.39.034 Investment by individual fund or commingling of funds—Investment in United States securities—Validation. Moneys thus determined available for this purpose may be invested on an individual fund basis or may, unless otherwise restricted by law be commingled within one common investment portfolio for investment. All income derived from such investment shall be apportioned and used for the benefit of the various participating funds or for the benefit of the general or current expense fund as the governing body of the city of [or] town shall determine by ordinance or resolution: PROVIDED, That funds derived from the sale of general obligation bonds or revenue bonds or similar instruments of indebtedness shall be invested, or used in such manner as the initiating ordinances, resolutions, or bond covenants may lawfully prescribe.

Any excess or inactive funds on hand in the city treasury not otherwise invested, or required to be invested by this section, as now or hereafter amended, may be invested by the city treasurer in United States government bonds, notes, bills, certificates of indebtedness, or interim financing warrants of a local improvement district which is within the protection of the local improvement guaranty fund law for the benefit of the general or current expense fund.

All previous or outstanding investments of city or town funds for the benefit of the city's or town's general or current expense fund which have been or could be made in accordance with the provisions of this section, as now or hereafter amended, are declared valid. [1981 c 218 § 1; 1975 1st ex.s. c 11 § 2; 1969 ex.s. c 33 § 3.]

35.39.050 Construction—1965 c 7. RCW 35.39.030 shall be deemed cumulative and not exclusive and shall be additional to any other power or authority granted any city or town. [1983 c 3 § 56; 1965 c 7 § 35.39.050. Prior: 1943 c 92 § 3; Rem. Supp. 1943 § 5646-15.]

35.39.060 Investment of pension funds. Any city or town now or hereafter operating an employees' pension system with the approval of the board otherwise responsible for management of its respective funds may invest, reinvest, manage, contract, sell, or exchange investments acquired. Investments shall be made in accordance with investment policy duly established and published by the board. In discharging its duties under this section, the board shall act with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent man acting in

a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims; shall diversify the investments of the employees' pension system so as to minimize the risk of large losses; and shall act in accordance with the documents and instruments governing the employees' pension system, insofar as such documents and instruments are consistent with the provisions of this title. [1982 c 166 § 1.]

Effective date—1982 c 166: "This act shall take effect July 1, 1982." [1982 c 166 § 9.]

35.39.070 City retirement system—Registration and custody of securities. The city treasurer may cause any securities in which the city retirement system deals to be registered in the name of a nominee without mention of any fiduciary relationship, except that adequate records shall be maintained to identify the actual owner of the security so registered. The securities so registered shall be held in the physical custody of the city treasurer, the federal reserve system, the designee of the city treasurer, or at the election of the designee and upon approval of the city treasurer, the Pacific Securities Depository Trust Company Inc. or the Depository Trust Company of New York City or its designees.

With respect to the securities, the nominee shall act only on the direction of the retirement board. All rights to the dividends, interest, and sale proceeds from the securities and all voting rights of the securities shall be vested in the actual owners of the securities, and not in the nominee. [1982 c 166 § 2.]

Effective date—1982 c 166: See note following RCW 35.39.060.

35.39.080 City retirement system—Investment advisory committee. The retirement board of any city which is responsible for the management of an employees' retirement system established to provide retirement benefits for nonpublic safety employees shall appoint an investment advisory committee consisting of at least three members who are considered experienced and qualified in the field of investments. [1982 c 166 § 3.]

Effective date—1982 c 166: See note following RCW 35.39.060.

35.39.090 City retirement system—Investment advisory committee—Powers and duties. In addition to its other powers and duties, the investment advisory committee shall:

- (1) Make recommendations as to general investment policies, practices, and procedures to the retirement board;
- (2) Review the investment transactions of the retirement board annually;
- (3) Prepare a written report of its activities during each fiscal year. Each report shall be submitted not more than thirty days after the end of each fiscal year to the retirement board and to any other person who has submitted a request therefor. [1982 c 166 § 4.]

Effective date—1982 c 166: See note following RCW 35.39.060.

35.39.100 City retirement system—Investment advisory committee—Employment of members. No advisory committee member during the term of appointment may be employed by any investment brokerage or mortgage

servicing firm doing business with the retirement board. [1982 c 166 § 5.]

Effective date—1982 c 166: See note following RCW 35.39.060.

35.39.110 City retirement system—Investment advisory committee—Liability of members. No member of the investment advisory committee is liable for the negligence, default, or failure of any other person or other member of the committee to perform the duties of his or her office, and no member of the committee may be considered or held to be an insurer of the funds or assets of the retirement system nor shall any member be liable for actions performed with the exercise of reasonable diligence within the scope of his or her duly authorized activities as a member of the committee. [1982 c 166 § 6.]

Effective date—1982 c 166: See note following RCW 35.39.060.

Chapter 35.40

FISCAL—VALIDATION AND FUNDING OF DEBTS

Sections

35.40.030 Ratification and funding after consolidation or annexation.

Funding indebtedness in counties, cities and towns: Chapter 39.52 RCW.

Metropolitan municipal corporations, funding and refunding bonds: RCW 35.58.470.

35.40.030 Ratification and funding after consolidation or annexation. If, in any case where any city or town in this state has been or may hereafter be formed by the consolidation of two or more cities or towns, or has annexed or may hereafter annex any new territory, an election shall be held, in accordance with the Constitution and laws of this state, for the purpose of submitting to the voters residing within the former corporate limits of either such former city or town, or of such city or town prior to such annexation, for ratification or disapproval, the attempted incurring on the part of such former city or town or of such city or town prior to such annexation by the corporate authorities thereof, of any indebtedness thereof, such consolidated or existing city or town may submit to all of the voters therein, at the same or a separate election, any proposition to fund such indebtedness so sought to be ratified or any part thereof or any existing indebtedness of such consolidated or existing city or town, or both. The proposition to ratify any such indebtedness so previously attempted to be incurred on the part of either such former city or town, or on the part of such city or town prior to such annexation, and the proposition to fund the same may be submitted, respectively, to the voters residing within the corporate limits of such former city or town or in such city or town prior to such annexation, and to all the voters in such consolidated city or town, respectively, in the same or in separate ordinances, as may be required or permitted by law; but the proposition to fund shall be the subject of a distinct vote in favor of or against the same, separate from the vote upon the proposition to ratify, and separate from the vote upon a proposition to fund any part of such indebtedness as to which a proposition to ratify is not submitted. [1965 c 7 § 35.40.030. Prior: 1893 c 58 § 1; RRS § 9556.]

Annexation of unincorporated areas: Chapter 35.13 RCW.

Consolidation including annexation of third class city or town to first class city: Chapter 35.10 RCW.

Chapter 35.41

FISCAL—MUNICIPAL REVENUE BOND ACT

Sections

35.41.010 Special funds—Authorized—Composition.

35.41.030 Revenue bonds authorized—Form, term, etc.

35.41.050 Revenue warrants.

35.41.060 Sale of revenue bonds and warrants—Contract provisions.

35.41.070 Suit to compel city to pay amount into special fund.

35.41.080 Rates and charges for services, use or benefits.

35.41.090 Rates and charges for services, use or benefits—Costs, expenses, interest may be included.

35.41.095 Revenue bonds for water or sewerage system—Pledge of utility local improvement district assessments.

35.41.100 Chapter is alternative and additional method.

35.41.900 Short title.

Industrial development revenue bonds: Chapter 39.84 RCW.

Municipal utilities: Chapter 35.92 RCW.

35.41.010 Special funds—Authorized—Composition.

For the purpose of providing funds for defraying all or a portion of the costs of planning, purchase, leasing, condemnation, or other acquisition, construction, reconstruction, development, improvement, extension, repair, maintenance, or operation of any municipally owned public land, building, facility, or utility, for which the municipality now has or hereafter is granted authority to acquire, condemn, develop, repair, maintain, or operate, the legislative body of any city or town may authorize, by ordinance, the creation of a special fund or funds into which the city or town shall be obligated to set aside and pay: Any or all municipal license fees specified in such ordinance creating such special fund, and/or any and all revenues derived from any utility or facility specified in said ordinance creating such special fund. The ordinance may provide that the city or town shall be obligated to set aside and pay into a special fund or funds so created:

- (1) A fixed proportion of any revenues or fees, or
- (2) A fixed amount of, and not to exceed, a fixed proportion of any revenues or fees, or
- (3) A fixed amount without regard to any fixed proportion of any revenues or fees, or
- (4) An amount of such revenues sufficient, together with any other moneys lawfully pledged to be paid into such fund or funds, to meet principal and interest requirements and to accumulate any reserves and additional funds that may be required.

The legislative body may also authorize the creation of a special fund or funds to defray all or part of the costs of planning, purchase, condemnation, or other acquisition, construction, improvement, maintenance or operation of any public park in, upon or above property used or to be used as municipally owned off-street parking space and facilities, whether or not revenues are received or fees charged in the course of public use of such park. Part or all of the otherwise unpledged revenues, fees or charges arising from municipal ownership, operation, lease or license of any off-street parking space and facilities, or arising from municipal license of any off-street parking space, shall be set aside and paid into such special fund or funds in accordance with this

section. [1971 ex.s. c 223 § 1; 1967 ex.s. c 144 § 12; 1965 c 7 § 35.41.010. Prior: 1957 c 117 § 1.]

Severability—1967 ex.s. c 144: See note following RCW 36.900.030.

Bids for operation of parking space or facilities in or beneath public parks: RCW 35.86.010.

"Facilities" defined: RCW 35.86.010.

General obligation bonds, use in financing off-street parking space and facilities: RCW 35.86.020.

35.41.030 Revenue bonds authorized—Form, term, etc. If the legislative body of a city or town deems it advisable to purchase, lease, condemn, or otherwise acquire, construct, develop, improve, extend, or operate any land, building, facility, or utility, and adopts an ordinance authorizing such purchase, lease, condemnation, acquisition, construction, development, improvement and to provide funds for defraying all or a portion of the cost thereof from the proceeds of the sale of revenue bonds, and such ordinance has been ratified by the voters of the city or town in those instances where the original acquisition, construction, or development of such facility or utility is required to be ratified by the voters under the provisions of RCW 35.67.030 and 35.92.070, such city or town may issue revenue bonds against the special fund or funds created solely from revenues. The revenue bonds so issued shall:

(1) Be registered bonds, as provided in RCW 39.46.030, or bearer bonds;

(2) Be issued in such denominations as determined by the legislative body of the city or town;

(3) Be numbered from one upwards consecutively;

(4) Bear the date of their issue;

(5) Be serial or term bonds and the final maturity thereof shall not extend beyond the reasonable life expectancy of the facility or utility;

(6) Bear interest at such rate or rates as authorized by the legislative body of the city or town, with interest coupons attached unless such bonds are registered as to interest, in which case no interest coupons need be attached;

(7) Be payable as to principal and interest at such place or time as may be designated therein;

(8) State upon their face that they are payable from a special fund, naming it, and the ordinance creating it, and that they do not constitute a general indebtedness of the city or town;

(9) Be signed by the mayor and bear the seal of the city or town and be attested by the clerk: PROVIDED, That the facsimile signatures of the mayor and clerk may be used when the ordinance authorizing the issuance of such bonds provides for the signatures thereof by an authenticating officer; and

(10) Be printed upon good bond paper: PROVIDED, That notwithstanding the provisions of this section, such revenue bonds may be issued and sold in accordance with chapter 39.46 RCW. [1983 c 167 § 39; 1971 ex.s. c 223 § 2; 1970 ex.s. c 56 § 34; 1969 ex.s. c 232 § 15; 1965 c 7 § 35.41.030. Prior: 1957 c 117 § 3.]

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.

35.41.050 Revenue warrants. (1) Revenue warrants may be issued and such warrants and interest thereon may be payable out of the special fund or refunded through the proceeds of the sale of revenue bonds. Every revenue warrant and the interest thereon issued against the special fund shall be a valid claim of the owner thereof only as against that fund and the amount of revenue pledged to the fund, and shall not constitute an indebtedness of the city or town. Every revenue warrant shall state on its face that it is payable from a special fund, naming it and the ordinance creating it. Such warrants may be in any form, including bearer warrants or registered warrants as provided in RCW 39.46.030.

(2) Notwithstanding subsection (1) of this section, such warrants may be issued and sold in accordance with chapter 39.46 RCW. [1983 c 167 § 40; 1965 c 7 § 35.41.050. Prior: 1957 c 117 § 5.]

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

35.41.060 Sale of revenue bonds and warrants—Contract provisions. Revenue bonds and warrants may be sold by negotiation or by public or private sale in any manner and for any price the legislative body of any city or town deems to be for the best interest of the city or town. Such legislative body may provide in any contract, for the construction or acquisition of the proposed facility or utility or the maintenance and operation thereof, and that payment therefor shall be made only in revenue bonds and/or warrants at their par value. [1965 c 7 § 35.41.060. Prior: 1957 c 117 § 6.]

35.41.070 Suit to compel city to pay amount into special fund. If a city or town fails to set aside and pay into the special fund created for the payment of revenue bonds and warrants the amount which it has obligated itself in the ordinance creating the fund to set aside and pay therein, the holder of any bond or warrant issued against the bond may bring suit against the city or town to compel it to do so. [1965 c 7 § 35.41.070. Prior: 1957 c 117 § 7.]

35.41.080 Rates and charges for services, use or benefits. The legislative body of any city or town may provide by ordinance for revenues by fixing rates and charges for the furnishing of service, use, or benefits to those to whom service, use, or benefits from such facility or utility is available, which rates and charges shall be uniform for the same class of service. And, if revenue bonds or warrants are issued against the revenues thereof, the legislative body of the city or town shall fix charges at rates which will be sufficient, together with any other moneys lawfully pledged therefor, to provide for the payment of bonds and warrants, principal and interest, sinking fund requirements and expenses incidental to the issuance of such revenue bonds or warrants; in fixing such charges the legislative body of the city or town may establish rates sufficient to pay, in addition, the costs of operating and maintaining such facility or

utility. [1971 ex.s. c 223 § 3; 1965 c 7 § 35.41.080. Prior: 1959 c 203 § 1; 1957 c 117 § 8.]

35.41.090 Rates and charges for services, use or benefits—Costs, expenses, interest may be included. In setting the rates to be charged for the service, use, or benefits derived from such facility or utility, or in determining the cost of the planning, acquisition, construction, reconstruction, development, improvement, extension, repair, maintenance, or operation thereof the legislative body of the city or town may include all costs and estimated costs of the issuance of said bonds, all engineering, inspection, fiscal and legal expense and interest which it is estimated will accrue during the construction period and for such period of time thereafter deemed by the legislative body to be necessary or desirable on money borrowed, or which it is estimated will be borrowed in connection therewith. [1971 ex.s. c 223 § 4; 1965 c 7 § 35.41.090. Prior: 1957 c 117 § 9.]

35.41.095 Revenue bonds for water or sewerage system—Pledge of utility local improvement district assessments. The legislative body of any city or town may provide as an additional method for securing the payment of any such bonds issued to pay the whole or a portion of the cost of providing the city or town with a system of water or sewerage as set forth in RCW 35.43.042, that utility local improvement district assessments authorized to be made for the purposes and subject to the limitations contained in RCW 35.43.042 may be pledged to secure the payment of such bonds. [1967 c 52 § 26.]

Construction—Severability—1967 c 52: See notes following RCW 35.43.042.

35.41.100 Chapter is alternative and additional method. The authority granted by this chapter shall be considered an alternative and additional method of issuing revenue bonds or warrants by cities and towns and no restriction, limitation, or regulation relative to the issuance of such bonds contained in any other law shall apply to the bonds issued hereunder. [1965 c 7 § 35.41.100. Prior: 1957 c 117 § 10.]

35.41.900 Short title. This chapter shall be known as "the municipal revenue bond act." [1965 c 7 § 35.41.900. Prior: 1957 c 117 § 11.]

**Chapter 35.42
LEASES**

Sections

**LEASING OF SPACE WITH OPTION
TO PURCHASE—1959 ACT**

- 35.42.010 Purpose.
- 35.42.020 Building defined.
- 35.42.030 Authority to lease.
- 35.42.040 Renewals—Option to purchase.
- 35.42.050 Provisions to pay taxes, insurance, make repairs, improvements, etc.
- 35.42.060 Execution of lease prior to construction—Lessor's bond—City not obligated for construction costs.
- 35.42.070 Lease of city land for building purposes and lease back of building by city.

- 35.42.080 Lease of city land for building purposes and lease back of building by city—Bids.
- 35.42.090 Leases exempted from certain taxes.

**LEASES OF REAL OR PERSONAL PROPERTY OR
PROPERTY RIGHTS WITH OR WITHOUT OPTION
TO PURCHASE—1963 ACT**

- 35.42.200 Leases authorized—Ballot proposition.
- 35.42.210 Exercise of option to purchase.
- 35.42.220 Budgeting rental payments—Bids—Construction of agreement where rental equals purchase price.

**LEASING OF SPACE WITH OPTION TO
PURCHASE—1959 ACT**

35.42.010 Purpose. It is the purpose of RCW 35.42.010 through 35.42.090 to supplement existing law for the leasing of space by cities and towns to provide for the leasing of such space through leases with an option to purchase and the acquisition of buildings erected upon land owned by a city or town upon the expiration of a lease of such land. [1965 c 7 § 35.42.010. Prior: 1959 c 80 § 1.]

35.42.020 Building defined. The term "building" as used in RCW 35.42.010 through 35.42.090 shall be construed to mean any building or buildings used as a part of, or in connection with, the operation of a city or town, and shall include the site and appurtenances, including but not limited to, heating facilities, water supply, sewage disposal, landscaping, walks, and drives. [1965 c 7 § 35.42.020. Prior: 1959 c 80 § 2.]

35.42.030 Authority to lease. Any city or town may, as lessee, lease a building for its use for a term of not to exceed fifty years. [1965 c 7 § 35.42.030. Prior: 1959 c 80 § 3.]

35.42.040 Renewals—Option to purchase. A lease of a building executed pursuant to RCW 35.42.010 through 35.42.090 may grant the lessee city or town an option to renew for a further term on like conditions, or an option to purchase the building covered by the lease at any time prior to the expiration of the term. A lease with an option to purchase shall provide that all sums paid as rent up to the time of exercising the option shall be credited toward the payment of the purchase price as of the date of payment. No lease shall provide, nor be construed to provide, that any city or town shall be under any obligation to purchase the leased building. [1965 c 7 § 35.42.040. Prior: 1959 c 80 § 4.]

35.42.050 Provisions to pay taxes, insurance, make repairs, improvements, etc. A lease of a building may provide that as a part of the rental, the lessee city or town may pay taxes and assessments on the leased building, maintain insurance thereon for the benefit of the lessor, and assume responsibilities for repair, replacement, alterations, and improvements during the term of the lease. [1965 c 7 § 35.42.050. Prior: 1959 c 80 § 5.]

35.42.060 Execution of lease prior to construction—Lessor's bond—City not obligated for construction costs.

A city or town may, in anticipation of the acquisition of a site and the construction of a building, execute a lease, as lessee, prior to the actual acquisition of a site and the construction of a building, but the lease shall not require payment of rental by the lessee until the building is ready for occupancy. The lessor shall furnish a bond satisfactory to the lessee conditioned on the delivery of possession of the completed building to the lessee city or town at the time prescribed in the lease, unavoidable delay excepted. The lease shall provide that no part of the cost of construction of the building shall ever become an obligation of the lessee city or town. [1965 c 7 § 35.42.060. Prior: 1959 c 80 § 6.]

35.42.070 Lease of city land for building purposes and lease back of building by city. Any city or town desiring to have a building for its use erected on land owned, or to be acquired, by it, may, as lessor, lease the land for a reasonable rental for a term of not to exceed fifty years: PROVIDED, That the city or town shall lease back the building or a portion thereof for the same term. The leases shall contain terms as agreed upon between the parties, and shall include the following provisions:

(1) No part of the cost of construction of the building shall ever be or become an obligation of the city or town.

(2) The city or town shall have a prior right to occupy any or all of the building upon payment of rental as agreed upon by the parties, which rental shall not exceed prevailing rates for comparable space.

(3) During any time that all or any portion of the building is not required for occupancy by the city or town, the lessee of the land may rent the unneeded portion to suitable tenants approved by the city or town.

(4) Upon the expiration of the lease, all buildings and improvements on the land shall become the property of the city or town. [1965 c 7 § 35.42.070. Prior: 1959 c 80 § 7.]

35.42.080 Lease of city land for building purposes and lease back of building by city—Bids. A lease and lease back agreement requiring a lessee to build on city or town property shall be made pursuant to a call for bids upon terms most advantageous to the city or town. The call for bids shall be given by posting notice thereof in a public place in the city or town and by publication in the official newspaper of the city or town once each week for two consecutive weeks before the date fixed for opening the bids. The city council or commission of the city or town may by resolution reject all bids and make further calls for bids in the same manner as the original call. If no bid is received on the first call, the city council or commission may readvertise and make a second call, or may execute a lease without any further call for bids. [1985 c 469 § 28; 1965 c 7 § 35.42.080. Prior: 1959 c 80 § 8.]

35.42.090 Leases exempted from certain taxes. All leases executed pursuant to RCW 35.42.010 through 35.42.090 shall be exempt from the tax imposed by chapter 19, Laws of 1951 second extraordinary session, as amended, and *chapter 82.45 RCW; section 5, chapter 389, Laws of 1955, and RCW 82.04.040; and section 9, chapter 178, Laws of 1941, and RCW 82.08.090, and by rules and regulations of the department of revenue issued pursuant thereto. [1975

1st ex.s. c 278 § 22; 1965 c 7 § 35.42.090. Prior: 1959 c 80 § 9.]

*Reviser's note: This internal reference has been changed from chapter 28A.45 RCW to chapter 82.45 RCW in accordance with 1981 c 148 § 13 and 1981 c 93 § 2. See note following RCW 82.45.010.

Construction—Severability—1975 1st ex.s. c 278: See notes following RCW 11.08.160.

LEASES OF REAL OR PERSONAL PROPERTY OR PROPERTY RIGHTS WITH OR WITHOUT OPTION TO PURCHASE—1963 ACT

35.42.200 Leases authorized—Ballot proposition.

Any city or town may execute leases for a period of years with or without an option to purchase with the state or any of its political subdivisions, with the government of the United States, or with any private party for the lease of any real or personal property, or property rights: PROVIDED, That with respect only to leases that finance the acquisition of property by the lessee, the aggregated portions of lease payments over the term of the lease which are allocable to principal shall constitute debt, which shall not result in a total indebtedness in excess of one and one-half percent of the taxable property of such city or town computed in accordance with RCW 39.36.030, unless a proposition in regard to whether or not such a lease may be executed is submitted to the voters for their approval or rejection in the same manner that bond issues for capital purposes are submitted, and the voters approve the same. [1990 c 205 § 1; 1965 c 7 § 35.42.200. Prior: 1963 c 170 § 1.]

35.42.210 Exercise of option to purchase. If at the time an option to purchase is exercised the remaining amount to be paid in order to purchase the real or personal property leased after crediting the rental payments toward the total purchase price therefor does not result in a total indebtedness in excess of one and one-half percent of the taxable property of such city or town computed in accordance with RCW 39.36.030, such a city or town may exercise its option to purchase such property. If such remaining amount to be paid to purchase such leased property will result in a total indebtedness in excess of one and one-half percent of the taxable property of such city or town, a proposition in regard to whether or not to purchase the property shall be submitted to the voters for approval or rejection in the same manner that bond issues for capital purposes are submitted to the voters. [1965 c 7 § 35.42.210. Prior: 1963 c 170 § 2.]

35.42.220 Budgeting rental payments—Bids—Construction of agreement where rental equals purchase price. The annual budget of a city shall provide for the payment of rental that falls due in the year for which the budget is applicable: PROVIDED, That if the cost of the real or personal property to be leased exceeds the amounts specified in RCW 35.23.352 prior to the execution of a lease with option to purchase therefor, the city or town shall call for bids in accordance with RCW 35.23.352: PROVIDED, That if at the expiration of a lease with option to purchase a city or town exercises such an option, the fact that the rental payments theretofore made equal the amount of the

purchase price of the real or personal property involved in such lease shall not preclude the agreement from being a lease with option to purchase up to the date of the exercising of the option. [1965 c 7 § 35.42.220. Prior: 1963 c 170 § 3.]

Chapter 35.43

LOCAL IMPROVEMENTS—AUTHORITY— INITIATION OF PROCEEDINGS

Sections

- 35.43.005 Municipal local improvement statutes applicable to public corporations.
- 35.43.010 Terms defined.
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- 35.43.030 Charters superseded—Application—Ordinances—Districts outside city authorized.
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- 35.43.043 Conversion of local improvement district into utility local improvement district.
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- first class cities, special:* RCW 35.22.280(10).
- local improvements, may be made by:* State Constitution Art. 7 § 9.
- public utility districts:* RCW 54.16.160, 54.16.165.

Authority of cities to levy special taxes for: State Constitution Art. 7 § 9.

Bonds, savings and loan associations may invest in: RCW 33.24.080.

Bridges, elevated, ordinance ordering improvement: RCW 35.85.020.

Curbs along streets, construction, reconstruction and repair: Chapter 35.68 RCW.

(1992 Ed.)

Eminent domain: Chapter 8.12 RCW.

First class cities, authority for special assessments: RCW 35.22.280 (10), (13).

Foreclosure of assessments

- curbs and gutter construction and repair:* RCW 35.68.070.
- sidewalk construction, third class cities:* RCW 35.70.090.
- sidewalks and driveways across:* RCW 35.68.070.

Local improvement districts

- bridges, elevated:* RCW 35.85.020.
- metropolitan municipal corporations, effect on:* RCW 35.58.500.
- roadways, elevated:* RCW 35.85.020.
- subways:* RCW 35.85.050.
- tunnels:* RCW 35.85.050.
- viaducts:* RCW 35.85.020.
- water rights acquisition:* RCW 35.92.220.

Metropolitan park districts, assessment against lands adjoining: RCW 35.61.220.

Parking, off-street facilities: RCW 35.86.020.

Pedestrian malls, financing: RCW 35.71.060.

Prepayment of taxes and assessments: RCW 35.21.650.

Roadways, elevated, ordinance ordering improvement: RCW 35.85.020.

Sanitary fills: Chapter 35.73 RCW.

Second class cities, providing for improvements: RCW 35.23.440(48).

Special assessments: State Constitution Art. 7 § 9.

Streets and alleys

- agreements with county:* RCW 35.77.020.
- county furnishing construction and maintenance:* RCW 35.77.020.
- county use of road fund:* RCW 35.77.030.
- establishing grade, procedure:* Chapter 35.73 RCW.

Subways, authority to construct: RCW 35.85.050.

Tunnels, authority to construct: RCW 35.85.050.

Unfit dwellings, assessments for: RCW 35.80.030(1)(h).

Viaducts, ordinance ordering improvement: RCW 35.85.020.

Water rights, acquisition of: RCW 35.92.220.

35.43.005 Municipal local improvement statutes applicable to public corporations. The provisions of this and the following chapters relating to municipal local improvements apply to local improvements owned or operated by a public corporation or by a public corporation and a city, town, or another public corporation as if they were owned or operated by a city or town. Whenever a section in such chapters refers to improvements made by, ordered by, owned by, operated by, constructed by, acquired by, or otherwise provided for or undertaken by a city or town or other municipality, it shall be construed to refer also to improvements made by, ordered by, owned by, operated by, constructed by, acquired by, or otherwise provided for or undertaken by a public corporation. [1987 c 242 § 6.]

Policy—1987 c 242: "It is declared to be the public policy of the state that public improvements owned and operated by public corporations that confer special benefits on property, including without limitation museum, cultural, or arts facilities or structures, should be able to use the local improvement district financing of municipalities." [1987 c 242 § 1.]

35.43.010 Terms defined. Whenever the words "city council" or "town council" are used in this and the following chapters relating to municipal local improvements, they shall be construed to mean the council or other legislative body of such city or town. Whenever the word "mayor" is used therein, it shall be construed to mean the presiding officer of said city or town. Whenever the words "installment" or "installments" are used therein, they shall be construed to include installment or installments of interest. Whenever the

words "local improvement," "local improvements," or "municipal local improvements" are used therein, they shall be construed to include improvements owned or operated by a public corporation or by a public corporation and a city, town, or another public corporation. Whenever the words "public corporation" are used therein, they shall mean a public corporation, commission, or authority created pursuant to RCW 35.21.730 through 35.21.755. [1987 c 242 § 2; 1965 c 7 § 35.43.010. Prior: 1925 ex.s. c 117 § 2; 1911 c 98 § 68; RRS § 9421.]

Policy—1987 c 242: See note following RCW 35.43.005.

35.43.020 Construction. The rule that statutes in derogation of the common law are to be strictly construed shall have no application to this and the following chapters relating to municipal local improvements but the same shall be liberally construed for the purpose of carrying out the objects for which intended. [1965 c 7 § 35.43.020. Prior: 1911 c 98 § 69; RRS § 9422.]

35.43.030 Charters superseded—Application—Ordinances—Districts outside city authorized. This and the following chapters relating to municipal local improvements shall supersede the provisions of the charter of any city of the first class.

They shall apply to all incorporated cities and towns, including unclassified cities and towns operating under special charters.

The council of each city and town shall pass such general ordinance or ordinances as may be necessary to carry out their provisions and thereafter all proceedings relating to local improvements shall be conducted in accordance with this and the following chapters relating to municipal local improvements and the ordinance or ordinances of such city or town.

Cities or towns may form local improvement districts or utility local improvement districts composed entirely or in part of unincorporated territory outside of such city or town's corporate limits in the manner provided in this chapter. [1971 ex.s. c 116 § 4; 1967 c 52 § 2; 1965 c 7 § 35.43.030. Prior: 1963 c 56 § 1; prior: (i) 1911 c 98 § 60; 1899 c 146 § 1; RRS § 9413. (ii) 1911 c 98 § 67; RRS § 9420. (iii) 1911 c 98 § 71; RRS § 9424.]

Construction—Severability—1967 c 52: See notes following RCW 35.43.042.

35.43.035 Creation of district outside city subject to review by boundary review board. The creation of a local improvement district outside of the boundaries of a city or town to provide water or sewer facilities may be subject to potential review by a boundary review board under chapter 36.93 RCW. [1989 c 84 § 30.]

35.43.040 Authority generally. Whenever the public interest or convenience may require, the legislative authority of any city or town may order the whole or any part of any local improvement including but not restricted to those, or any combination thereof, listed below to be constructed, reconstructed, repaired, or renewed and landscaping including but not restricted to the planting, setting out, cultivating, maintaining, and renewing of shade or ornamental trees and

shrubbery thereon; may order any and all work to be done necessary for completion thereof; and may levy and collect special assessments on property specially benefited thereby to pay the whole or any part of the expense thereof, viz:

(1) Alleys, avenues, boulevards, lanes, park drives, parkways, parking facilities, public places, public squares, public streets, their grading, regrading, planking, replanking, paving, repaving, macadamizing, remacadamizing, graveling, regraveling, piling, repiling, capping, recapping, or other improvement; if the management and control of park drives, parkways, and boulevards is vested in a board of park commissioners, the plans and specifications for their improvement must be approved by the board of park commissioners before their adoption;

(2) Auxiliary water systems;

(3) Auditoriums, field houses, gymnasiums, swimming pools, or other recreational, playground, museum, cultural, or arts facilities or structures;

(4) Bridges, culverts, and trestles and approaches thereto;

(5) Bulkheads and retaining walls;

(6) Dikes and embankments;

(7) Drains, sewers, and sewer appurtenances which as to trunk sewers shall include as nearly as possible all the territory which can be drained through the trunk sewer and subsewers connected thereto;

(8) Escalators or moving sidewalks together with the expense of operation and maintenance;

(9) Parks and playgrounds;

(10) Sidewalks, curbing, and crosswalks;

(11) Street lighting systems together with the expense of furnishing electrical energy, maintenance, and operation;

(12) Underground utilities transmission lines;

(13) Water mains, hydrants, and appurtenances which as to trunk water mains shall include as nearly as possible all the territory in the zone or district to which water may be distributed from the trunk water mains through lateral service and distribution mains and services;

(14) Fences, culverts, syphons, or coverings or any other feasible safeguards along, in place of, or over open canals or ditches to protect the public from the hazards thereof;

(15) Roadbeds, trackage, signalization, storage facilities for rolling stock, overhead and underground wiring, and any other stationary equipment reasonably necessary for the operation of an electrified public streetcar line;

(16) Systems of surface, underground, or overhead railways, tramways, buses, or any other means of local transportation except taxis, and including passenger, terminal, station parking, and related facilities and properties, and such other facilities as may be necessary for passenger and vehicular access to and from such terminal, station, parking, and related facilities and properties, together with all lands, rights of way, property, equipment, and accessories necessary for such systems and facilities;

(17) Convention center facilities or structures in cities imposing a special excise tax pursuant to RCW 67.40.100(2). Assessments for purposes of convention center facilities or structures may be levied only to the extent necessary to cover a funding shortfall that occurs when funds received from special excise taxes imposed pursuant to RCW 67.28.180 and 67.40.100(2) are insufficient to fund the annual debt service for such facilities or structures, and may

not be levied on property exclusively maintained as single-family or multifamily permanent residences whether they are rented, leased, or owner occupied; and

(18) Programs of aquatic plant control, lake or river restoration, or water quality enhancement. Such programs shall identify all the area of any lake or river which will be improved and shall include the adjacent waterfront property specially benefited by such programs of improvements. Assessments may be levied only on waterfront property including any waterfront property owned by the department of natural resources or any other state agency. Notice of an assessment on a private leasehold in public property shall comply with provisions of chapter 79.44 RCW. Programs under this subsection shall extend for a term of not more than five years. [1989 c 277 § 1; 1985 c 397 § 1; 1983 c 291 § 1; 1981 c 17 § 1; 1969 ex.s. c 258 § 1; 1965 c 7 § 35.43.040. Prior: 1959 c 75 § 1; 1957 c 144 § 2; prior: (i) 1911 c 98 § 1; RRS § 9352. (ii) 1945 c 190 § 1, part; 1915 c 168 § 6, part; 1913 c 131 § 1, part; 1911 c 98 § 6, part; Rem. Supp. 1945 § 9357, part. (iii) 1911 c 98 § 15; RRS § 9367. (iv) 1911 c 98 § 58, part; RRS § 9411, part.]

Authority supplemental—Severability—1985 c 397: See RCW 35.51.900 and 35.51.901.

35.43.042 Authority to establish utility local improvement districts—Procedure. Whenever the legislative authority of any city or town has provided pursuant to law for the acquisition, construction, reconstruction, purchase, condemnation and purchase, addition to, repair, or renewal of the whole or any portion of a:

(1) System for providing the city or town and the inhabitants thereof with water, which system includes as a whole or as a part thereof water mains, hydrants or appurtenances which are authorized subjects for local improvements under RCW 35.43.040(13) or other law; or a

(2) System for providing the city or town with sewerage and storm or surface water disposal, which system includes as a whole or as a part thereof drains, sewers or sewer appurtenances which are authorized subjects for local improvements under RCW 35.43.040(7) or other law; or

(3) Off-street parking facilities; and

Has further provided in accordance with any applicable provisions of the Constitution or statutory authority for the issuance and sale of revenue bonds to pay the cost of all or a portion of any such system, such legislative authority shall have the authority to establish utility local improvement districts, and to levy special assessments on all property specially benefited by any such local improvement to pay in whole or in part the damages or costs of any local improvements so provided for.

The initiation and formation of such utility local improvement districts and the levying, collection and enforcement of assessments shall be in the manner and subject to the same procedures and limitations as are now or hereafter provided by law for the initiation and formation of local improvement districts in cities and towns and the levying, collection and enforcement of assessments pursuant thereto.

It must be specified in any petition or resolution initiating the formation of such a utility local improvement district in a city or town and in the ordinance ordered pursuant thereto, that the assessments shall be for the sole

purpose of payment into such revenue bond fund as may be specified by the legislative authority for the payment of revenue bonds issued to defray the cost of such system or facilities or any portion thereof as provided for in this section.

Assessments in any such utility local improvement district may be made on the basis of special benefits up to but not in excess of the total cost of the local improvements portion of any system or facilities payable by issuance of revenue bonds. No warrants or bonds shall be issued in any such utility local improvement district, but the collection of interest and principal on all assessments in such utility local improvement district, when collected, shall be paid into any such revenue bond fund.

When in the petition or resolution for establishment of a local improvement district and in the ordinance ordered pursuant thereto, it is specified or provided that the assessments shall be for the sole purpose of payment into a revenue bond fund for the payment of revenue bonds, then the local improvement district shall be designated a "utility local improvement district".

The provisions of chapters 35.45, 35.47 and 35.48 RCW shall have no application to utility local improvement districts created under authority of this section. [1969 ex.s. c 258 § 2; 1967 c 52 § 1.]

Construction—1967 c 52: "The authority granted by this 1967 amendatory act shall be considered an alternative and additional method of securing payment of revenue bonds issued for the purposes specified in RCW 35.43.042 and shall not be construed as a restriction or limitation upon any other method for providing for the payment of any such revenue bonds." [1967 c 52 § 27.]

Severability—1967 c 52: "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 52 § 29.]

The above two annotations apply to 1967 c 52. For codification of that act, see Codification Tables, Volume 0.

35.43.043 Conversion of local improvement district into utility local improvement district. The legislative authority of any city or town may by ordinance convert any then existing local improvement district into a utility local improvement district at any time prior to the adoption of an ordinance approving and confirming the final assessment roll of such local improvement district. The ordinance so converting the local improvement district shall provide for the payment of the special assessments levied in that district into the special fund established or to be established for the payment of revenue bonds issued to defray the cost of the local improvement in that district. [1967 c 52 § 28.]

Construction—Severability—1967 c 52: See notes following RCW 35.43.042.

35.43.045 Open canals or ditches—Safeguards. Every city or town shall have the right of entry upon all irrigation, drainage, or flood control canal or ditch rights of way within its limits for all purposes necessary to safeguard the public from the hazards of such open canals or ditches, and the right to cause to be constructed, installed, and maintained upon or adjacent to such rights of way safeguards as provided in RCW 35.43.040: PROVIDED, That such safeguards must not unreasonably interfere with maintenance of the canal or ditch or with the operation thereof. The city

or town, at its option, notwithstanding any laws to the contrary, may require the irrigation, drainage, flood control, or other district, agency, person, corporation, or association maintaining the canal or ditch to supervise the installation and construction of such safeguards, or to maintain the same. If such option is exercised reimbursement must be made by the city or town for all actual costs thereof. [1965 c 7 § 35.43.045. Prior: 1959 c 75 § 2.]

Safeguarding open canals or ditches, assessments: RCW 35.43.040, 35.43.045, 36.88.015, 36.88.350, 36.88.380 through 36.88.400, 87.03.480, 87.03.526.

35.43.050 Authority—Noncontinuous improvements.

When the legislative body of any city or town finds that all of the property within a local improvement district or utility local improvement district will be benefited by the improvements as a whole, a local improvement district or utility local improvement district may include adjoining, vicinal, or neighboring streets, avenues, and alleys or other improvements even though the improvements thus made are not connected or continuous. The assessment rates may be ascertained on the basis of the special benefit of the improvements as a whole to the properties within the entire local improvement district or utility local improvement district, or on the basis of the benefit of each unit of the improvements to the properties specially benefited by that unit, or the assessment rates may be ascertained by a combination of the two bases. Where no finding is made by the legislative body as to the benefit of the improvements as a whole to all of the property within a local improvement district or utility local improvement district, the cost and expense of each continuous unit of the improvements shall be ascertained separately, as near as may be, and the assessment rates shall be computed on the basis of the cost and expense of each unit. In the event of the initiation of a local improvement district authorized by this section or a utility local improvement district authorized by this section, the legislative body may, in its discretion, eliminate from the district any unit of the improvement which is not connected or continuous and may proceed with the balance of the improvement within the local improvement district or utility local improvement district, as fully and completely as though the eliminated unit had not been included within the improvement district, without the giving of any notices to the property owners remaining within the district, other than such notices as are required by the provisions of this chapter to be given subsequent to such elimination. [1985 c 397 § 2; 1967 c 52 § 3; 1965 c 7 § 35.43.050. Prior: 1957 c 144 § 14; prior: 1947 c 155 § 1, part; 1941 c 90 § 1, part; 1915 c 168 § 2, part; 1911 c 98 § 13, part; Rem. Supp. 1947 § 9365, part.]

Authority supplemental—Severability—1985 c 397: See RCW 35.51.900 and 35.51.901.

Construction—Severability—1967 c 52: See notes following RCW 35.43.042.

35.43.060 Consolidated cities—Procedure. The city council of any city which is composed of two or more cities or towns which have been or may hereafter be consolidated may make and pass all resolutions, orders and ordinances necessary for any assessment where the improvement was made or was being made by a component city or town prior

to consolidation. [1965 c 7 § 35.43.060. Prior: 1911 c 98 § 64; RRS § 9417.]

35.43.070 Ordinance—Action on petition or resolution. A local improvement may be ordered only by an ordinance of the city or town council, pursuant to either a resolution or petition therefor. The ordinance must receive the affirmative vote of at least a majority of the members of the council.

Charters of cities of the first class may prescribe further limitations. In cities and towns other than cities of the first class, the ordinance must receive the affirmative vote of at least two-thirds of the members of the council if, prior to its passage, written objections to its enactment are filed with the city clerk by or on behalf of the owners of a majority of the lineal frontage of the improvement and of the area within the limits of the proposed improvement district. [1965 c 7 § 35.43.070. Prior: (i) 1911 c 98 § 8; RRS § 9359. (ii) 1911 c 98 § 66; RRS § 9419.]

35.43.075 Petition for district outside city may be denied. Whenever the formation of a local improvement district or utility local improvement district which lies entirely or in part outside of a city or town's corporate limits is initiated by petition the legislative authority of the city or town may by a majority vote deny the petition and refuse to form the local improvement district or utility local improvement district. [1967 c 52 § 4; 1965 c 7 § 35.43.075. Prior: 1963 c 56 § 3.]

Construction—Severability—1967 c 52: See notes following RCW 35.43.042.

35.43.080 Ordinance—Creation of district. Every ordinance ordering a local improvement to be paid in whole or in part by assessments against the property specially benefited shall describe the improvement and establish a local improvement district to be known as "local improvement district No. . . .," or a utility local improvement district to be known as "utility local improvement district No. . . ." which shall embrace as nearly as practicable all the property specially benefited by the improvement. [1969 ex.s. c 258 § 3; 1967 c 52 § 5; 1965 c 7 § 35.43.080. Prior: 1957 c 144 § 15; prior: (i) 1947 c 155 § 1, part; 1941 c 90 § 1, part; 1915 c 168 § 2, part; 1911 c 98 § 13, part; Rem. Supp. 1947 § 9365, part. (ii) 1929 c 97 § 2; 1911 c 98 § 14; RRS § 9366.]

Construction—Severability—1967 c 52: See notes following RCW 35.43.042.

35.43.100 Ordinance—Finality—Limitation upon challenging jurisdiction or authority to proceed. The council may continue the hearing upon any petition or resolution provided for in this chapter and shall retain jurisdiction thereof until it is finally disposed of. The action and decision of the council as to all matters passed upon by it in relation to any petition or resolution shall be final and conclusive. No lawsuit whatsoever may be maintained challenging the jurisdiction or authority of the council to proceed with the improvement and creating the local improvement district or in any way challenging the validity thereof or any proceedings relating thereto unless that

lawsuit is served and filed no later than thirty days after the date of passage of the ordinance ordering the improvement and creating the district or, when applicable, no later than thirty days after the expiration of the thirty-day protest period provided in RCW 35.43.180. [1969 ex.s. c 258 § 4; 1965 c 7 § 35.43.100. Prior: 1911 c 98 § 19; RRS § 9371.]

35.43.110 Petition—Mandatory, when. Proceedings to establish local improvement districts must be initiated by petition in the following cases:

(1) Any local improvement payable in whole or in part by special assessments which includes a charge for the cost and expense of operation and maintenance of escalators or moving sidewalks shall be initiated only upon a petition signed by the owners of two-thirds of the lineal frontage upon the improvement to be made and two-thirds of the area within the limits of the proposed improvement district;

(2) If the management of park drives, parkways, and boulevards of a city has been vested in a board of park commissioners or similar authority: PROVIDED, That the proceedings may be initiated by a resolution, if the ordinance is passed at the request of the park board or similar authority therefor specifying the particular drives, parkways, or boulevards, or portions thereof to be improved and the nature of the improvement. [1981 c 313 § 10; 1965 c 7 § 35.43.110. Prior: 1957 c 144 § 3; prior: (i) 1911 c 98 § 58, part; RRS § 9411, part. (ii) 1945 c 190 § 1, part; 1915 c 168 § 6, part; 1913 c 131 § 1, part; 1911 c 98 § 6, part; Rem. Supp. 1945 § 9357, part.]

Severability—1981 c 313: See note following RCW 36.94.020.

35.43.120 Petition—Requirements. Any local improvement may be initiated upon a petition signed by the owners of property aggregating a majority of the area within the proposed district. The petition must briefly describe: (1) The nature of the proposed improvement, (2) the territorial extent of the proposed improvement, (3) what proportion of the area within the proposed district is owned by the petitioners as shown by the records in the office of the county auditor, and (4) the fact that actual assessments may vary from assessment estimates so long as they do not exceed a figure equal to the increased true and fair value the improvement, or street lighting, adds to the property.

If any of the property within the area of the proposed district stands in the name of a deceased person, or of any person for whom a guardian has been appointed and not discharged, the signature of the executor, administrator, or guardian, as the case may be, shall be equivalent to the signature of the owner of the property on the petition. The petition must be filed with the clerk or with such other officer as the city or town by charter or ordinance may require. [1989 c 243 § 1; 1981 c 323 § 1; 1969 ex.s. c 258 § 5; 1965 c 7 § 35.43.120. Prior: 1957 c 144 § 6; prior: 1911 c 98 § 9, part; RRS § 9360, part.]

35.43.125 Petition—Notice and public hearing required. A public hearing shall be held on the creation of a proposed local improvement district or utility local improvement district that is initiated by petition. Notice requirements for this public hearing shall be the same as for the public hearing on the creation of a proposed local

improvement district or utility local improvement district that is initiated by resolution. [1987 c 315 § 2.]

35.43.130 Preliminary estimates and assessment roll. Upon the filing of a petition or upon the adoption of a resolution, as the case may be, initiating a proceeding for the formation of a local improvement district or utility local improvement district, the proper board, officer, or authority designated by charter or ordinance to make the preliminary estimates and assessment roll shall cause an estimate to be made of the cost and expense of the proposed improvement and certify it to the legislative authority of the city or town together with all papers and information in its possession touching the proposed improvement, a description of the boundaries of the district, and a statement of what portion of the cost and expense of the improvement should be borne by the property within the proposed district.

If the proceedings were initiated by petition the designated board, officer or authority shall also determine the sufficiency of the petition and whether the facts set forth therein are true. If the petition is found to be sufficient and in all proceedings initiated by resolution of the legislative authority of the city or town, the estimates must be accompanied by a diagram showing thereon the lots, tracts, and parcels of land and other property which will be specially benefited by the proposed improvement and the estimated amount of the cost and expense thereof to be borne by each lot, tract, or parcel of land or other property: PROVIDED, That no such diagram shall be required where such estimates are on file in the office of the city engineer, or other designated city office, together with a detailed copy of the preliminary assessment roll and the plans and assessment maps of the proposed improvement.

For the purpose of estimating and levying local improvement assessments, the value of property of the United States, of the state, or of any county, city, town, school district, or other public corporation whose property is not assessed for general taxes shall be computed according to the standards afforded by similarly situated property which is assessed for general taxes. [1983 c 303 § 1; 1967 c 52 § 6; 1965 c 7 § 35.43.130. Prior: 1957 c 144 § 7; prior: 1953 c 26 § 1. (i) 1911 c 98 § 9, part; RRS § 9360, part. (ii) 1929 c 97 § 1, part; 1911 c 98 § 10, part; RRS § 9361, part. (iii) 1949 c 28 § 1, part; 1931 c 85 § 1, part; 1927 c 109 § 1, part; 1923 c 135 § 1, part; 1921 c 128 § 1, part; 1915 c 168 § 1, part; 1911 c 98 § 12, part; Rem. Supp. 1949 § 9363, part. (iv) 1927 c 209 § 4, part; 1923 c 141 § 4, part; RRS § 9351-4, part.]

Severability—1983 c 303: See RCW 36.60.905.

Construction—Severability—1967 c 52: See notes following RCW 35.43.042.

35.43.140 Resolutions—Contents, publication—Hearing, by whom held. Any local improvement to be paid for in whole or in part by the levy and collection of assessments upon the property within the proposed improvement district may be initiated by a resolution of the city or town council or other legislative authority of the city or town, declaring its intention to order the improvement, setting forth the nature and territorial extent of the improvement, containing a statement that actual assessments may vary from

assessment estimates so long as they do not exceed a figure equal to the increased true and fair value the improvement, or street lighting, adds to the property, and notifying all persons who may desire to object thereto to appear and present their objections at a time to be fixed therein.

In the case of trunk sewers and trunk water mains the resolution must describe the routes along which the trunk sewer, subsewer and branches of trunk water main and laterals are to be constructed.

In case of dikes or other structures to protect the city or town or any part thereof from overflow or to open, deepen, straighten, or enlarge watercourses, waterways and other channels the resolution must set forth the place of commencement and ending thereof and the route to be used.

In the case of auxiliary water systems, or extensions thereof or additions thereto for protection of the city or town or any part thereof from fire, the resolution must set forth the routes along which the auxiliary water system or extensions thereof or additions thereto are to be constructed and specifications of the structures or works necessary thereto or forming a part thereof.

The resolution shall be published in at least two consecutive issues of the official newspaper of the city or town, the first publication to be at least fifteen days before the day fixed for the hearing.

The hearing herein required may be held before the city or town council, or other legislative authority, or before a committee thereof. The legislative authority of a city having a population of fifteen thousand or more may designate an officer to conduct the hearings. The committee or hearing officer shall report recommendations on the resolution to the legislative authority for final action. [1989 c 243 § 2; 1985 c 469 § 29; 1984 c 203 § 1; 1965 c 7 § 35.43.140. Prior: 1957 c 144 § 8; prior: 1953 c 177 § 1. (i) 1929 c 97 § 1, part; 1911 c 98 § 10, part; RRS § 9361, part. (ii) 1911 c 98 § 16, part; RRS § 9368, part. (iii) 1911 c 98 § 17, part; RRS § 9369, part. (iv) 1911 c 98 § 18, part; RRS § 9370, part.]

Severability—1984 c 203: "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 203 § 10.]

35.43.150 Resolutions—Hearing upon—Notice.

Notice of the hearing upon a resolution declaring the intention of the legislative authority of a city or town to order an improvement shall be given by mail at least fifteen days before the day fixed for hearing to the owners or reputed owners of all lots, tracts, and parcels of land or other property to be specially benefited by the proposed improvement, as shown on the rolls of the county assessor, directed to the address thereon shown.

The notice shall set forth the nature of the proposed improvement, the estimated cost, a statement that actual assessments may vary from assessment estimates so long as they do not exceed a figure equal to the increased true and fair value the improvement, or street lighting, adds to the property, and the estimated benefits of the particular lot, tract, or parcel. [1989 c 243 § 3; 1983 c 303 § 2; 1965 c 7 § 35.43.150. Prior: 1957 c 144 § 9; prior: 1929 c 97 § 1, part; 1911 c 98 § 10, part; RRS § 9361, part.]

Severability—1983 c 303: See RCW 36.60.905.

35.43.180 Restraint by protest. The jurisdiction of the legislative authority of a city or town to proceed with any local improvement initiated by resolution shall be divested by a protest filed with the city or town council within thirty days from the date of passage of the ordinance ordering the improvement, signed by the owners of the property within the proposed local improvement district or utility local improvement district subject to sixty percent or more of the total cost of the improvement including federally-owned or other nonassessable property as shown and determined by the preliminary estimates and assessment roll of the proposed improvement district or, if all or part of the local improvement district or utility local improvement district lies outside of the city or town, such jurisdiction shall be divested by a protest filed in the same manner and signed by the owners of property which is within the proposed local improvement district or utility local improvement district but outside the boundaries of the city or town, and which is subject to sixty percent or more of that part of the total cost of the improvement allocable to property within the proposed local improvement district or utility local improvement district but outside the boundaries of the city or town, including federally-owned or other nonassessable property: PROVIDED, That such restraint by protest shall not apply to any of the following local improvements, if the legislative body finds and recites in the ordinance or resolution authorizing the improvement that such improvement is necessary for the protection of the public health and safety and such ordinance or resolution is passed by unanimous vote of all members present: (1) Sanitary sewers or water mains where the health officer of the city or town, or department of ecology, files with the legislative authority a report showing the necessity for such improvement; and (2) fire hydrants where the chief of the fire department files a report showing the necessity for such improvement. [1983 c 303 § 3; 1967 c 52 § 8; 1965 c 58 § 2; 1965 c 7 § 35.43.180. Prior: 1963 c 56 § 2; 1957 c 144 § 12; prior: 1949 c 28 § 1, part; 1931 c 85 § 1, part; 1927 c 109 § 1, part; 1923 c 135 § 1, part; 1921 c 128 § 1, part; 1915 c 168 § 1, part; 1911 c 98 § 12, part; Rem. Supp. 1949 § 9363, part.]

Severability—1983 c 303: See RCW 36.60.905.

Construction—Severability—1967 c 52: See notes following RCW 35.43.042.

35.43.182 Waivers of protest—Recording—Limits on enforceability. If an owner of property enters into an agreement with a city or town waiving the property owner's right under RCW 35.43.180 to protest formation of a local improvement district, the agreement must specify the improvements to be financed by the district and shall set forth the effective term of the agreement, which shall not exceed ten years. The agreement must be recorded with the auditor of the county in which the property is located. It is against public policy and void for an owner, by agreement, as a condition imposed in connection with proposed property development, or otherwise, to waive rights to object to the property owner's individual assessment (including the determination of special benefits allocable to the property), or to appeal to the superior court the decision of the city or town council affirming the final assessment roll. [1988 c 179 § 8.]

Severability—Prospective application—Section captions—1988 c 179: See RCW 39.92.900 and 39.92.901.

35.43.184 Preformation expenditures. The city or town engineer or other designated official may contract with owners of real property to provide for payment by the owners of the cost of the preparation of engineering plans, surveys, studies, appraisals, legal services, and other expenses associated with improvements to be financed in whole or in part by a local improvement district (not including the cost of actual construction of such improvements), that the owners elect to undertake. The contract may provide for reimbursement to the owner of such costs from the proceeds of bonds issued by the district after formation of a district under this chapter, from assessments paid to the district as appropriate, or by a credit in the amount of such costs against future assessments assessed against such property under the district. Such reimbursement shall be made to the owner of the property at the time of reimbursement. The contract shall also provide that such costs shall not be reimbursed to the owner if a district to construct the specified improvements (as the project may be amended) is not formed within six years of the date of the contract. The contract shall provide that any preformation work shall be conducted only under the direction of the city or town engineer or other appropriate city or town authority. [1988 c 179 § 9.]

Severability—Prospective application—Section captions—1988 c 179: See RCW 39.92.900 and 39.92.901.

35.43.186 Credits for other assessments. A city or town ordering a local improvement upon which special assessments on property specifically benefited by the improvement are levied and collected, may provide as part of the ordinance creating the local improvement district that moneys paid or the cost of facilities constructed by a property owner in the district in satisfaction of obligations under chapter 39.92 RCW, shall be credited against assessments due from the owner of such property at the time the credit is made, if those moneys paid or facilities constructed directly defray the cost of the specified improvements under the district and if credit for such amounts is reflected in the final assessment roll confirmed for the district. [1988 c 179 § 10.]

Severability—Prospective application—Section captions—1988 c 179: See RCW 39.92.900 and 39.92.901.

35.43.188 Assessment reimbursement accounts. A city or town ordering a local improvement upon which special assessments on property specifically benefited by the improvement are levied and collected, may provide as part of the ordinance creating the local improvement district that the payment of an assessment levied for the district on underdeveloped properties may be made by owners of other properties within the district, if they so elect, subject to terms of reimbursement set forth in the ordinance. The terms for reimbursement shall require the owners of underdeveloped properties on whose behalf payments of assessments have been made to reimburse all such assessment payments to the party who made them when those properties are developed or redeveloped, together with interest at a rate specified in the ordinance. The ordinance may provide that

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reimbursement shall be made on a one-time, lump sum basis, or may provide that reimbursement shall be made over a period not to exceed five years. The ordinance may provide that reimbursement shall be made no later than the time of dissolution of the district, or may provide that no reimbursement is due if the underdeveloped properties are not developed or redeveloped before the dissolution of the district. Reimbursement amounts due from underdeveloped properties under this section are liens upon the underdeveloped properties in the same manner and with like effect as assessments made under this chapter. For the purposes of this section, "underdeveloped properties" may include those properties that, in the discretion of the legislative body of the city or town, (1) are undeveloped or are not developed to their highest and best use, and (2) are likely to be developed or redeveloped before the dissolution of the district. [1988 c 179 § 11.]

Severability—Prospective application—Section captions—1988 c 179: See RCW 39.92.900 and 39.92.901.

35.43.190 Work—By contract or by city or public corporation. All local improvements, the funds for the making of which are derived in whole or in part from assessments upon property specially benefited shall be made by contract on competitive bids whenever the estimated cost of such improvement including the cost of materials, supplies, labor, and equipment will exceed the sum of five thousand dollars. The city, town, or public corporation may reject any and all bids. The city, town, or public corporation itself may make the local improvements if all the bids received exceed by ten percent preliminary cost estimates prepared by an independent consulting engineer or registered professional engineer retained for that purpose by the city, town, or public corporation. [1987 c 242 § 3; 1971 ex.s. c 116 § 6; 1965 c 7 § 35.43.190. Prior: 1911 c 98 § 59; RRS § 9412.]

Policy—1987 c 242: See note following RCW 35.43.005.

35.43.200 Street railways at expense of property benefited. Any city or town in this state owning and operating a municipal street railway over one hundred miles of track shall have power to provide for purchasing, or otherwise acquiring, or constructing and equipping surface, subway and elevated street railways and extensions thereof, and to levy and collect special assessments on property specially benefited thereby, for paying the cost and expense of the same or any portion thereof, as hereinafter provided. [1965 c 7 § 35.43.200. Prior: 1923 c 176 § 1; RRS § 9425-1.]

35.43.210 Street railways at expense of property benefited—Petition—Assessment district. Any improvement district created under RCW 35.43.200-35.43.230 shall be created only by ordinance defining its boundaries as specified and described in the petition therefor and specifying the plan or system therein provided for; and shall be initiated only upon a petition therefor, specifying and describing the boundaries of such district and specifying the plan or system of proposed improvement, signed by the owners of at least sixty percent of the lineal frontage upon the proposed improvement and of at least fifty percent of the

area within the limits of the proposed improvement district: PROVIDED, That the city council may in its discretion reject any such petition. [1965 c 7 § 35.43.210. Prior: 1923 c 176 § 2; RRS § 9425-2.]

35.43.220 Street railways at expense of property benefited—Assessment of cost. The cost and expense of any such improvement shall be distributed and assessed against all the property included in such local improvement district, in accordance with the special benefits conferred thereon. [1965 c 7 § 35.43.220. Prior: 1923 c 176 § 3; RRS § 9425-3.]

35.43.230 Street railways at expense of property benefited—Procedure. Except as herein otherwise provided all matters and proceedings relating to such local improvement district, the levying and collecting of assessments, the issuance and redemption of local improvement warrants and bonds, and the enforcement of local assessment liens hereunder shall be governed by the laws relating to local improvements; and all matters and proceedings relating to the purchase, acquisition, or construction and equipment of the improvement and the operation of the same hereunder and the issuance and redemption of utility bonds and warrants, if any, and the use of general or utility funds, if any, in connection with the purchase, acquisition, construction, equipping, or operation of the improvement shall be governed by the laws relating to municipal public utilities. [1965 c 7 § 35.43.230. Prior: 1923 c 176 § 4; RRS § 9425-4.]

35.43.250 Deferral of collection of assessments for economically disadvantaged persons—Authorized. Any city of the first class in this state ordering any local improvement upon which shall be levied and collected special assessments on property specifically benefited thereby may provide as part of the ordinance creating any local improvement district that the collection of any assessment levied therefor may be deferred until a time previous to the dissolution of the district for those economically disadvantaged property owners or other persons who, under the terms of a recorded contract of purchase, recorded mortgage, recorded deed of trust transaction or recorded lease are responsible under penalty of forfeiture, foreclosure or default as between vendor/vendee, mortgagor/mortgagee, grantor and trustor/trustee and grantee, and beneficiary and lender, or lessor and lessee for the payment of local improvement district assessments, and in the manner specified in the ordinance qualify for such deferment, upon assurance of property security for the payment thereof. [1972 ex.s. c 137 § 2.]

Severability—1972 ex.s. c 137: See note following RCW 35.49.010.

35.43.260 Service fees for sewers not constructed within ten years after voter approval—Credit against future assessments, service charges. Any municipal corporation, quasi municipal corporation, or political subdivision which has the authority to install sewers by establishing local improvement districts, which has charged and collected monthly service fees for sewers, that have been authorized and approved by the voters and have not been constructed

for a period of ten or more years since the voter approval, is hereby authorized and directed to grant a credit against the future assessment to be assessed at the time of actual completion of construction of the sewers for each parcel of real property in an amount equal in dollars to the total amount of service fees charged and collected since voter approval for each such parcel, plus interest at six percent compounded annually: PROVIDED, That if such service fees and interest exceed the future assessment for construction of the sewers, such excess funds shall be used to defray future sewer service charge fees.

It is the intent of the legislature that the provisions of this section are procedural and remedial and shall have retroactive effect. [1977 c 72 § 3.]

35.43.270 Sanitary sewer or potable water facilities—Notice to certain property owners. Whenever it is proposed that a local improvement district or utility local improvement district finance sanitary sewers or potable water facilities, additional notice of the public hearing on the proposed improvement district shall be mailed to the owners of any property located outside of the proposed improvement district that would be required as a condition of federal housing administration loan qualification, at the time of notice, to be connected to the specific sewer or water facilities installed by the local improvement district. The notice shall include information about this restriction. [1987 c 315 § 1.]

35.43.280 Settlement of Indian claims. (1) The settlement of Indian land and other claims against public and private property owners is declared to be in the interest of public health and safety, orderly government, environmental protection, economic development, and the social well-being of the citizens of this state, and to specifically benefit the properties released from those claims.

It is the purpose of *this act to encourage the settlement of such Indian land and other claims lawsuits by permitting the establishment and use of local improvement districts to finance all or a portion of the settlement costs of such lawsuits.

(2) A local improvement district may be established by a local government legislative authority to finance all or part of the settlement costs in an Indian land and other claims settlement related to public and private property located within the local government. The settlement of an Indian land claim lawsuit shall be deemed to be an improvement that may be financed in whole or in part through use of a local improvement district.

Except as expressly provided in this section, all matters relating to the establishment and operation of such a local improvement district, the levying and collection of special assessments, the issuance of local improvement district bonds and other obligations, and all related matters, shall be subject to the provisions of chapters 35.43 through 35.54 RCW. The resolution or petition initiating the creation of a local improvement district used to finance all or a portion of an Indian land and other claims settlement shall describe the general nature of the Indian land and other claims and the proposed settlement. The value of a contribution by any person, municipal corporation, political subdivision, or the

state of money, real property, or personal property to the settlement of Indian land and other claims shall be credited to any assessment for a local improvement district under this section. [1989 1st ex.s. c 4 § 2.]

***Reviser's note:** "This act" consists of the enactment of this section, RCW 36.32.540, and an uncodified section.

Severability—1989 1st ex.s. 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." [1989 1st ex.s. c 4 § 4.]

Chapter 35.44

LOCAL IMPROVEMENTS—ASSESSMENTS AND REASSESSMENTS

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Deferral of special assessments: Chapter 84.38 RCW.

35.44.010 Assessment district—All property to be assessed—Basis. All property included within the limits of a local improvement district or utility local improvement district shall be considered to be the property specially benefited by the local improvement and shall be the property to be assessed to pay the cost and expense thereof or such part thereof as may be chargeable against the property specially benefited. The cost and expense shall be assessed upon all the property in accordance with the special benefits conferred thereon. [1985 c 397 § 3; 1967 c 52 § 9; 1965 c 7 § 35.44.010. Prior: 1957 c 144 § 16; prior: 1947 c 155 § 1, part; 1941 c 90 § 1, part; 1915 c 168 § 2, part; 1911 c 98 § 13, part; Rem. Supp. 1947 § 9365, part.]

Authority supplemental—Severability—1985 c 397: See RCW 35.51.900 and 35.51.901.

Construction—Severability—1967 c 52: See notes following RCW 35.43.042.

35.44.015 Special benefit assessments for farm and agricultural land—Exemption from assessments, etc. See RCW 84.34.300 through 84.34.380, 84.34.922.

35.44.020 Assessment district—Cost items to be included. There shall be included in the cost and expense of every local improvement for assessment against the property in the district created to pay the same, or any part thereof:

(1) The cost of all of the construction or improvement authorized for the district including, but not limited to, that portion of the improvement within the street intersections;

(2) The estimated cost and expense of all engineering and surveying necessary for the improvement done under the supervision of the city or town engineer;

(3) The estimated cost and expense of ascertaining the ownership of the lots or parcels of land included in the assessment district;

(4) The estimated cost and expense of advertising, mailing, and publishing all necessary notices;

(5) The estimated cost and expense of accounting, clerical labor, and of books and blanks extended or used on the part of the city or town clerk and city or town treasurer in connection with the improvement;

(6) All cost of the acquisition of rights of way, property, easements, or other facilities or rights, whether by eminent domain, purchase, gift, or in any other manner;

(7) The cost for legal, financial, and appraisal services and any other expenses incurred by the city, town, or public corporation for the district or in the formation thereof, or by the city, town, or public corporation in connection with such construction or improvement and in the financing thereof, including the issuance of any bonds and the cost of providing for increases in the local improvement guaranty fund, or providing for a separate reserve fund or other security for the payment of principal of and interest on such bonds.

Any of the costs set forth in this section may be excluded from the cost and expense to be assessed against the property in such local improvement district and may be paid from any other moneys available therefor if the legislative body of the city or town so designates by ordinance at any time. [1987 c 242 § 4; 1985 c 397 § 4; 1971 ex.s. c

116 § 8; 1969 ex.s. c 258 § 6; 1965 c 7 § 35.44.020. Prior: 1955 c 364 § 1; 1911 c 98 § 55; RRS § 9408.]

Policy—1987 c 242: See note following RCW 35.43.005.

Authority supplemental—Severability—1985 c 397: See RCW 35.51.900 and 35.51.901.

35.44.030 Assessment district—Zones. For the purpose of ascertaining the amount to be assessed against each separate lot, tract, parcel of land or other property therein, the local improvement district or utility local improvement district shall be divided into subdivisions or zones paralleling the margin of the street, avenue, lane, alley, boulevard, park drive, parkway, public place or public square to be improved, numbered respectively first, second, third, fourth, and fifth.

The first subdivision shall include all lands within the district lying between the street margins and lines drawn parallel therewith and thirty feet therefrom.

The second subdivision shall include all lands within the district lying between lines drawn parallel with and thirty and sixty feet respectively from the street margins.

The third subdivision shall include all lands within the district lying between lines drawn parallel with and sixty and ninety feet respectively from the street margins.

The fourth subdivision shall include all lands, if any, within the district lying between lines drawn parallel with and ninety and one hundred twenty feet respectively from the street margins.

The fifth subdivision shall include all lands, if any, within the district lying between a line drawn parallel with and one hundred twenty feet from the street margin and the outer limit of the improvement district. [1967 c 52 § 10; 1965 c 7 § 35.44.030. Prior: 1957 c 144 § 17; prior: 1947 c 155 § 1, part; 1941 c 90 § 1, part; 1915 c 168 § 2, part; 1911 c 98 § 13, part; Rem. Supp. 1947 § 9365, part.]

Construction—Severability—1967 c 52: See notes following RCW 35.43.042.

35.44.040 Assessment rate per square foot. The rate of assessment per square foot in each subdivision of an improvement district shall be fixed on the basis that the special benefits conferred on a square foot of land in subdivisions first, second, third, fourth and fifth, respectively, are related to each other as are the numbers, forty-five, twenty-five, twenty, ten, and five, respectively, and shall be ascertained in the following manner:

(1) The products of the number of square feet in subdivisions first, second, third, fourth, and fifth, respectively, and the numbers forty-five, twenty-five, twenty, ten, and five, respectively, shall be ascertained;

(2) The aggregate sum thereof shall be divided into the total cost and expense of the improvement;

(3) The resultant quotient multiplied by forty-five, twenty-five, twenty, ten, and five, respectively, shall be the respective rate of assessment per square foot for subdivisions first, second, third, fourth and fifth: PROVIDED, That in lieu of the above formula the rate of assessment per square foot in each subdivision of an improvement district may be fixed on the basis that the special benefits conferred on a square foot of land in subdivisions first, second, third, fourth and fifth, respectively, are related to each other as are the

numbers 0.015000, 0.008333, 0.006666, 0.003333, and 0.001666, respectively; and the method of determining the assessment on each lot, tract, or parcel of land in the improvement district may be ascertained in the following manner:

(1) The products of the number of square feet in subdivisions first, second, third, fourth and fifth, respectively, for each lot, tract or parcel of land in the improvement district and the numbers 0.015000, 0.008333, 0.006666, 0.003333 and 0.001666, respectively, shall be ascertained. The sum of all such products for each such lot, tract or parcel of land shall be the number of "assessable units of frontage" therein;

(2) The rate for each assessable unit of frontage shall be determined by dividing that portion of the total cost of the improvement representing special benefits by the aggregate sum of all assessable units of frontage;

(3) The assessment for each lot, tract or parcel of land in the improvement district shall be the product of the assessable units of frontage therefor, multiplied by the rate per assessable unit of frontage. [1965 c 7 § 35.44.040. Prior: 1957 c 144 § 18; prior: 1947 c 155 § 1, part; 1941 c 90 § 1, part; 1915 c 168 § 2, part; 1911 c 98 § 13, part; Rem. Supp. 1947 § 9365, part.]

35.44.045 Open canals or ditches—Safeguards—Ascertaining assessments. As an alternative to other methods of ascertaining assessments for local improvements, in a local improvement district established for safeguarding open canals or ditches, the district may be sectioned into subdivisions or zones paralleling the canal or ditch, numbered respectively, first, second, third and fourth. Each subdivision shall be equal to one-quarter of the width of the district as measured back from the margin of the canal right of way. The rate of assessment per square foot in each subdivision so formed shall be fixed on the basis that the special benefits conferred on a square foot of land in subdivisions first, second, third, and fourth, respectively, are related to each other as are the numbers, forty, thirty, twenty, and ten, respectively, and shall be ascertained in the following manner:

(1) The products of the number of square feet in subdivisions first, second, third, and fourth, respectively, and the numbers forty, thirty, twenty, and ten, respectively, shall be ascertained;

(2) The aggregate sum thereof shall be divided into the total cost and expense of the local improvement;

(3) The resultant quotient multiplied by forty, thirty, twenty, and ten, respectively, shall be the respective rate of assessment per square foot for each subdivision. [1965 c 7 § 35.44.045. Prior: 1959 c 75 § 3.]

Safeguarding open canals or ditches, assessments: RCW 35.43.040, 35.43.045, 36.88.015, 36.88.350, 36.88.380 through 36.88.400, 87.03.480, 87.03.526.

35.44.047 Other methods of computing assessments may be used. Notwithstanding the methods of assessment provided in RCW 35.44.030, 35.44.040 and 35.44.045, the city or town may use any other method or combination of methods to compute assessments which may be deemed to more fairly reflect the special benefits to the properties being assessed. The failure of the council to specifically recite in

its ordinance ordering the improvement and creating the local improvement district that it will not use the zone and termini method of assessment shall not invalidate the use of any other method or methods of assessment. [1969 ex.s. c 258 § 7.]

35.44.050 Assessment roll—Entry of assessments against property. The total assessment thus ascertained against each separate lot, tract, parcel of land, or other property in the district shall be entered upon the assessment roll as the amount to be levied and assessed against each separate lot, tract, parcel of land, or other property. [1965 c 7 § 35.44.050. Prior: 1957 c 144 § 19; prior: 1947 c 155 § 1, part; 1941 c 90 § 1, part; 1915 c 168 § 2, part; 1911 c 98 § 13, part; Rem. Supp. 1947 § 9365, part.]

35.44.060 Assessment roll—Diagram on preliminary survey not conclusive. The diagram or print directed to be submitted to the council shall be in the nature of a preliminary determination by the designated administrative board, officer, or authority upon the method and relative estimated amounts of assessments to be levied upon the property specially benefited by the improvement and shall not be binding or conclusive in any way upon the board, officer, or authority in the preparation of the assessment roll for the improvement or upon the council in any hearing affecting the assessment roll. [1965 c 7 § 35.44.060. Prior: 1911 c 98 § 11; RRS § 9362.]

35.44.070 Assessment roll—Filing—Hearing, date, by whom held. The assessment roll for local improvements when prepared as provided by law shall be filed with the city or town clerk. The council or other legislative authority shall thereupon fix a date for a hearing thereon before such legislative authority or may direct that the hearing shall be held before a committee thereof or the legislative authority of any city having a population of 15,000 or more may designate an officer to conduct such hearings. The committee of [or] officer designated shall hold a hearing on the assessment roll and consider all objections filed following which the committee or officer shall make recommendations to such legislative authority which shall either adopt or reject the recommendations of the committee or officer. If a hearing is held before such a committee or officer it shall not be necessary to hold a hearing on the assessment roll before such legislative authority: PROVIDED, That a local ordinance shall provide for an appeal by any person protesting his or her assessment to the legislative authority of a decision made by such officer. The same procedure may if so directed by such legislative authority be followed with respect to any assessment upon the roll which is raised or changed to include omitted property. Such legislative authority shall direct the clerk to give notice of the hearing and of the time and place thereof. [1979 ex.s. c 100 § 1; 1965 c 7 § 35.44.070. Prior: 1953 c 177 § 2; 1929 c 97 § 3, part; 1911 c 98 § 21, part; RRS § 9373, part.]

35.44.080 Assessment roll—Notice of hearing. The notice of hearing upon the assessment roll shall specify the time and place of hearing and shall notify all persons who may desire to object thereto:

(1) To make their objections in writing and to file them with the city or town clerk at or prior to the date fixed for the hearing;

(2) That at the time and place fixed and at times to which the hearing may be adjourned, the council will sit as a board of equalization for the purpose of considering the roll; and

(3) That at the hearing the council or committee or officer will consider the objections made and will correct, revise, raise, lower, change, or modify the roll or any part thereof or set aside the roll and order the assessment to be made de novo.

Following the hearing the council shall confirm the roll by ordinance. [1979 ex.s. c 100 § 2; 1965 c 7 § 35.44.080. Prior: 1929 c 97 § 3, part; 1911 c 98 § 21, part; RRS § 9373, part.]

35.44.090 Assessment roll—Notice—Mailing—Publication. At least fifteen days before the date fixed for hearing, notice thereof shall be mailed to the owner or reputed owner of the property whose name appears on the assessment roll, at the address shown on the tax rolls of the county treasurer for each item of property described on the list. In addition thereto the notice shall be published at least once a week for two consecutive weeks in the official newspaper of the city or town, the last publication to be at least fifteen days before the date fixed for hearing. [1986 c 278 § 48; 1985 c 469 § 30; 1965 c 7 § 35.44.090. Prior: 1929 c 97 § 3, part; 1911 c 98 § 21, part; RRS § 9373, part.]

Severability—1986 c 278: See note following RCW 36.01.010.

35.44.100 Assessment roll—Hearing—Objections—Authority of council. At the time fixed for hearing objections to the confirmation of the assessment roll, and at the times to which the hearing may be adjourned, the council may correct, revise, raise, lower, change, or modify the roll or any part thereof, or set aside the roll and order the assessment to be made de novo and at the conclusion thereof confirm the roll by ordinance. [1965 c 7 § 35.44.100. Prior: 1929 c 97 § 3, part; 1911 c 98 § 21, part; RRS § 9373, part.]

35.44.110 Assessment roll—Objections—Timeliness. All objections to the confirmation of the assessment roll shall state clearly the grounds of objections. Objections not made within the time and in the manner prescribed in this chapter shall be conclusively presumed to have been waived. [1965 c 7 § 35.44.110. Prior: 1929 c 97 § 3, part; 1911 c 98 § 21, part; RRS § 9373, part.]

35.44.120 Assessment roll—Amendment—Procedure. If an assessment roll is amended so as to raise any assessment appearing thereon or to include omitted property, a new time and place for hearing shall be fixed and a new notice of hearing on the roll given as in the case of an original hearing: PROVIDED, That as to any property originally entered upon the roll the assessment upon which has not been raised, no objections to confirmation of the assessment roll shall be considered by the council or by any court on appeal unless the objections were made in writing

at or prior to the date fixed for the original hearing upon the assessment roll. [1965 c 7 § 35.44.120. Prior: 1929 c 97 § 3, part; 1911 c 98 § 21, part; RRS § 9373, part.]

35.44.130 City property—Assessment. Every city and town shall include in its annual tax levy an amount sufficient to pay all unpaid assessments with all interest, penalties, and charges thereon levied against all lands belonging to the city or town. The proceeds of such a portion of the tax levy shall be placed in a separate fund to be known as the "city (or town) property assessments redemption fund" and by the city or town treasurer inviolably applied in payment of any unpaid assessment liens on any lands belonging to the city or town. [1965 c 7 § 35.44.130. Prior: (i) 1929 c 183 § 1; 1909 c 130 § 1; RRS § 9344. (ii) 1929 c 183 § 2, part; 1909 c 130 § 2, part; RRS § 9345, part.]

35.44.140 County property assessment. All lands held or owned by any county in fee simple, in trust, or otherwise within the limits of a local improvement district or utility local improvement district of a city or town shall be assessed and charged for their proportion of the cost of the local improvement in the same manner as other property in the district and the county commissioners are authorized to cause the assessments to be paid at the times and in the manner provided by law and the ordinances of the city or town. This section shall apply to all cities and towns, any charter or ordinance provision to the contrary notwithstanding. [1971 ex.s. c 116 § 9; 1967 c 52 § 11; 1965 c 7 § 35.44.140. Prior: (i) 1905 c 29 § 1; RRS § 9340. (ii) 1907 c 61 § 1; 1905 c 29 § 2; RRS § 9341. (iii) 1929 c 139 § 2; 1905 c 29 § 4; RRS § 9343.]

Construction—Severability—1967 c 52: See notes following RCW 35.43.042.

35.44.150 Harbor area leaseholds—Assessment. All leasehold rights and interests of private individuals, firms or corporations in or to harbor areas located within the limits of a city or town are declared to be real property for the purpose of assessment for the payment of the cost of local improvements. They may be assessed and reassessed in accordance with the special benefits received, which shall be limited to benefits accruing during the term of the lease, to the property subject to lease immediately abutting upon the improvement and extending one-half block therefrom not exceeding, however, three hundred fifty feet. [1965 c 7 § 35.44.150. Prior: 1915 c 134 § 1; RRS § 9364.]

35.44.160 Leases on tidelands—Assessment. All leases of tidelands owned in fee by the state are declared to be real property for the purpose of assessment for the payment of the cost of local improvements. [1965 c 7 § 35.44.160. Prior: 1911 c 98 § 56; RRS § 9409.]

35.44.170 Metropolitan park district property—Assessment. All lands held by a metropolitan park district in fee simple, in trust, or otherwise within the limits of a local improvement district in a city or town shall be assessed and charged for their proportion of the cost of all local improvements in the same manner as other property in the

district. [1965 c 7 § 35.44.170. Prior: (i) 1929 c 204 § 1; RRS § 9343-1. (ii) 1929 c 204 § 2; RRS § 9343-2.]

35.44.180 Notices—Mailing—Proof. The mailing of any notice required in connection with municipal local improvements shall be conclusively proved by the written certificate of the officer, board, or authority directed by the provisions of the charter or ordinance of a city or town to give the notice. [1965 c 7 § 35.44.180. Prior: 1929 c 97 § 4; RRS § 9373-1.]

35.44.190 Proceedings conclusive—Exceptions—Adjustments to assessments if other funds become available. Whenever any assessment roll for local improvements has been confirmed by the council, the regularity, validity, and correctness of the proceedings relating to the improvement and to the assessment therefor, including the action of the council upon the assessment roll and the confirmation thereof shall be conclusive in all things upon all parties. They cannot in any manner be contested or questioned in any proceeding by any person unless he filed written objections to the assessment roll in the manner and within the time required by the provisions of this chapter and unless he prosecutes his appeal in the manner and within the time required by the provisions of this chapter.

No proceeding of any kind shall be commenced or prosecuted for the purpose of defeating or contesting any assessment or the sale of any property to pay an assessment or any certificate of delinquency issued therefor, or the foreclosure of any lien therefor, except that injunction proceedings may be brought to prevent the sale of any real estate upon the ground (1) that the property about to be sold does not appear upon the assessment roll or, (2) that the assessment has been paid.

If federal, local, or state funds become available for a local improvement after the assessment roll has been confirmed by the city legislative authority, the funds may be used to lower the assessments on a uniform basis. Any adjustments to the assessments because of the availability of federal or state funds may be made on the next annual payment. [1985 c 397 § 9; 1965 c 7 § 35.44.190. Prior: 1911 c 98 § 23; RRS § 9375.]

Severability—1985 c 397: See RCW 35.51.901.

35.44.200 Procedure on appeal—Perfecting appeal. The decision of the council or other legislative body, upon any objections made in the manner and within the time herein prescribed, shall be final and conclusive, subject however to review by the superior court upon appeal. The appeal shall be made by filing written notice of appeal with the city or town clerk and with the clerk of the superior court of the county in which the city or town is situated. [1965 c 7 § 35.44.200. Prior: 1957 c 143 § 2; prior: 1911 c 98 § 22, part; RRS § 9374, part.]

35.44.210 Procedure on appeal—Notice of appeal. The notice of appeal must be filed within ten days after the ordinance confirming the assessment roll becomes effective and shall describe the property and set forth the objections of the appellant to the assessment. [1965 c 7 § 35.44.210.]

Prior: 1957 c 143 § 3; prior: 1911 c 98 § 22, part; RRS § 9374, part.]

35.44.220 Procedure on appeal—Bond. At the time of filing the notice of appeal with the clerk of the superior court, the appellant shall execute and file with him a sufficient bond in the penal sum of two hundred dollars, with at least two sureties to be approved by the judge of the court, conditioned to prosecute the appeal without delay and, if unsuccessful, to pay all reasonable costs and expenses which the city or town incurs by reason of the appeal. Upon application therefor, the court may order the appellant to execute and file such additional bonds as the necessity of the case may require. [1971 ex.s. c 116 § 3; 1969 ex.s. c 258 § 8; 1965 c 7 § 35.44.220. Prior: 1957 c 143 § 4; prior: 1911 c 98 § 22, part; RRS § 9374, part.]

35.44.230 Procedure on appeal—Transcript. Within ten days from the filing of the notice of appeal, the appellant shall file with the clerk of the superior court a transcript consisting of the assessment roll and his objections thereto, together with the ordinance confirming the assessment roll and the record of the council with reference to the assessment. This transcript, upon payment of the necessary fees therefor, shall be furnished by the city or town clerk and shall be certified by him to contain full, true and correct copies of all matters and proceedings required to be included in the transcript. The fees payable therefor shall be the same as those payable to the clerk of the superior court for the preparation and certification of transcripts on appeal to the supreme court or the court of appeals in civil actions. [1971 c 81 § 90; 1965 c 7 § 35.44.230. Prior: 1957 c 143 § 5; prior: 1911 c 98 § 22, part; RRS § 9374, part.]

35.44.240 Procedure on appeal—Notice of hearing. Within three days after the filing of the transcript with the clerk of the superior court, the appellant shall give notice to the head of the legal department of the city or town and to its clerk that the transcript has been filed. The notice shall also state a time (not less than three days from the date of service thereof) when the appellant will call up the cause for hearing. [1965 c 7 § 35.44.240. Prior: 1957 c 143 § 6; prior: 1911 c 98 § 22, part; RRS § 9374, part.]

35.44.250 Procedure on appeal—Hearing by superior court. At the time fixed for hearing in the notice thereof or at such further time as may be fixed by the court, the superior court shall hear and determine the appeal without a jury and the cause shall have preference over all other civil causes except proceedings relating to eminent domain in cities and towns 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 founded upon a fundamentally wrong basis and/or the decision of the council or other legislative body thereon was arbitrary or capricious; in which event the judgment of the court shall correct, change, modify, or annul the assessment insofar as it affects the property of the appellant. [1969 ex.s. c 258 § 9; 1965 c 7 § 35.44.250. Prior: 1957 c 143 § 7; prior: 1911 c 98 § 22, part; RRS § 9374, part.]

35.44.260 Procedure on appeal—Appellate review. Appellate review of the judgment of the superior court may be obtained as in other cases if sought within fifteen days after the date of the entry of the judgment in the superior court. [1988 c 202 § 36; 1971 c 81 § 91; 1965 c 7 § 35.44.260. Prior: 1957 c 143 § 8; prior: 1911 c 98 § 22, part; RRS § 9374, part.]

Rules of court: Appeal procedures superseded by RAP 2.1, 2.2, 18.22.

Severability—1988 c 202: See note following RCW 2.24.050.

35.44.270 Procedure on appeal—Certified copy of decision or order. A certified copy of the decision of the superior court pertaining to assessments for local improvements shall be filed with the officer having custody of the assessment roll and he shall modify and correct the assessment roll in accordance with the decision. In the event appellate review of the decision is sought, a certified copy of the court's order shall be filed with the officer having custody of the assessment roll and the officer shall thereupon modify and correct the assessment roll in accordance with the order. [1988 c 202 § 37; 1971 c 81 § 92; 1965 c 7 § 35.44.270. Prior: 1957 c 143 § 9; prior: 1911 c 98 § 22, part; RRS § 9374, part.]

Severability—1988 c 202: See note following RCW 2.24.050.

35.44.280 Reassessments—When authorized. In all cases of special assessments for local improvements wherein the assessments are not valid in whole or in part for want of form, or insufficiency, informality, irregularity, or nonconformance with the provisions of law, charter, or ordinance, the city or town council may reassess the assessments and enforce their collection in accordance with the provisions of law and ordinance existing at the time the reassessment is made. This shall apply not only to an original assessment but also to any reassessment, to any assessment upon omitted property and to any supplemental assessment which is declared void and its enforcement refused by any court or which for any cause has been set aside, annulled or declared void by any court either directly or by virtue of any decision thereof. [1965 c 7 § 35.44.280. Prior: 1911 c 98 § 42, part; 1893 c 96 § 3; RRS § 9395, part.]

35.44.290 Reassessments—Basis—Property included. Every reassessment shall be made upon the property which has been or will be specially benefited by the local improvement and may be made upon property whether or not it abuts upon, is adjacent to, or proximate to the improvement or was included in the original assessment district.

Property not included in the original improvement district when so assessed shall become a part of the improvement district and all payments of assessments shall be paid into and become part of the local improvement fund to pay for the improvement.

Property in the original local improvement district which is excluded in reassessment need not be entered upon the assessment roll.

Every reassessment must be based upon the actual cost of the improvement at the time of its completion. [1965 c 7 § 35.44.290. Prior: (i) 1911 c 98 § 42, part; 1893 c 96 §

3, part; RRS § 9395, part. (ii) 1911 c 98 § 43, part; 1909 c 71 § 1, part; 1893 c 95 § 2, part; RRS § 9396, part.]

35.44.300 Reassessments—Irregularities not fatal. The fact that the contract has been let or that the improvement has been made and completed in whole or in part shall not prevent the reassessment from being made, nor shall the omission or neglect of any office or officers to comply with the law, the charter, or ordinances governing the city or town as to petition, notice, resolution to improve, estimate, survey, diagram, manner of letting contract, or execution of work or any other matter connected with the improvement and the first assessment thereof operate to invalidate or in any way affect the making of a reassessment. [1965 c 7 § 35.44.300. Prior: 1911 c 98 § 43, part; 1909 c 71 § 1, part; 1893 c 95 § 2, part; RRS § 9396, part.]

35.44.310 Reassessments—Amount thereof. The reassessment shall be for an amount which shall not exceed the actual cost and expense of the improvement, together with the accrued interest thereon, it being the true intent and meaning of the statutes relating to local improvements to make the cost and expense of local improvements payable by the property specially benefited thereby, notwithstanding the proceedings of the council, board of public works or other board, officer, or authority may be found to be irregular or defective, whether jurisdictional or otherwise. [1965 c 7 § 35.44.310. Prior: 1911 c 98 § 43, part; 1909 c 71 § 1, part; 1893 c 95 § 2, part; RRS § 9396, part.]

35.44.320 Reassessments—Credit for prior payments. In case of reassessment, all sums paid on the former attempted assessments shall be credited to the property on account of which they were paid. [1965 c 7 § 35.44.320. Prior: 1911 c 98 § 43, part; 1909 c 71 § 1, part; 1893 c 95 § 2, part; RRS § 9396, part.]

35.44.330 Reassessments—Payment. In case of reassessment after the certification of the assessment roll to the city or town treasurer for collection, the same length of time for payment of the assessment thereon without the imposition of any penalties or interest and the notice that the assessments are in the hands of the treasurer for collection shall be given as in case of an original assessment. After delinquency, penalties and interest may be charged as in cases of original assessment and if the original assessment was payable in installments, the new assessment may be divided into equal installments and made payable at such times as the city or town council may prescribe in the ordinance ordering the new assessment. [1965 c 7 § 35.44.330. Prior: 1911 c 98 § 43, part; 1909 c 71 § 1, part; 1893 c 95 § 2, part; RRS § 9396, part.]

35.44.340 Reassessments—Limitation of time for. No city or town shall have jurisdiction to proceed with any reassessment unless the ordinance ordering it is passed by the city or town council within ten years from and after the time the original assessment for the same improvement was finally held to be invalid, insufficient or for any cause set aside, in whole or in part or its enforcement denied directly

or indirectly by the courts. [1965 c 7 § 35.44.340. Prior: 1911 c 98 § 45, part; RRS § 9398, part.]

35.44.350 Reassessments, assessments on omitted property, supplemental assessments—Provisions governing. All of the provisions of law relating to the filing of assessment rolls, time and place for hearing thereon, notice of hearing, the hearing upon the roll, the confirmation of the assessment roll, the time when the assessments become a lien upon the property assessed, the proceedings on appeal from any such assessment, the method of collecting the assessment and all proceedings for enforcing the lien thereof shall be had and conducted the same in the case of reassessments, assessments on omitted property, or supplemental assessments as in the case of an original assessment. [1965 c 7 § 35.44.350. Prior: 1911 c 98 § 44; 1893 c 95 § 1; RRS § 9397.]

35.44.360 Assessments on omitted property—Authority. If by reason of mistake, inadvertence, or for any cause, property in a local improvement district or utility local improvement district which except for its omission would have been subject to assessment has been omitted from the assessment roll, the city or town council, upon its own motion, or upon the application of the owner of any property in the district which has been assessed for the improvement, may proceed to assess the property so omitted in accordance with the benefits accruing to it by reason of the improvement in proportion to the assessments levied upon other property in the district. [1967 c 52 § 12; 1965 c 7 § 35.44.360. Prior: 1911 c 98 § 37, part; RRS § 9390, part.]

Construction—Severability—1967 c 52: See notes following RCW 35.43.042.

35.44.370 Assessments on omitted property—Resolution—Notice. In case of assessments on omitted property the city or town council shall pass a resolution:

(1) Setting forth that the property therein described was omitted from the assessment;

(2) Notifying all persons who may desire to object thereto to appear at a meeting of the city or town council at a time specified in the resolution and present their objections thereto, and

(3) Directing the proper board, officer, or authority to report to the council at or prior to the date fixed for the hearing the amount which should be borne by each lot, tract, or parcel of land or other property so omitted. The resolution shall be published in all respects as provided for publishing the resolutions for an original assessment. [1965 c 7 § 35.44.370. Prior: 1911 c 98 § 37, part; RRS § 9390, part.]

35.44.380 Assessments on omitted property—Confirmation ordinance—Collection. At the conclusion of the hearing or any adjournment thereof upon proposed assessments on omitted property the council shall consider the matter as though the property were included in the original roll and may confirm the roll or any portion thereof by ordinance. Thereupon the roll of omitted property shall be certified to the treasurer for collection as other assess-

ments. [1965 c 7 § 35.44.380. Prior: 1911 c 98 § 37, part; RRS § 9390, part.]

35.44.390 Supplemental assessments—When authorized. If by reason of any mistake, inadvertence, or other cause, the amount assessed was not equal to the cost and expense of a local improvement or that portion thereof to be paid by assessment of the property benefited the city or town council shall make supplemental assessments on all the property in the district. The property found to be specially benefited shall not be limited to the property included in the original assessment district.

These assessments shall be made in accordance with the provisions of law, charter, and ordinances existing at the time of the levy. [1965 c 7 § 35.44.390. Prior: 1911 c 98 § 42, part; 1893 c 96 § 3, part; RRS § 9395, part.]

35.44.400 Supplemental assessments—Limitation of time for. No city or town shall have jurisdiction to proceed with any supplemental assessment unless the ordinance ordering it is passed by the city or town council within ten years from and after the time that it was finally determined that the total amount of valid assessments levied and assessed on account of a local improvement was insufficient to pay the whole or that portion of the cost and expense thereof to be paid by special assessment. [1965 c 7 § 35.44.400. Prior: 1911 c 98 § 45, part; RRS § 9398, part.]

35.44.410 Segregation of assessments. Whenever any land against which there has been levied any special assessment by any city or town shall have been sold in part or subdivided, the legislative authority of that city or town shall have the power to order a segregation of the assessment.

Any person desiring to have such a special assessment against a tract of land segregated to apply to smaller parts thereof shall apply to the city or town which levied the assessment. If the legislative authority thereof determines that a segregation should be made, it shall by resolution order the city or town treasurer to make segregation on the original assessment roll as directed in the resolution. The segregation shall be made as nearly as possible on the same basis as the original assessment was levied, and the total of the segregated parts of the assessment shall equal the assessment before segregation. The resolution shall describe the original tract, the amount and date of the original assessment, and shall define the boundaries of the divided parts and the amount of the assessment chargeable to each part. A certified copy of the resolution shall be delivered to the city or town treasurer who shall proceed to make the segregation ordered upon being tendered a fee of ten dollars for each tract of land for which a segregation is to be made. In addition to such charge the legislative authority of the city or town may require as a condition to the order of segregation that the person seeking it pay the city or town the reasonable engineering and clerical costs incident to making the segregation. No segregation need be made if the legislative authority of the city or town shall find that by such segregation the security of the lien for such assessment will be so jeopardized as to reduce the security for any

outstanding local improvement district obligations payable from such assessment. [1969 ex.s. c 258 § 10.]

35.44.420 Property donations—Credit against assessments. A city legislative authority may give credit for all or any portion of any property donation against an assessment, charge, or other required financial contribution for transportation improvements within a local improvement district. The credit granted is available against any assessment, charge, or other required financial contribution for any transportation purpose that uses the donated property. [1987 c 267 § 9.]

Severability—1987 c 267: See RCW 47.14.910.

Right of way donations: Chapter 47.14 RCW.

Chapter 35.45

LOCAL IMPROVEMENTS—BONDS AND WARRANTS

Sections

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35.45.010 Authority to issue bonds. The city or town council may provide by ordinance for the payment of the whole or any portion of the cost and expense of any local improvement by bonds of the improvement district, but no bonds shall be issued in excess of the cost and expense of the improvement, nor shall they be issued prior to twenty days after the thirty days allowed for the payment of assessments without penalty or interest. [1965 c 7 § 35.45.010. Prior: (i) 1911 c 98 § 46, part; 1899 c 124 § 1; RRS § 9399, part. (ii) 1917 c 139 § 1, part; 1915 c 168 § 4, part; 1911 c 98 § 47, part; 1899 c 124 § 2, part; RRS § 9400, part. (iii) 1911 c 98 § 50, part; RRS § 9403, part.]

35.45.020 Bond issue—Due date—Interest. Local improvement bonds shall be issued pursuant to ordinance and shall be made payable on or before a date not to exceed thirty years from and after the date of issue, which latter date may be fixed by ordinance or resolution of the council, and bear interest at such rate or rates as authorized by the council. The council may, in addition to issuing bonds callable under the provisions of RCW 35.45.050 whenever sufficient moneys are available, issue bonds with a fixed maturity schedule or with a fixed maximum annual retirement schedule. [1971 ex.s. c 116 § 10; 1970 ex.s. c 56 §

35; 1969 ex.s. c 258 § 11; 1969 c 81 § 1; 1965 c 7 § 35.45.020. Prior: 1917 c 139 § 1, part; 1915 c 168 § 4, part; 1911 c 98 § 47, part; 1899 c 124 § 2, part; RRS § 9400, part.]

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

Rights not impaired—1969 c 81: "No phrase, clause, subdivision or section of this 1969 amendatory act shall be construed to impair the rights of bondholders as to any bonds issued prior to the effective date of this 1969 amendatory act." [1969 c 81 § 2.]

35.45.030 Bonds—Form—Content. (1) Local improvement bonds shall be in such denominations as may be provided in the ordinance authorizing their issue and shall be numbered from one upwards consecutively. Each bond shall (a) be signed by the mayor and attested by the clerk, (b) have the seal of the city or town affixed thereto, (c) refer to the improvement to pay for which it is issued and the ordinance ordering it, (d) provide that the principal sum therein named and the interest thereon shall be payable out of the local improvement fund created for the cost and expense of the improvement, or out of the local improvement guaranty fund, or, with respect to interest only, out of the general revenues of the city or town, and not otherwise, (e) provide that the bond owners' remedy in case of nonpayment shall be confined to the enforcement of the special assessments made for the improvement and to the guaranty fund, and (f) be in any form, including bearer bonds or registered bonds as provided in RCW 39.46.030.

Any interest coupons may be signed by the mayor and attested by the clerk, or in lieu thereof, may have printed thereon a facsimile of their signatures.

(2) Notwithstanding subsection (1) of this section, but subject to RCW 35.45.010, such bonds may be issued and sold in accordance with chapter 39.46 RCW. [1983 c 167 § 41; 1967 ex.s. c 44 § 1; 1965 c 7 § 35.45.030. Prior: (i) 1917 c 139 § 1, part; 1915 c 168 § 4, part; 1911 c 98 § 47, part; 1899 c 124 § 2; RRS § 9400, part. (ii) 1927 c 209 § 5, part; 1925 ex.s. c 183 § 5, part; 1923 c 141 § 5, part; RRS § 9351-5, part. (iii) 1911 c 98 § 52, part; RRS § 9405, part.]

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

35.45.040 Bonds—Sale of. (1) Local improvement bonds may be issued to the contractor or sold by the officers authorized by the ordinance directing their issue to do so, in the manner prescribed therein at the price established by the legislative authority of the city or town. Any portion of the bonds of any issue remaining unsold may be issued to the contractor constructing the improvement in payment thereof.

The proceeds of all sales of bonds shall be applied in payment of the cost and expense of the improvement.

(2) Notwithstanding subsection (1) of this section, such bonds may be sold in accordance with chapter 39.46 RCW. [1983 c 167 § 42; 1981 c 323 § 2; 1965 c 7 § 35.45.040. Prior: (i) 1911 c 98 § 46, part; 1899 c 124 § 1; RRS § 9399, part. (ii) 1911 c 98 § 48; 1899 c 124 § 3; RRS § 9401.]

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

35.45.050 Call of bonds. Except when bonds have been issued with a fixed maturity schedule or with a fixed maximum annual retirement schedule as authorized in RCW 35.45.020, the city or town treasurer shall call in and pay the principal of one or more bonds of any issue in their numerical order whenever there is sufficient money in any local improvement fund, against which the bonds have been issued, over and above that which is sufficient for the payment of interest on all unpaid bonds of that issue. The call shall be made for publication in the city or town official newspaper in its first publication following the date of delinquency of any installment of the assessment or as soon thereafter as practicable. The call shall state that bonds No. . . . (giving the serial number or numbers of the bonds called) will be paid on the day the next interest payments are due and that interest on those bonds will cease upon that date. [1983 c 167 § 43; 1971 ex.s. c 116 § 11; 1965 c 7 § 35.45.050. Prior: 1911 c 98 § 54, part; RRS § 9407, part.]

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

35.45.060 Interest on bonds—How payable. The city or town treasurer shall pay interest on the bonds issued against local improvement funds out of the local improvement fund from which the bonds are payable. [1965 c 7 § 35.45.060. Prior: 1911 c 98 § 54, part; RRS § 9407, part.]

35.45.065 Interest on bonds—Payment from general revenues—Authority—Procedure. The city or town council may provide by ordinance that all or part of the interest upon said bonds shall be paid from the general revenues of the city or town and may create a local improvement district bond interest fund for this purpose. If the city or town council determine that the city or town shall pay all interest on such bonds from its general revenues, the interest coupons attached to the bond shall recite that the interest thereby evidenced is payable from general revenues. If the city or town council determines that the city or town council shall pay a part of the interest on such bonds from its general revenues, the interest coupons representing interest payable from the general revenues of the city or town shall be denominated as "B" coupons and shall recite that the interest payable thereunder is payable from the general revenues of the city or town. [1967 ex.s. c 44 § 2.]

35.45.070 Nonliability of city or town. Neither the holder nor owner of any bond, interest coupon, or warrant issued against a local improvement fund shall have any claim therefor against the city or town by which it is issued, except for payment from the special assessments made for the improvement for which the bond or warrant was issued and except also for payment from the local improvement guaranty fund of the city or town as to bonds issued after the creation of a local improvement guaranty fund of that city or town. The city or town shall not be liable to the holder or owner of any bond, interest coupon, or warrant for any loss to the local improvement guaranty fund occurring in the lawful operation thereof. A copy of the foregoing part of this section shall be plainly written, printed or engraved on each bond. [1965 c 7 § 35.45.070. Prior: (i) 1911 c 98 §

52, part; RRS § 9405, part. (ii) 1927 c 209 § 5; 1925 ex.s. c 183 § 5; 1923 c 141 § 5, part; RRS § 9351-5, part.]

35.45.080 Remedy of bondholders. If a city or town fails to pay any bonds or to promptly collect any local improvement assessments when due, the owner of the bonds may proceed in his own name to collect the assessment and foreclose the lien thereof in any court of competent jurisdiction and shall recover in addition to the amount of the bond and interest thereon, five percent, together with the cost of suit. Any number of holders of bonds for any single improvement may join as plaintiffs and any number of owners of property upon which the assessments are liens may be joined as defendants in the same suit.

The owners of local improvement bonds issued by a city or town after the creation of a local improvement guaranty fund therein, shall also have recourse against the local improvement guaranty fund of such city or town. [1965 c 7 § 35.45.080. Prior: (i) 1927 c 209 § 5, part; 1925 ex.s. c 183 § 5, part; 1923 c 141 § 5, part; RRS § 9351-5, part. (ii) 1911 c 98 § 51; 1899 c 124 § 6; RRS § 9404.]

35.45.090 Excess to be refunded—Demand—Right of action. Any funds in the treasury of any municipal corporation belonging to the fund of any local improvement district after the payment of the whole cost and expense of such improvement, in excess of the total sum required to defray all the expenditures by such municipal corporation on account thereof, shall be refunded, on demand, to the payers into such fund. Each such payer shall be entitled to such proportion of such excess as his original assessment bears to the entire original assessment levied for such improvement. Such municipal corporation may, after one year from the date on which the last installment becomes due, transfer any balance remaining on hand to the general fund of such municipal corporation, but shall, notwithstanding such transfer remain liable for the refund herein provided for until such refund shall have been made, unless the actual cost involved in making such refund shall exceed the excess in such fund.

Such demand shall be made in writing to the treasurer of such municipal corporation. No action shall be commenced in any court to obtain any such refund, except upon such demand, and until ninety days after making such demand. No excess shall be recovered in any action where the excess in the fund does not average the sum of one dollar in favor of all payers into such fund.

This section shall not be deemed to require the refunding of any balance left in any local improvement fund after the payment of all outstanding obligations issued against such fund, where such balance accrues from any saving in interest or from penalties collected upon delinquent assessments, but any such balance, whether accruing heretofore or hereafter, may be turned into the general fund or otherwise disposed of, as the legislative authority of the city may direct.

The provisions of this chapter relating to the refund of excess local improvement district funds shall not apply to any district whose obligations are guaranteed by the local improvement guaranty fund. [1965 c 7 § 35.45.090. Prior: 1917 c 140 § 1; 1909 c 108 § 1; RRS § 9351.]

35.45.130 Warrants against local improvement fund authorized. Every city and town may provide by ordinance for the issuance of warrants in payment of the cost and expense of any local improvement, payable out of the local improvement district fund. The warrants shall bear interest at a rate or rates established by the issuing officer under the direction of the legislative authority of the city or town and shall be redeemed either in cash or by local improvement bonds for the same improvement authorized by ordinance.

All warrants against any local improvement fund sold by the city or town or issued to a contractor and by him sold or hypothecated for a valuable consideration shall be claims and liens against the improvement fund against which they are drawn prior and superior to any right, lien, or claim of any surety upon the bond or bonds given to the city or town by or for the contractor to secure the performance of his contract or to secure the payment of persons who have performed work thereon, furnished materials therefor, or provisions and supplies for the carrying on of the work. [1981 c 323 § 3; 1970 ex.s. c 56 § 36; 1965 c 7 § 35.45.130. Prior: 1953 c 117 § 1; prior: 1915 c 168 § 3; 1911 c 98 § 72; 1899 c 146 § 7; RRS 9425.]

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

35.45.140 Warrants acceptable in payment of assessments. Cities and towns may accept warrants drawn against any local improvement fund upon such conditions as they may by ordinance or resolution prescribe, in satisfaction of:

- (1) Assessments levied to supply such fund, in due order of priority of right;
- (2) Judgments rendered against property owners who have become delinquent in the payment of assessments levied to supply such fund; and
- (3) In payment of certificates of purchase in cases where property of delinquents has been sold under execution or at tax sale for failure to pay assessments levied to supply such fund. [1965 c 7 § 35.45.140. Prior: (i) 1899 c 97 § 1; RRS § 9346. (ii) 1899 c 97 § 2; RRS § 9347. (iii) 1899 c 97 § 3; RRS § 9348. (iv) 1899 c 97 § 4; RRS § 9349. (v) 1899 c 97 § 5; RRS § 9350.]

35.45.150 Installment notes—Interest certificates. In addition to the issuance of bonds and warrants in payment of the cost and expense of any local improvement, any city or town may also issue and sell installment notes payable out of the local improvement district fund. Such installment notes may be issued any time after the thirty day period allowed by law for the payment of assessments of any district without penalty or interest, and may bear any denomination or denominations, the aggregate of which shall represent the balance of the cost and expense of the local improvement district which is to be borne by the property owners therein.

Application of local improvement district funds for the reduction of the principal and interest amounts due on any notes herein provided to finance said improvement shall be made not less than once each year beginning with the issue date thereof. Appropriate notification of such application of funds shall be made by the city or town treasurer to the registered payees of said notes, except those notes owned by

funds of the issuing municipality. Such notes may be registered as provided in RCW 39.46.030. If more than one local improvement installment note is issued for a single district, said notes shall be numbered consecutively. All notes issued shall bear on the face thereof: (1) The name of the payee; (2) the number of the local improvement district from whose funds the notes are payable; (3) the date of issue of each note; (4) the date on which the note, or the final installment thereon shall become due; (5) the rate or rates of interest, as provided by the city or town legislative authority, to be paid on the unpaid balance thereof, and; (6) such manual or facsimile signatures and attestations as are required by state statute or city charter to appear on the warrants of each issuing municipality.

The reverse side of each installment note issued pursuant to this section shall bear a tabular payment record which shall indicate at prescribed installment dates, the receipt of any local improvement district funds for the purpose of servicing the debt evidenced by said notes. Such receipts shall first be applied toward the interest due on the unpaid balance of the note, and any additional moneys shall thereafter apply as a reduction of the principal amount thereof. The tabular payment record shall, in addition to the above, show the unpaid principal balance due on each installment note, together with sufficient space opposite each transaction affecting said note for the manual signature of the city's or town's clerk, treasurer or other properly designated receiving officer of the municipality, or of any other registered payee presenting said note for such installment payments.

Whenever there are insufficient funds in a local improvement district to meet any payment of installment interest due on any note herein authorized, a noninterest-bearing defaulted installment interest certificate shall be issued by the city or town treasurer which shall consist of a written statement certifying the amount of such defaulted interest installment; the name of the payee of the note to whom the interest is due and the number of the local improvement district from whose funds the note and interest thereon is payable. Such certificates may be registered as provided in RCW 39.46.030. The certificate herein provided shall bear the manual signature of the city or town treasurer or his authorized agent. The defaulted installment interest certificate so issued shall be redeemed for the face amount thereof with any available funds in the local improvement guaranty fund.

Whenever at the date of maturity of any installment note issued pursuant to this section, there are insufficient funds in a local improvement district, due to delinquencies in the collection of assessments, to pay the final installment of the principal due thereon, the note shall be redeemed with any available funds in the local improvement guaranty fund for the amount of said final installment.

All certificates and notes issued pursuant to this section are to become subject to the same redemption privileges as apply to any local improvement district bonds and warrants now accorded the protection of the local improvement guaranty fund as provided in chapter 35.54 RCW, and whenever the certificates or notes issued as herein provided are redeemed by said local improvement guaranty fund, they shall be held therein as investments thereof in the same manner as prescribed for other defaulted local improvement district obligations.

Notwithstanding any other statutory provisions, local improvement installment notes authorized by this section which are within the protection of the local improvement guaranty fund law shall be considered legal investments for any available surplus funds of the issuing municipality which now or hereafter may be authorized to be invested in the city's or town's local improvement districts' bonds or warrants and shall be considered legal investments for all national and state banks, savings and loan institutions, and any and all other commercial banking or financial institutions to the same extent that the local improvement district bonds and any coupons issued pursuant to the provisions of this chapter have been and are legal investments for such institutions. Any such local improvement installment notes may be transferred or sold by said city or town upon such terms or conditions and in such manner as the local governing body of said city or town may determine, or may be issued to another fund of the city or town: PROVIDED, HOWEVER, That the same shall not be sold at less than par plus accrued interest.

Notwithstanding the provisions of this section, such notes and certificates may be issued, and such notes may be sold, in accordance with chapter 39.46 RCW. [1983 c 167 § 44. Prior: 1981 c 323 § 4; 1981 c 156 § 2; prior: 1970 ex.s. c 93 § 2; 1970 ex.s. c 56 § 37; 1965 c 7 § 35.45.150; prior: 1961 c 165 § 1.]

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

Severability—1970 ex.s. c 93: See note following RCW 39.60.050.

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

Investment of public funds in notes, debentures: RCW 39.60.050.

35.45.155 Installment notes—Refunding. Any city or town having issued one or more installment notes pursuant to RCW 35.45.150 may refund all of such notes or the principal thereof then outstanding payable from any one local improvement district fund by the issuance of local improvement district bonds pursuant to chapter 35.45 RCW and by the payment into the city or town fund or funds holding such notes the then outstanding principal amount of such notes plus the interest thereon accrued to the date of such refunding. The bonds shall be payable from the same local improvement district fund from which such notes were payable; shall be payable no later than the final payment date of the notes being refunded; shall be in the same total principal amount as the outstanding principal amount of the notes being refunded less any sums in the local improvement district fund the city or town applies to the redemption of such notes; and shall be sold at not less than par plus accrued interest to date of delivery. Any interest payable on the bonds in excess of the interest payable on assessment installments payable into the local improvement district fund shall be paid from the general fund of the city or town in accordance with RCW 35.45.065. The principal proceeds and interest accrued to date of delivery of the bonds shall be paid into the local improvement district fund and the notes shall be redeemed on that date. The city or town shall pay all costs and expenses of such refunding from moneys available therefor. [1969 ex.s. c 258 § 12.]

35.45.160 Consolidated local improvement districts—Authorized—Purpose. For the purpose of issuing bonds only, the governing body of any municipality 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. [1967 ex.s. c 44 § 3.]

35.45.170 Refunding bonds—Limitations. The legislative authority of any city or town may issue and sell bonds to refund outstanding local improvement district or consolidated local improvement district bonds issued after June 7, 1984, on the earliest date such outstanding bonds may be redeemed following the date of issuance of such refunding bonds. Such refunding shall be subject to the following:

(1) The refunding shall result in a net interest cost savings after paying the costs and expenses of the refunding, and the principal amount of the refunding bonds may not exceed the principal balance of the assessment roll or rolls pledged to pay the bonds being refunded at the time of the refunding.

(2) The refunding bonds shall be paid from the same local improvement fund or bond redemption fund as the bonds being refunded.

(3) The costs and expenses of the refunding shall be paid from the proceeds of the refunding bonds, or the same local improvement district fund or bond redemption fund for the bonds being refunded, except the city or town may advance such costs and expenses to such fund pending the receipt of assessment payments available to reimburse such advances.

(4) The last maturity of the refunding bonds shall be no later than one year after the last maturity of bonds being refunded.

(5) The refunding bonds may be exchanged for the bonds being refunded or may be sold in the same manner permitted at the time of sale for local improvement district bonds.

(6) All other provisions of law applicable to the refunded bonds shall apply to the refunding bonds. [1984 c 186 § 66.]

Purpose—1984 c 186: See note following RCW 39.46.110.

Chapter 35.47

LOCAL IMPROVEMENTS—PROCEDURE FOR CANCELLATION OF NONGUARANTEED BONDS

Sections

- 35.47.010 Distribution of moneys in local improvement funds to holders of bonds and warrants—Notice—Time limitation—Abandonment and transfer to general fund.
- 35.47.020 Declaration of obsolescence and cancellation upon distribution of moneys, untimely presentment, or lack of money in local improvement fund.

- 35.47.030 Cancellation procedure where no money in local improvement fund.
- 35.47.040 Action under RCW 35.47.010 through 35.47.030 unaffected by chapter 35.48 RCW or other law.
- 35.47.900 Severability—1965 ex.s. c 6.

35.47.010 Distribution of moneys in local improvement funds to holders of bonds and warrants—Notice—Time limitation—Abandonment and transfer to general fund. Any city or town having any outstanding and unpaid local improvement bonds or warrants issued in connection with a local improvement therein to which the local guaranty fund law is not applicable and that have been delinquent for more than fifteen years, by ordinance, may direct that the money, if any, remaining in a given local improvement fund for which no real property is held in trust shall be distributed by the city or town on a pro rata basis, without any reference to numerical order, to the holders of outstanding bonds or warrants for each such fund, excluding the accrued interest thereon. If the outstanding bonds or warrants are not presented for payment within one year after the last date of publication of notice provided for herein, the money being held in the local improvement fund of a city or town shall be deemed abandoned, and shall be transferred to the city or town general fund: PROVIDED, That the city or town shall publish a notice once each week for two successive weeks in the official newspaper of the city or town in which it is indicated that L.I.D. bonds for L.I.D. improvement Nos. to inclusive must be presented to the city or town for payment not later than one year from this date or the money being held in the local improvement fund of the city or town shall be transferred to the city or town general fund. [1985 c 469 § 31; 1965 ex.s. c 6 § 1.]

35.47.020 Declaration of obsolescence and cancellation upon distribution of moneys, untimely presentment, or lack of money in local improvement fund. After the city or town having said bonds or warrants referred to in RCW 35.47.010 has distributed the money in a local improvement district fund in accordance with RCW 35.47.010, or such bonds or warrants are not presented for payment within one year after the last date of publication of notice provided for in RCW 35.47.010, such city or town may, by ordinance, declare such bonds and warrants, without any reference to numerical order, to be obsolete, cancel the same, and terminate all accounting thereon, and clear such bonds and warrants off their records including any unguaranteed bonds or warrants outstanding against districts in which there remains no money in the given local improvement fund. [1965 ex.s. c 6 § 2.]

35.47.030 Cancellation procedure where no money in local improvement fund. If the bonds or warrants outstanding against a district are unguaranteed and if there remains no money in the appropriate local improvement fund to pay them, and if no real property is held in trust for the fund, the city or town shall give notice in the same manner as provided in RCW 35.47.010, stating that L.I.D. (bonds or warrants) for L.I.D. improvement Nos. to inclusive will be canceled as provided in RCW 35.47.020, unless such bonds or warrants are presented to the city or town within one year from the date of last

publication of the notice, together with good cause shown as to why such cancellation should not take place. If such bonds or warrants are not presented, with good cause shown, within one year after the last date of publication of such notice, they may be canceled as provided in RCW 35.47.020. [1965 ex.s. c 6 § 3.]

35.47.040 Action under RCW 35.47.010 through 35.47.030 unaffected by chapter 35.48 RCW or other law. Nothing in chapter 35.48 RCW or other existing law to the contrary shall preclude the action authorized herein. [1965 ex.s. c 6 § 4.]

35.47.900 Severability—1965 ex.s. c 6. If any provision of this act, or its application to any person or circumstance is held to be invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected. [1965 ex.s. c 6 § 6.]

Chapter 35.48

LOCAL IMPROVEMENTS—NONGUARANTEED BONDS

Sections

- 35.48.010 Special revolving fund for delinquent nonguaranteed bonds and warrants—Composition.
- 35.48.020 Use of revolving fund—Maximum bond price.
- 35.48.030 Subrogation—Refund of surplus.
- 35.48.040 Refund to revolving fund.
- 35.48.050 Purchase of warrants on previous funds—Transfer of assets to revolving fund—Disposition.
- 35.48.060 Procedure governed by ordinance.

35.48.010 Special revolving fund for delinquent nonguaranteed bonds and warrants—Composition. If any city or town has issued bonds or warrants payable from a local improvement or condemnation award fund, to which the local improvement guaranty fund law is not applicable, and if the assessment, or last installment thereof, against which the bonds or warrants were issued has been delinquent not more than thirty-two years, the city or town may create a special revolving fund and may provide moneys therefor by general tax levy, if the levy, together with other levies made or authorized by such city or town, will not exceed the levy which is legally allowed; or such city or town may place in said fund or advance or loan to said fund any money which it is not prohibited by law from advancing, loaning to or placing in said fund. [1965 c 7 § 35.48.010. Prior: 1961 c 46 § 1; 1943 c 244 § 2; Rem. Supp. 1943 § 9351-11.]

Purpose—1943 c 244: "WHEREAS, there are many millions of dollars of delinquent and unpaid local improvement district and condemnation award bonds and warrants issued by various cities of the state and not protected by the Local Improvement Guaranty Fund, only a small part of which for the present at least can be paid and many of which will never be paid because of inability of property owners to pay the special assessments levied to provide funds for payment thereof and the depreciated value of the real estate which is the only security provided by present law from which payment of the assessments may be enforced; and, WHEREAS, the cities are not legally liable under existing law for payment of such bonds and warrants except as there are moneys available in the special fund from which the same are payable; and, WHEREAS, such cities and its citizens as a whole have derived benefit from the improvements installed with the proceeds or as a result of the issuance of such bonds and warrants; and,

WHEREAS, the nonpayment of such unpaid and delinquent bonds and warrants not only causes great hardship and suffering on those who have invested money in such bonds and warrants, but also reflects discredit on the financial structure of the various cities involved, to the detriment of the cities as a whole and also the entire state; NOW, THEREFORE, this law is enacted to enable cities to provide some relief from the hardship imposed by such conditions." [1943 c 244 § 1.]

35.48.020 Use of revolving fund—Maximum bond price. Any moneys in such revolving fund may be used for the purchase of unpaid delinquent local improvement warrants, or bonds and interest payments, or bonds and interest coupons thereon, issued by the city or town, payable from a local improvement district fund or condemnation award fund, to which the local improvement guaranty fund law is not applicable, if the assessment, or last installment thereof, against which the bonds or warrants have been issued, has been delinquent not more than thirty-two years. The maximum purchase price to be paid for said bonds or warrants shall be fixed by the municipality, and may from time to time be changed but shall never exceed fifty percent of the face value of the bonds, interest payments, interest coupons, or warrants: PROVIDED, That no warrants shall be issued payable from the revolving fund unless there is sufficient cash in said fund available for payment of such warrants. [1983 c 167 § 45; 1965 c 7 § 35.48.020. Prior: 1961 c 46 § 2; 1943 c 244 § 3; Rem. Supp. 1943 § 9351-12.]

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

35.48.030 Subrogation—Refund of surplus. The purchase of any such bonds or warrants shall not relieve the local improvement or condemnation award fund from which the same are payable from liability for payment of the same, but the city or town upon purchase thereof shall become subrogated to all the rights of the former owners thereof and may proceed to enforcement of said bonds or warrants as any owner thereof might do. The city or town may sell any property acquired by it in such proceedings upon such terms and for such prices as it sees fit, or it may resell any of the bonds or warrants for such prices as it shall fix.

Any excess in any local improvement district fund or condemnation award fund which will average a payment of one dollar to each payer into said fund shall, after payment, retirement, or cancellation of all bonds or warrants payable from said fund, be refunded and paid to the payers into the fund in the proportion that their respective assessments bear to the entire original assessment levied for such improvement, and any unpaid assessments, or portion thereof, shall be reduced in the same proportion. Any proceeds derived from the sale of any bonds or warrants, or from the sale of real estate, shall be placed in the revolving fund. [1965 c 7 § 35.48.030. Prior: 1943 c 244 § 4; Rem. Supp. 1943 § 9351-13.]

35.48.040 Refund to revolving fund. If there are funds in any local improvement district fund or condemnation award fund sufficient to pay or retire any bond or warrant issued and payable from said fund, and the city or town is the owner and holder of the bond or warrant next payable from the fund, the city or town treasurer shall from

the moneys in the local improvement or condemnation award fund place in the revolving fund a sum of money equivalent to the amount paid by the city or town for such bond or warrant and shall thereupon cancel, mark paid and remove from said revolving fund such bond or warrant. [1965 c 7 § 35.48.040. Prior: 1943 c 244 § 5; Rem. Supp. 1943 § 9351-14.]

35.48.050 Purchase of warrants on previous funds—Transfer of assets to revolving fund—Disposition. Whenever a city or town has heretofore by ordinance created a fund for use in purchasing delinquent local improvement or condemnation award bonds or warrants not protected by the local improvement guaranty fund law, and has purchased any such bonds or warrants and issued warrants payable from said fund, which warrants are unpaid because of lack of funds and have remained unpaid for a period of less than thirty-two years from date of issue thereof, the city or town may use any funds available in the revolving fund to purchase said warrants at such price as it may determine, but in no event at more than fifty percent of the face value, without interest.

Whenever all such warrants have been purchased or paid, the city or town may transfer to the revolving fund any bonds, warrants or other assets belonging to said fund first above mentioned, and thereafter such bonds, warrants or other assets shall be held and disposed of for the benefit of said revolving fund in the same manner as other funds and assets therein: PROVIDED, That nothing contained in this chapter shall legalize any warrants heretofore issued or render any city or town liable thereunder. [1965 c 7 § 35.48.050. Prior: 1961 c 46 § 3; 1943 c 244 § 6; Rem. Supp. 1943 § 9351-15.]

35.48.060 Procedure governed by ordinance. All actions of a city or town respecting the purchase of bonds and warrants or sales of bonds, warrants or assets of the revolving fund shall be as directed by general or special ordinance. [1965 c 7 § 35.48.060. Prior: 1943 c 244 § 7; Rem. Supp. 1943 § 9351-16.]

Chapter 35.49

LOCAL IMPROVEMENTS—COLLECTION OF ASSESSMENTS

Sections

- 35.49.010 Collection by city treasurer—Notices.
- 35.49.020 Installments—Number—Due date.
- 35.49.030 Ordinance to prescribe time of payment—Interest—Penalties.
- 35.49.040 Payment without interest or penalty.
- 35.49.050 Prepayment of installments subsequently due.
- 35.49.060 Payment by city or town.
- 35.49.070 Payment by county.
- 35.49.080 Payment by metropolitan park district.
- 35.49.090 Payment by joint owner.
- 35.49.100 Payment in error—Remedy.
- 35.49.110 Record of payment.
- 35.49.120 Tax liens—Private certificate holder takes subject to local assessments.
- 35.49.130 Tax liens—County foreclosures—Notice to city treasurers—City may protect assessment lien.
- 35.49.140 Tax liens—Payment by city after taking property on foreclosure of local assessments.

- 35.49.150 Tax title property—City may acquire from county before resale.
- 35.49.160 Tax title property—Disposition of proceeds upon resale.
- 35.49.170 Acquisition of property by state or political subdivisions which is subject to unpaid assessments and delinquencies.

Prepayment of taxes and assessments: RCW 35.21.650.

35.49.010 Collection by city treasurer—Notices. All assessments for local improvements in local improvement districts shall be collected by the city treasurer and shall be kept in a separate fund to be known as "local improvement fund, district No. . . ." and shall be used for no other purpose than the redemption of warrants drawn upon and bonds issued against the fund to provide payment for the cost and expense of the improvement.

All assessments for local improvements in a utility local improvement district shall be collected by the city treasurer, shall be paid into the appropriate revenue bond fund, and shall be used for no other purpose than the redemption of revenue bonds issued to provide funds for the cost and expense of the improvement.

As soon as the assessment roll has been placed in the hands of the city or town treasurer for collection, he shall publish a notice in the official newspaper of the city or town once a week for two consecutive weeks, that the roll is in his hands for collection and that all or any portion of the assessment may be paid within thirty days from the date of the first publication of the notice without penalty, interest or costs.

Within fifteen days of the first newspaper publication, the city or town treasurer shall notify each owner or reputed owner whose name appears on the assessment roll, at the address shown on the tax rolls of the county treasurer for each item of property described on the list, of the nature of the assessment, of the amount of his real property subject to such assessment, of the total amount of assessment due, and of the time during which such assessment may be paid without penalty, interest, or costs. [1972 ex.s. c 137 § 1; 1969 ex.s. c 258 § 13; 1967 c 52 § 13; 1965 c 7 § 35.49.010. Prior: (i) 1911 c 98 § 28; RRS § 9380. (ii) 1911 c 98 § 50, part; RRS § 9403, part.]

Severability—1972 ex.s. c 137: "If any provision of this 1972 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." [1972 ex.s. c 137 § 6.] For codification of 1972 ex.s. c 137, see Codification Tables, Volume 0.

Construction—Severability—1967 c 52: See notes following RCW 35.43.042.

Saving—1927 c 275: "All local improvement initiated or proceedings commenced by any city or town before the taking effect of this act, relating to the making of any local improvement, or the collection and foreclosure of local improvement, or the collection and foreclosure of local improvement assessments, and the sale of property therefor, shall proceed without being in any manner affected by the passage of this act; PROVIDED, That any city or town may at its option foreclose in the manner provided in this act the lien of any local improvement assessment created prior to the effective date of this act, and cause deed to issue, but as to any such property purchased by such city or town at such foreclosure the same shall be held and sold by such city or town under and pursuant to the provisions of law in force and effect prior to the taking effect of this act." [1927 c 275 § 8.]

35.49.020 Installments—Number—Due date. In all cases where bonds are issued to pay the cost and expense of

a local improvement, the ordinance levying the assessments shall provide that the sum charged against any lot, tract, and parcel of land or other property, or any portion thereof, may be paid during the thirty day period allowed for the payment of assessments without penalty or interest and that thereafter the sum remaining unpaid may be paid in equal annual principal installments or in equal annual installments of principal and interest. The number of installments shall be less by two than the number of years which the bonds issued to pay for the improvement are to run. The estimated interest rate may be stated in the ordinance confirming the assessment roll. Where payment is required in equal annual principal installments, interest on the whole amount unpaid at the rate fixed by the ordinance authorizing the issuance and sale of the bonds shall be due on the due date of the first installment of principal and each year thereafter on the due date of each installment of principal: PROVIDED, That the legislative authority of any city or town having made a bond issue payable on or before twenty-two years after the date of issue may provide by ordinance that all assessments and portions of assessments unpaid after the thirty day period allowed for payment of assessments without penalty or interest may be paid in ten equal installments beginning with the eleventh year and ending with the twentieth year from the expiration of said thirty day period, together with interest on the unpaid installments at the rate fixed by such ordinance, and that in each year after the said thirty day period, to and including the tenth year thereafter, one installment of interest on the principal sum of the assessment at the rate so fixed shall be paid and collected, and that beginning with the eleventh year after the thirty day period one installment of the principal, together with the interest due thereon, and on all installments thereafter to become due shall be paid and collected. [1982 c 96 § 1; 1981 c 323 § 5; 1969 ex.s. c 258 § 14; 1965 c 7 § 35.49.020. Prior: 1925 ex.s. c 117 § 1; 1915 c 168 § 5; 1911 c 98 § 49; 1899 c 124 § 4; RRS § 9402.]

35.49.030 Ordinance to prescribe time of payment—Interest—Penalties. Every city and town shall prescribe by ordinance within what time assessments or installments thereof shall be paid, and shall provide for the payment and collection of interest thereon at a rate as shall be fixed by the legislative body of the city or town. Assessments or installments thereof, when delinquent, in addition to such interest, shall bear such penalty not less than five percent as shall be by general ordinance prescribed. [1971 ex.s. c 116 § 5; 1969 ex.s. c 258 § 15; 1965 c 7 § 35.49.030. Prior: 1955 c 353 § 3; prior: 1927 c 275 § 1, part; 1921 c 92 § 1, part; 1911 c 98 § 24, part; RRS § 9376, part.]

35.49.040 Payment without interest or penalty. The owner of any lot, tract, or parcel of land or other property charged with local improvement assessment may redeem it from all or any portion thereof by paying to the city or town treasurer all or any portion thereof without interest within thirty days after the first publication by the treasurer of notice that the assessment roll is in his hands for collection. [1965 c 7 § 35.49.040. Prior: 1911 c 98 § 50, part; RRS § 9403, part.]

35.49.050 Prepayment of installments subsequently due. The owner of any lot, tract, or parcel of land or other property charged with a local improvement assessment may redeem it from all liability for the unpaid amount of the assessment at any time after the thirty day period allowed for payment of assessments without penalty or interest by paying the entire installments of the assessment remaining unpaid to the city or town treasurer with interest thereon to the date of maturity of the installment next falling due. [1965 c 7 § 35.49.050. Prior: 1911 c 98 § 50, part; RRS § 9403, part.]

35.49.060 Payment by city or town. On or before the fifteenth day of August of each year, the city or town treasurer shall certify to the city or town council a detailed statement showing:

- (1) The proceedings authorizing and confirming any local improvement assessments or utility local improvement assessments affecting city or town property,
- (2) The lots, tracts, or parcels of lands of the city or town so assessed,
- (3) The several assessments against each,
- (4) The interest, penalties, and charges thereon,
- (5) The penalties and charges which will accrue upon the assessments to the date of payment, and
- (6) The total of all such assessments, interest, penalty, and charges.

The longest outstanding liens shall be paid first, but if the money in the "city (or town) property assessments redemption fund" is insufficient at any time to discharge all such liens against the lands of the city or town upon a given assessment roll, the city or town treasurer may pay such portion thereof as may be possible from the funds available.

If deemed necessary, the city or town council may transfer money from the general fund to the redemption fund as a loan to be repaid when the money is available for repayment. [1967 c 52 § 14; 1965 c 7 § 35.49.060. Prior: 1929 c 183 § 2, part; 1909 c 130 § 2; RRS § 9345, part.]

Construction—Severability—1967 c 52: See notes following RCW 35.43.042.

35.49.070 Payment by county. Upon the confirmation of the assessment roll for a local improvement district or utility local improvement district, the city or town treasurer shall certify and forward to the board of county commissioners a statement of all the lots, tracts, or parcels of land held or owned by the county assessed thereon, separately describing each lot, tract, or parcel, with the amount of the assessment charged against it.

The board of county commissioners shall cause the amount of such local assessments to be paid to the city or town as other claims against the county are paid.

If title to any property thus described was acquired by the county through foreclosure of general tax liens, the county shall:

- (1) Pay the assessment from the proceeds of the sale of the property; or
- (2) Sell the property subject to the lien of the assessment. [1967 c 52 § 15; 1965 c 7 § 35.49.070. Prior: 1929 c 139 § 1; 1905 c 29 § 3; RRS § 9342.]

Construction—Severability—1967 c 52: See notes following RCW 35.43.042.

35.49.080 Payment by metropolitan park district. Upon the confirmation of the assessment roll for a local improvement district or utility local improvement district, the city treasurer shall certify and forward to the board of park commissioners of any metropolitan park district in which the city is located, a statement of all the lots, tracts, and parcels of land or other property held or owned by the district, assessed thereon, separately describing each lot, tract, or parcel with the amount of the assessment charged against it.

The board of park commissioners shall cause the amount of the local assessments to be paid as other claims against the metropolitan park district are paid. [1967 c 52 § 16; 1965 c 7 § 35.49.080. Prior: 1929 c 204 § 3; RRS § 9343-3.]

Construction—Severability—1967 c 52: See notes following RCW 35.43.042.

35.49.090 Payment by joint owner. If any assessment for a local improvement, or an installment thereof, or judgment for either of them is paid, or a certificate of sale for either of them is redeemed by a joint owner of any of the property so assessed, he may, after demand and refusal, recover from his co-owners, by an action brought in superior court, the respective portions of the payment which each co-owner should bear. He shall have a lien upon the undivided interests of his co-owners from the date of the payment made by him and in the action shall recover interest at ten percent from the date of payment by him and the costs of the action in addition to the principal sum due him. [1965 c 7 § 35.49.090. Prior: 1911 c 98 § 62; RRS § 9415.]

35.49.100 Payment in error—Remedy. If, through error or inadvertence, a person pays any assessment for a local improvement or an installment thereof upon the lands of another, he may, after demand and refusal, recover from the owner of such lands, by an action in the superior court, the amount so paid and the costs of the action. [1965 c 7 § 35.49.100. Prior: 1911 c 98 § 65; RRS § 9418.]

35.49.110 Record of payment. If the amount of any assessment for a local improvement with interest, penalty, costs, and charges accrued thereon is paid to the treasurer before sale of the property in foreclosure of the lien thereon, the city or town treasurer shall mark it paid upon the assessment roll with the date of payment thereof. [1965 c 7 § 35.49.110. Prior: 1927 c 275 § 2; 1911 c 98 § 30; RRS § 9382.]

35.49.120 Tax liens—Private certificate holder takes subject to local assessments. The holder of a certificate of delinquency for general taxes, before commencing any action to foreclose the lien of such certificate, shall pay in full all local improvement assessments or installments thereof which are a lien against the property or any portion thereof, or he may elect to proceed to acquire title to the property subject to certain or all of the assessments or installments which are a lien thereon, in which case the complaint, decree of foreclosure, order of sale, sale, certificate of sale, and deed shall so state:

If the holder pays such local assessments or installments he shall be entitled to twelve percent interest per annum on the amount of the delinquent assessments or delinquent installments thereof so paid, from the date of payment. [1965 c 7 § 35.49.120. Prior: 1929 c 143 § 1, part; 1925 ex.s. c 170 § 1, part; 1911 c 98 § 40, part; RRS § 9393, part.]

35.49.130 Tax liens—County foreclosures—Notice to city treasurers—City may protect assessment lien. In county foreclosures for delinquency in the payment of general taxes, the county treasurer shall mail a copy of the published summons to the treasurer of every city and town within which any property involved in the foreclosure proceeding is situated. The copy of the summons shall be mailed within fifteen days after the first publication thereof, but the county treasurer's failure to do so shall not affect the jurisdiction of the court nor the priority of the tax sought to be foreclosed.

If any property situated in a city or town is offered for sale for general taxes, the city or town shall have power to protect the lien or liens of any local improvement assessments outstanding against the whole or portion of such property by purchase thereof or otherwise. [1965 c 7 § 35.49.130. Prior: (i) 1911 c 98 § 63; RRS § 9416. (ii) 1929 c 143 § 1, part; 1925 ex.s. c 170 § 1, part; 1911 c 98 § 40, part; RRS § 9393, part.]

35.49.140 Tax liens—Payment by city after taking property on foreclosure of local assessments. If a city or town has bid in any property on sale for local improvement assessments, it may satisfy the lien of any outstanding general taxes upon the property by payment of the face of such taxes and costs, without penalty or interest, but this shall not apply where certificates of delinquency against the property have been issued to private persons. [1965 c 7 § 35.49.140. Prior: 1929 c 143 § 1, part; 1925 ex.s. c 170 § 1, part; 1911 c 98 § 40, part; RRS § 9393, part.]

35.49.150 Tax title property—City may acquire from county before resale. If property is struck off to or bid in by a county at a sale for general taxes, and is subject to local improvement assessments in any city or town, or has been taken over by the city or town on the foreclosure of local improvement assessments, the city or town may acquire the property from the county at any time before resale and receive a deed therefor upon paying the face of such taxes and costs, without penalty or interest. [1965 c 7 § 35.49.150. Prior: 1929 c 143 § 1, part; 1925 ex.s. c 170 § 1, part; 1911 c 98 § 40, part; RRS § 9393, part.]

35.49.160 Tax title property—Disposition of proceeds upon resale. Whenever property struck off to or bid in by a county at a sale for general taxes is subsequently sold by the county, the proceeds of the sale shall first be applied to discharge in full the lien or liens for general taxes for which property was sold; the remainder, or such portion thereof as may be necessary, shall be paid to the city or town to discharge all local improvement assessment liens against the property; and the surplus, if any, shall be distributed among the proper county funds. [1965 c 7 §

35.49.160. Prior: 1929 c 143 § 1, part; 1925 ex.s. c 170 § 1, part; 1911 c 98 § 40, part; RRS § 9393, part.]

35.49.170 Acquisition of property by state or political subdivisions which is subject to unpaid assessments and delinquencies. See RCW 79.44.190.

Chapter 35.50

LOCAL IMPROVEMENTS—FORECLOSURE OF ASSESSMENTS

Sections

35.50.005	Filing of title, diagram, expense—Posting proposed roll.
35.50.010	Assessment lien—Attachment—Priority.
35.50.020	Assessment lien—Validity.
35.50.030	Authority and conditions precedent to foreclosure.
35.50.040	Entire assessment, foreclosure of.
35.50.050	Limitation of foreclosure action.
35.50.220	Procedure—Commencement of action.
35.50.225	Procedure—Form of summons.
35.50.230	Procedure—Parties and property included.
35.50.240	Procedure—Pleadings and evidence.
35.50.250	Procedure—Summons and service.
35.50.260	Procedure—Trial and judgment—Notice of sale.
35.50.270	Procedure—Sale—Right of redemption.

35.50.005 Filing of title, diagram, expense—Posting proposed roll. Within fifteen days after any city or town has ordered a local improvement and created a local improvement district, the city or town shall cause to be filed with the officer authorized by law to collect the assessments for such improvement, the title of the improvement and district number and a copy of the diagram or print showing the boundaries of the district and preliminary assessment roll or abstract of same showing thereon the lots, tracts and parcels of land that will be specially benefited thereby and the estimated cost and expense of such improvement to be borne by each lot, tract, or parcel of land. Such officer shall immediately post the proposed assessment roll upon his index of local improvement assessments against the properties affected by the local improvement. [1969 ex.s. c 258 § 16; 1965 c 7 § 35.50.005. Prior: 1955 c 353 § 1.]

35.50.010 Assessment lien—Attachment—Priority. The charge assessed upon the respective lots, tracts, or parcels of land and other property in the assessment roll confirmed by ordinance of the city or town council for the purpose of paying the cost and expense in whole or in part of any local improvement, shall be a lien upon the property assessed from the time the assessment roll is placed in the hands of the city or town treasurer for collection, but as between the grantor and grantee, or vendor and vendee of any real property, when there is no express agreement as to payment of the local improvement assessments against the real property, the lien of such assessment shall attach thirty days after the filing of the diagram or print and the estimated cost and expense of such improvement to be borne by each lot, tract, or parcel of land, as provided in RCW 35.50.005. Interest and penalty shall be included in and shall be a part of the assessment lien.

The assessment lien shall be paramount and superior to any other lien or encumbrance theretofore or thereafter created except a lien for general taxes. [1965 c 7 §

35.50.010. Prior: 1955 c 353 § 4; prior: (i) 1911 c 98 § 20; RRS § 9372. (ii) 1927 c 275 § 1, part; 1921 c 92 § 1; 1911 c 98 § 24, part; RRS § 9376, part.]

35.50.020 Assessment lien—Validity. If the city or town council in making assessments against any property within any local improvement district or utility local improvement district has acted in good faith and without fraud, the assessments shall be valid and enforceable as such and the lien thereof upon the property assessed shall be valid.

It shall be no objection to the validity of the assessment, or the lien thereof:

(1) That the contract for the improvement was not awarded in the manner or at the time required by law; or

(2) That the assessment was made by an unauthorized officer or person if the assessment roll was confirmed by the city or town authorities; or

(3) That the assessment is based upon a front foot basis, or upon a basis of benefits to the property within the improvement district unless it is made to appear that the city or town authorities did not act in good faith and did not attempt to act fairly in regard thereto or unless it is made to appear that the city or town authorities acted fraudulently or oppressively in making the assessment.

All local improvement assessments heretofore or hereafter made by city or town authorities in good faith are valid and in full force and effect. [1967 c 52 § 17; 1965 c 7 § 35.50.020. Prior: 1911 c 98 § 61; RRS § 9414.]

Construction—Severability—1967 c 52: See notes following RCW 35.43.042.

35.50.030 Authority and conditions precedent to foreclosure. If on the first day of January in any year, two installments of any local improvement assessment are delinquent, or if the final installment thereof has been delinquent for more than one year, the city or town shall proceed with the foreclosure of the delinquent assessment or delinquent installments thereof by proceedings brought in its own name in the superior court of the county in which the city or town is situate.

The proceedings shall be commenced on or before March 1st of that year or on or before such other date in such year as may be fixed by general ordinance, but not before the city or town treasurer has notified by certified mail the persons whose names appear on the assessment roll as owners of the property charged with the assessments or installments which are delinquent, at the address last known to the treasurer, a notice thirty days before the commencement of the proceedings. If the person whose name appears on the tax rolls of the county assessor as owner of the property, or the address shown for the owner, differs from that appearing on the city or town assessment roll, then the treasurer shall also mail a copy of the notice to that person or that address.

The notice shall state the amount due upon each separate lot, tract, or parcel of land and the date after which the proceedings will be commenced. The city or town treasurer shall file with the clerk of the superior court at the time of commencement of the foreclosure proceeding the affidavit of the person who mailed the notices. This affidavit shall be conclusive proof of compliance with the

requirements of this section. [1983 c 303 § 18; 1982 c 91 § 1; 1981 c 323 § 6; 1965 c 7 § 35.50.030. Prior: 1933 c 9 § 1, part; 1927 c 275 § 5, part; 1919 c 70 § 2; 1915 c 185 § 1; 1911 c 98 §§ 34, 36, part; RRS § 9386, part; prior: 1897 c 111.]

Severability—1983 c 303: See RCW 36.60.905.

Severability—1982 c 91: "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 91 § 10.]

Construction—1933 c 9: "The provisions of this act shall be applicable to the lien of assessments heretofore as well as hereafter levied and to foreclosure proceedings now pending." [1933 c 9 § 3.]

35.50.040 Entire assessment, foreclosure of. When the local improvement assessment is payable in installments, the enforcement of the lien of any installment shall not prevent the enforcement of the lien of any subsequent installment.

A city or town may by general ordinance provide that upon failure to pay any installment due the entire assessment shall become due and payable and the collection thereof enforced by foreclosure: PROVIDED, That the payment of all delinquent installments together with interest, penalty, and costs at any time before entry of judgment in foreclosure shall extend the time of payment on the remainder of the assessments as if there had been no delinquency or foreclosure. Where foreclosure of two installments of the same assessment on any lot, tract, or parcel is sought, the city or town treasurer shall cause such lot, tract, or parcel to be dismissed from the action, if the installment first delinquent together with interest, penalty, costs, and charges is paid at any time before sale. [1965 c 7 § 35.50.040. Prior: (i) 1933 c 9 § 1, part; 1927 c 275 § 5, part; 1919 c 70 § 2, part; 1915 c 185 § 1; 1911 c 98 §§ 34, 36, part; RRS § 9386, part. (ii) 1919 c 70 § 1; 1911 c 98 § 35; RRS § 9388; prior: 1897 c 111.]

35.50.050 Limitation of foreclosure action. An action to collect a local improvement assessment or any installment thereof or to enforce the lien thereof whether brought by the city or town, or by any person having the right to bring such action must be commenced within ten years after the assessment becomes delinquent or within ten years after the last installment becomes delinquent, if the assessment is payable in installments: PROVIDED, That the time during which payment of principal is deferred as to economically disadvantaged property owners as provided for in RCW 35.43.250 shall not be a part of the time limited for the commencement of action. [1989 c 11 § 6; 1972 ex.s. c 137 § 5; 1965 c 7 § 35.50.050. Prior: 1911 c 98 § 41; RRS § 9394.]

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

Severability—1972 ex.s. c 137: See note following RCW 35.49.010.

35.50.220 Procedure—Commencement of action. In foreclosing local improvement assessment liens, a city or town shall proceed by filing a complaint in the superior court of the county in which the city or town is located. It shall be sufficient to allege in the complaint (1) the passage of the ordinance authorizing the improvement, (2) the making of the improvement, (3) the levying of the assess-

ment, (4) the confirmation thereof, (5) the date of delinquency of the installment or installments of the assessment for the enforcement of which the action is brought and (6) that they have not been paid prior to delinquency or at all. [1982 c 91 § 2; 1965 c 7 § 35.50.220. Prior: 1933 c 9 § 2, part; RRS § 9386-1, part.]

Severability—1982 c 91: See note following RCW 35.50.030.

35.50.225 Procedure—Form of summons. In foreclosing local improvement assessments, the summons shall be substantially in the following form:

SUPERIOR COURT OF WASHINGTON
FOR [.] COUNTY
No.
Plaintiff,
v.
Defendant.
SUMMONS FOR FORECLOSURE
OF LOCAL IMPROVEMENT
ASSESSMENT LIEN

To the Defendant: A lawsuit has been started against you in the above entitled court by, plaintiff. Plaintiff's claim is stated in the written complaint, a copy of which is served upon you with this summons. The purpose of this suit is to foreclose on your interest in the following described property:

[legal description]

which is located at:

[street address]

In order to defend against this lawsuit, you must respond to the complaint by stating your defense in writing, and by serving a copy upon the person signing this summons within 20 days after the service of this summons, excluding the day of service, or a default judgment may be entered against you without notice. A default judgment is one where plaintiff is entitled to what he asks for because you have not responded. If you serve a notice of appearance on the undersigned person, you are entitled to notice before a default judgment may be entered.

IMPORTANT NOTICE

If judgment is taken against you, either by default or after hearing by the court, your property will be sold at public auction.

You may prevent the sale by paying the amount of the judgment at any time prior to the sale.

If your property is sold, you may redeem the property at any time up to two years after the date of the sale, by paying the amount for which the property was sold, plus interest and costs of the sale.

If you wish to seek the advice of an attorney in this matter, you should do so promptly so that your written response, if any, may be served on time.

[signed]
Print or Type Name
() Plaintiff () Plaintiff's
Attorney
P.O. Address

Dated Telephone Number

[1982 c 91 § 6.]

Severability—1982 c 91: See note following RCW 35.50.030.

35.50.230 Procedure—Parties and property included. In foreclosing local improvement assessment liens, it is not necessary to bring a separate suit for each of the lots, tracts, or parcels of land or other property or for each separate local improvement district or utility local improvement district. All or any of the lots, tracts, or parcels of land or other property upon which local improvement assessments are delinquent under any and all local improvement assessment rolls in the city or town may be proceeded against in the same action. For all lots, tracts, or parcels which contain a residential structure with an assessed value of at least two thousand dollars, all persons owning or claiming to own the property shall be made defendants thereto. For all other lots, tracts, or parcels, the persons whose names appear on the assessment roll and property tax rolls as owners of the property charged with the assessments or taxes shall be made defendants thereto. [1983 c 303 § 19; 1982 c 91 § 3; 1967 c 52 § 19; 1965 c 7 § 35.50.230. Prior: 1933 c 9 § 2, part; RRS § 9386-1, part.]

Severability—1983 c 303: See RCW 36.60.905.

Severability—1982 c 91: See note following RCW 35.50.030.

Construction—Severability—1967 c 52: See notes following RCW 35.43.042.

35.50.240 Procedure—Pleadings and evidence. In foreclosing local improvement assessment liens, the assessment roll and the ordinance confirming it, or duly authenticated copies thereof shall be prima facie evidence of the regularity and legality of the proceedings connected therewith and the burden of proof shall be on the defendants. [1982 c 91 § 4; 1965 c 7 § 35.50.240. Prior: 1933 c 9 § 2, part; RRS § 9386-1, part.]

Severability—1982 c 91: See note following RCW 35.50.030.

35.50.250 Procedure—Summons and service. In foreclosing local improvement assessments, if the lot, tract, or parcel contains a residential structure with an assessed value of at least two thousand dollars, the summons shall be served upon the defendants in the manner required by RCW 4.28.080. For all other lots, tracts, or parcels the summons shall be served by either personal service on the defendants or by certified and regular mail. [1983 c 303 § 20; 1982 c 91 § 5; 1965 c 7 § 35.50.250. Prior: 1933 c 9 § 2, part; RRS § 9386-1, part.]

Severability—1983 c 303: See RCW 36.60.905.

Severability—1982 c 91: See note following RCW 35.50.030.

Commencement of actions: Chapter 4.28 RCW.

35.50.260 Procedure—Trial and judgment—Notice of sale. In foreclosing local improvement assessments the action shall be tried to the court without a jury. If the parties interested in any particular lot, tract, or parcel default, the court may enter judgment of foreclosure and sale as to such parties and lots, tracts, or parcels and the action may proceed as to the remaining defendants and lots, tracts, or parcels. Judgment and order of sale may be entered as to

any one or more separate lots, tracts, or parcels involved in the action and the court shall retain jurisdiction to others.

The judgment shall specify separately the amount of the installments with interest, penalty, and all reasonable costs, including the title searches, chargeable to each lot, tract, or parcel. The judgment shall have the effect of a separate judgment as to each lot, tract, or parcel described in the judgment, and any appeal shall not invalidate or delay the judgment except as to the property concerning which the appeal is taken. In the judgment the court shall order the lots, tracts, or parcels therein described sold by the city or town treasurer or by the county sheriff and an order of sale shall issue pursuant thereto for the enforcement of the judgment.

In all other respects, the trial, judgment, and appeals to the supreme court or the court of appeals shall be governed by the statutes governing the foreclosure of mortgages on real property.

Prior to the sale of the property, if the property is shown on the property tax rolls under unknown owner or if the property contains a residential structure having an assessed value of two thousand dollars or more, the treasurer shall order or conduct a title search of the property to determine the record title holders and all persons claiming a mortgage, deed of trust, or mechanic's, laborer's, materialmen's, or vendor's lien on the property.

At least thirty days prior to the sale of the property, a copy of the notice of sale shall be mailed by certified and regular mail to all defendants in the foreclosure action as to that parcel, lot, or tract and, if the owner is unknown or the property contains a residential structure having an assessed value of two thousand dollars or more, a copy of the notice of sale shall be mailed by regular and certified mail to any additional record title holders and persons claiming a mortgage, deed of trust, or mechanic's, laborer's, materialmen's, or vendor's lien on the property.

In all other respects the procedure for sale shall be conducted in the same manner as property tax sales described in RCW 84.64.080. [1983 c 303 § 21; 1982 c 91 § 7; 1971 c 81 § 93; 1965 c 7 § 35.50.260. Prior: 1933 c 9 § 2, part; RRS § 9386-1, part.]

Severability—1983 c 303: See RCW 36.60.905.

Severability—1982 c 91: See note following RCW 35.50.030.

Foreclosure of real estate mortgages and personal property liens: Chapter 61.12 RCW.

Foreclosure of special assessments

by utility local improvement districts—Attorneys' fees: RCW 56.20.120.
by water districts—Attorneys' fees: RCW 57.16.150.

35.50.270 Procedure—Sale—Right of redemption. In foreclosing local improvement assessments, all sales shall be subject to the right of redemption within two years from the date of sale. [1983 c 303 § 22; 1982 c 91 § 8; 1965 c 7 § 35.50.270. Prior: 1933 c 9 § 2, part; RRS § 9386-1, part.]

Severability—1983 c 303: See RCW 36.60.905.

Severability—1982 c 91: See note following RCW 35.50.030.

Chapter 35.51

**LOCAL IMPROVEMENTS—CLASSIFICATION
OF PROPERTY—JOINT IMPROVEMENTS—
RESERVE FUNDS**

Sections

35.51.010	Definitions.
35.51.020	Joint planning, construction, and operation of improvements.
35.51.030	Alternative or additional method of assessment— Classification of property.
35.51.040	Reserve fund authorized—Use.
35.51.900	Authority supplemental—1985 c 397.
35.51.901	Severability—1985 c 397.

35.51.010 Definitions. The definitions set forth in this section apply throughout this chapter.

(1) "Local improvement district" means any local improvement district, local utility district, or any other similar special assessment district.

(2) "Municipality" means any city, town, county, metropolitan municipal corporation, or any other municipal corporation or quasi-municipal corporation of the state of Washington authorized to order local improvements, to establish local improvement districts, and to levy special assessments on property specially benefited thereby to pay the expense of the improvements.

(3) "Permissible floor area" means the maximum total floor area, at grade and above and below grade, of a building or other structure that may lawfully be developed on a property.

(4) "Private land use restriction" means any restriction on the use of property imposed by agreement and enforceable by a court of law and that the legislative authority of a municipality determines is useful in measuring special benefits to a property from an improvement. Such restrictions include but are not limited to easements, covenants, and equitable servitudes that are not mere personal obligations.

(5) "Public land use restriction" means any restriction on the use of property imposed by federal, state, or local laws, regulations, ordinances, or resolutions. Such restrictions include but are not limited to local zoning ordinances and historic preservation statutes. [1985 c 397 § 5.]

35.51.020 Joint planning, construction, and operation of improvements. A municipality may contract with any other municipality, with a public corporation, or with the state of Washington, for the following purposes:

(1) To have the acquisition or construction of the whole or any part of an improvement performed by another municipality, by a public corporation, or by the state of Washington;

(2) To pay, from assessments on property within a local improvement district or from the proceeds of local improvement district bonds, notes or warrants, the whole or any part of the expense of an improvement ordered, constructed, acquired, or owned by another municipality or a public corporation; or

(3) To integrate the planning, financing, construction, acquisition, management, or operation, or any combination thereof, of the improvements of one municipality or a public corporation with the planning, financing, construction,

acquisition, management, or operation, or any combination thereof, of the improvements of another municipality or public corporation on such terms and conditions as may be mutually agreed upon including, but not limited to, the allocation of the costs of the improvements and the allocation of planning, financing, construction, management, operation, or other responsibilities. [1987 c 242 § 5; 1985 c 397 § 6.]

Policy—1987 c 242: See note following RCW 35.43.005.

35.51.030 Alternative or additional method of assessment—Classification of property. (1) As an alternative or in addition to other methods of ascertaining assessments for local improvements, the legislative authority of a municipality may develop and apply a system of classification of properties based upon some or all of the public land use restrictions or private land use restrictions to which such property may be put at the time the assessment roll is confirmed.

(2) The legislative authority of a municipality may classify property into office, retail, residential, public, or any other classifications the legislative authority finds reasonable, and may levy special assessments upon different classes of property at different rates, but in no case may a special assessment exceed the special benefit to a particular property. A municipality also may exempt certain classes of property from assessment if the legislative authority of the municipality determines that properties within such classes will not specially benefit from the improvement.

(3) For each property within a classification, the legislative authority of the municipality may determine the special assessment after consideration of any or all of the following:

- (a) Square footage of the property;
- (b) Permissible floor area;
- (c) Distance from or proximity of access to the local improvement;
- (d) Private land use restrictions and public land use restrictions;
- (e) Existing facilities on the property at the time the assessment roll is confirmed; and
- (f) Any other factor the legislative authority finds to be a reasonable measure of the special benefits to the properties being assessed.

(4) If after the assessment roll is confirmed, the legislative authority of a municipality finds that the lawful uses of any assessed property have changed and that the property no longer falls within its original classification, the legislative authority may, in its discretion, reclassify and reassess such property whether or not the bonds issued to pay any part of such costs remain outstanding. If such reassessment reduces the total outstanding assessments within the local improvement district, the legislative authority shall either reassess all other properties upward in an aggregate amount equal to such reduction, or shall pledge additional money, including money in a reserve fund, to the payment of principal of and interest on such bonds in an amount equal to such reduction.

(5) When the legislative authority of a municipality determines that it will use the alternative or additional method of assessment authorized by this section, it may select and describe the method or methods of assessment in

the ordinance ordering a local improvement and creating a local improvement district if such method or methods of assessment have been described in the notice of hearing required under RCW 35.43.150. If the method or methods of assessment are so selected and described in the ordinance ordering a local improvement and creating a local improvement district, the action and decision of the legislative authority as to such method or methods of assessment shall be final and conclusive, and no lawsuit whatsoever may be maintained challenging such method or methods of assessment unless that lawsuit is served and filed no later than thirty days after the date of passage of the ordinance ordering the improvement, and creating the district or, when applicable, no later than thirty days after the expiration of the thirty-day protest period provided in RCW 35.43.180. [1985 c 397 § 7.]

35.51.040 Reserve fund authorized—Use. For the purpose of securing the payment of the principal of and interest on an issue of local improvement bonds, notes, warrants, or other short-term obligations, the legislative authority of a municipality may create a reserve fund in an amount not exceeding fifteen percent of the principal amount of the bonds, notes, or warrants issued. The cost of a reserve fund may be included in the cost and expense of any local improvement for assessment against the property in the local improvement district to pay the cost, or any part thereof. The reserve fund may be provided for from the proceeds of the bonds, notes, warrants, or other short-term obligations, from special assessment payments, or from any other money legally available therefor. The legislative authority of a municipality shall provide that after payment of administrative costs a sum in proportion to the ratio between the part of the original assessment against a given lot, tract, or parcel of land in a local improvement district assessed to create a reserve fund, if any, and the total original amount of such assessment, plus a proportionate share of any interest accrued in the reserve fund, shall be credited and applied, respectively, to any nondelinquent portion of the principal of that assessment and any nondelinquent installment interest on that assessment paid by a property owner, but in no event may the principal amount of bonds outstanding exceed the principal amount of assessments outstanding. Whether the payment is made during the thirty-day prepayment period referred to in RCW 35.49.010 and 35.49.020 or thereafter and whenever all or part of a remaining nondelinquent assessment or any nondelinquent installment payment of principal and interest is paid, the reserve fund balance shall be reduced accordingly as each such sum is thus credited and applied to a nondelinquent principal payment and a nondelinquent interest payment. Each payment of a nondelinquent assessment or any nondelinquent installment payment of principal and interest shall be reduced by the amount of the credit. The balance of a reserve fund remaining after payment in full and retirement of all local improvement bonds, notes, warrants, or other short-term obligations secured by such fund shall be transferred to the municipality's guaranty fund.

Where, before July 26, 1987, a municipality established a reserve fund under this section that did not provide for a credit or reimbursement of the money remaining in the

reserve fund to the owners of the lots, tracts, or parcels of property subject to the assessments, the balance in the reserve fund shall be distributed, after payment in full and retirement of all local improvement district bonds and other obligations secured by the reserve fund, to those owners of the lots, tracts, or parcels of property subject to the assessments at the time the final installment or assessment payment on the lot, tract, or parcel was made. No owner is eligible to receive reimbursement for a lot, tract, or parcel if a lien on an unpaid assessment, or an installment thereon, that was imposed on such property remains in effect at the time the reimbursement is made or was foreclosed on the property. The amount to be distributed to the owners of each lot, tract, or parcel that is eligible for reimbursement shall be equal to the balance in the reserve fund, multiplied by the assessment imposed on the lot, tract, or parcel, divided by the total of all the assessments on the lots, tracts, or parcels eligible for reimbursement. [1987 c 340 § 1; 1985 c 397 § 8.]

35.51.900 Authority supplemental—1985 c 397. The authority granted by *sections 1 through 8 of this act is supplemental and in addition to the authority granted by Title 35 RCW and to any other authority granted to cities, towns, or municipal corporations to levy special assessments. [1985 c 397 § 12.]

*Reviser's note: "Sections 1 through 8 of this act" [1985 c 397] consist of the enactment of RCW 35.51.010 through 35.51.040 and the 1985 c 397 amendments to RCW 35.43.040, 35.43.050, 35.44.010, and 35.44.020.

35.51.901 Severability—1985 c 397. 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 397 § 13.]

Chapter 35.53

LOCAL IMPROVEMENTS—DISPOSITION OF PROPERTY ACQUIRED

Sections	
35.53.010	Property to be held in trust—Taxability.
35.53.020	Discharge of trust.
35.53.030	Sale or lease of trust property.
35.53.040	Termination of trust in certain property.
35.53.050	Termination of trust in certain property—Complaint—Allegations.
35.53.060	Termination of trust in certain property—Property—Parties—Summons.
35.53.070	Termination of trust in certain property—Receivership—Regulations.

35.53.010 Property to be held in trust—Taxability. Property bid in by the city or town or struck off to it pursuant to proceedings for the foreclosure of local improvement assessment liens shall be held in trust by the city or town for the fund of the improvement district or the revenue bond fund into which assessments in utility local improvement districts are pledged to be paid for the benefit of which the property was sold. Any property so held in trust shall be exempt from taxation for general state, county and municipal purposes during the period that it is so held. [1967 c 52 §

20; 1965 c 7 § 35.53.010. Prior: 1933 c 107 § 1, part; 1927 c 275 § 3, part; 1911 c 98 § 31, part; RRS § 9383, part.]

Construction—Severability—1967 c 52: See notes following RCW 35.43.042.

35.53.020 Discharge of trust. The city or town may relieve itself of its trust relation to a local improvement district fund or revenue bond fund into which utility local improvement assessments are pledged to be paid as to any lot, tract, or parcel of property by paying into the fund the amount of the delinquent assessment for which the property was sold and all accrued interest, together with interest to the time of the next call of bonds or warrants against such fund at the rate provided thereon. Upon such payment the city or town shall hold the property discharged of the trust. [1967 c 52 § 21; 1965 c 7 § 35.53.020. Prior: 1933 c 107 § 1, part; 1927 c 275 § 3, part; 1911 c 98 § 31, part; RRS § 9383, part.]

Construction—Severability—1967 c 52: See notes following RCW 35.43.042.

35.53.030 Sale or lease of trust property. A city or town may lease or sell and convey any such property held in trust by it, by virtue of the conveyance thereof to it by a local improvement assessment deed. The sale may be public or private and for such price and upon such terms as may be determined by resolution of the council, any provisions of law, charter, or ordinance to the contrary notwithstanding. After first reimbursing any funds which may have advanced moneys on account of any lot, tract, or parcel, all proceeds resulting from lease or sale thereof shall ratably belong and be paid into the funds of the local improvement concerned. [1965 c 7 § 35.53.030. Prior: 1927 c 275 § 4; 1911 c 98 § 32; RRS § 9384.]

35.53.040 Termination of trust in certain property. A city or town which has heretofore acquired or hereafter acquires any property through foreclosure of delinquent assessments for local improvements initiated or proceedings commenced before June 8, 1927, may terminate its trust therein by an action in the superior court, if all the bonds and warrants outstanding in the local improvement district in which the assessments were levied are delinquent. [1965 c 7 § 35.53.040. Prior: 1929 c 142 § 1, part; RRS § 9384-1, part.]

35.53.050 Termination of trust in certain property—Complaint—Allegations. The complaint in any such action by a city or town to terminate its trust in property acquired at a local improvement assessment sale shall set forth:

- (1) The number of the local improvement district or utility local improvement district,
- (2) The bonds and warrants owing thereby,
- (3) The owners thereof or that the owners are unknown,
- (4) A description of the assets of the district with the estimated value thereof,
- (5) The amount of the assessments, including penalty and interest, of any other local improvement districts or utility local improvement districts which are a lien upon the same property,

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(6) The amount of the bonds and warrants owing by such other districts and the names of the owners thereof unless they are unknown, except where the bonds and warrants are guaranteed by a local improvement guaranty fund or pursuant to any other form of guaranty authorized by law. [1967 c 52 § 22; 1965 c 7 § 35.53.050. Prior: 1929 c 142 § 1, part; RRS § 9384-1, part.]

Construction—Severability—1967 c 52: See notes following RCW 35.43.042.

35.53.060 Termination of trust in certain property—Property—Parties—Summons. Two or more delinquent districts and all property, bonds and warrants therein may be included in one action to terminate the trust.

All persons owning any bonds or warrants of the districts involved in the action or having an interest therein shall be made parties defendant except in cases where the bonds or warrants are guaranteed by a local improvement guaranty fund or pursuant to any other form of guaranty authorized by law.

Summons shall be served as in other actions. Unknown owners and unknown parties shall be served by publication. [1965 c 7 § 35.53.060. Prior: 1929 c 142 § 1, part; RRS § 9384-1, part.]

Commencement of actions: Chapter 4.28 RCW.

35.53.070 Termination of trust in certain property—Receivership—Regulations. In such an action the court after acquiring jurisdiction shall proceed as in the case of a receivership except that the city or town shall serve as trustee in lieu of a receiver.

The assets of the improvement districts involved shall be sold at such prices and in such manner as the court may deem advisable and be applied to the costs and expenses of the action and the liquidation of the bonds and warrants of the districts or revenue bonds to which utility local improvement assessments are pledged to pay.

No notice to present claims other than the summons in the action shall be necessary. Any claim presented shall be accompanied by the bonds and warrants upon which it is based. Dividends upon any bonds or warrants for which no claim was filed shall be paid into the general fund of the city or town, but the owner thereof may obtain it at any time within five years thereafter upon surrender and cancellation of his bonds and warrants.

Upon the termination of the receivership the city or town shall be discharged from all trusts relating to the property, funds, bonds, and warrants involved in the action. [1967 c 52 § 23; 1965 c 7 § 35.53.070. Prior: 1929 c 142 § 1, part; RRS § 9384-1, part.]

Construction—Severability—1967 c 52: See notes following RCW 35.43.042.

Chapter 35.54

LOCAL IMPROVEMENTS—GUARANTY FUNDS

Sections	
35.54.010	Establishment.
35.54.020	Rules and regulations.
35.54.030	Source—Interest and earnings.
35.54.040	Source—Subrogation rights to assessments.
35.54.050	Source—Surplus from improvement funds.

- 35.54.060 Source—Taxation.
 35.54.070 Use of fund—Purchase of bonds, coupons and warrants.
 35.54.080 Use of fund—Purchase of general tax certificates or property on or after foreclosure—Disposition.
 35.54.090 Warrants against fund.
 35.54.095 Transfer of assets to general fund—When authorized—Payment of claims as general obligation, when.
 35.54.100 Deferral of collection of assessments for economically disadvantaged persons—Payment from guaranty fund—Lien—Payment dates for deferred obligations.

35.54.010 Establishment. There is established in every city and town a fund to be designated the "local improvement guaranty fund" for the purpose of guaranteeing, to the extent of the fund, the payment of its local improvement bonds and warrants issued to pay for any local improvement ordered in the city or town or in any area wholly or partly outside its corporate boundaries: (1) In any city of the first class having a population of more than three hundred thousand, subsequent to June 8, 1927; (2) in any city or town having created and maintained a guaranty fund under chapter 141, Laws of 1923, subsequent to the date of establishment of such fund; and (3) in any other city or town subsequent to April 7, 1926: PROVIDED, That this shall not apply to any city of the first class which maintains a local improvement guaranty fund under chapter 138, Laws of 1917, but any such city maintaining a guaranty fund under chapter 138, Laws of 1917 may by ordinance elect to operate under the provisions of this chapter and may transfer to the guaranty fund created hereunder all the assets of the former fund and, upon such election and transfer, all bonds guaranteed under the former fund shall be guaranteed under the provisions of this chapter. [1971 ex.s. c 116 § 7; 1965 c 7 § 35.54.010. Prior: (i) 1917 c 138 § 1; RRS § 8986. (ii) 1917 c 138 § 2; RRS § 8987. (iii) 1917 c 138 § 3; RRS § 8988. (iv) 1917 c 138 § 4; RRS § 8989. (v) 1917 c 138 § 5; RRS § 8990. (vi) 1917 c 138 § 6; RRS § 8991. (vii) 1927 c 209 § 1; 1925 ex.s. c 183 § 1; 1923 c 141 § 1; RRS § 9351-1. (viii) 1927 c 209 § 2, part; 1925 ex.s. c 183 § 2, part; 1923 c 141 § 2, part; RRS § 9351-2, part.]

35.54.020 Rules and regulations. Every city and town operating under the provisions of this chapter shall prescribe by ordinance appropriate rules and regulations for the maintenance and operation of the guaranty fund not inconsistent with the provisions of this chapter. [1965 c 7 § 35.54.020. Prior: 1933 c 109 § 1, part; 1927 c 209 § 3, part; 1925 ex.s. c 183 § 3, part; 1923 c 141 § 3, part; RRS § 9351-3, part.]

35.54.030 Source—Interest and earnings. Interest and earnings from the local improvement guaranty fund shall be paid into the fund. [1965 c 7 § 35.54.030. Prior: 1933 c 109 § 1, part; 1927 c 209 § 3, part; 1925 ex.s. c 183 § 3, part; 1923 c 141 § 3, part; RRS § 9351-3, part.]

35.54.040 Source—Subrogation rights to assessments. Whenever any sum is paid out of the local improvement guaranty fund on account of principal or interest of a local improvement bond or warrant, the city or town as trustee of the fund shall be subrogated to all the rights of the holder of the bond or interest coupon or warrant so paid, and the proceeds thereof, or of the underlying assessment, shall

become part of the guaranty fund. [1965 c 7 § 35.54.040. Prior: 1933 c 109 § 1, part; 1927 c 209 § 3, part; 1925 ex.s. c 183 § 3, part; 1923 c 141 § 3, part; RRS § 9351-3, part.]

35.54.050 Source—Surplus from improvement funds. If in any local improvement fund guaranteed by a local improvement guaranty fund there is a surplus remaining after the payment of all outstanding bonds and warrants payable therefrom, it shall be paid into the local improvement guaranty fund. [1965 c 7 § 35.54.050. Prior: 1933 c 109 § 1, part; 1927 c 209 § 3, part; 1925 ex.s. c 183 § 3, part; 1923 c 141 § 3, part; RRS § 9351-3, part.]

35.54.060 Source—Taxation. For the purpose of maintaining the local improvement guaranty fund, every city and town shall, at the time of making its annual budget and tax levy, provide for the levy of a sum sufficient, with the other sources of the fund, to pay the warrants issued against the fund during the preceding fiscal year and to establish a balance therein: PROVIDED, That the levy in any one year shall not exceed the greater of: (1) Twelve percent of the outstanding obligations guaranteed by the fund, or (2) the total amount of delinquent assessments and interest accumulated on the delinquent assessments before the levy as of September 1.

The taxes levied for the maintenance of the local improvement guaranty fund shall be additional to and, if need be, in excess of all statutory and charter limitations applicable to tax levies in any city or town. [1981 c 323 § 7; 1965 c 7 § 35.54.060. Prior: (i) 1933 c 109 § 1, part; 1927 c 209 § 3, part; 1925 ex.s. c 183 § 3, part; 1923 c 141 § 3, part; RRS § 9351-3, part. (ii) 1927 c 209 § 2, part; 1925 ex.s. c 183 § 2, part; 1923 c 141 § 2, part; RRS § 9351-2, part.]

Special assessments or taxation for local improvements: State Constitution Art. 7 § 9.

35.54.070 Use of fund—Purchase of bonds, coupons and warrants. Defaulted bonds, interest coupons and warrants against local improvement funds shall be purchased out of the guaranty fund, and as between the several issues of bonds, coupons, or warrants no preference shall exist, but they shall be purchased in the order of their presentation. [1965 c 7 § 35.54.070. Prior: 1933 c 109 § 1, part; 1927 c 209 § 3, part; 1925 ex.s. c 183 § 3, part; 1923 c 141 § 3, part; RRS § 9351-3, part.]

35.54.080 Use of fund—Purchase of general tax certificates or property on or after foreclosure—Disposition. For the purpose of protecting the guaranty fund, so much of the guaranty fund as is necessary may be used to purchase certificates of delinquency for general taxes on property subject to local improvement assessments which underlie the bonds, coupons, or warrants guaranteed by the fund, or to purchase such property at county tax foreclosures, or from the county after foreclosure.

The city or town, as trustee of the fund, may foreclose the lien of general tax certificates of delinquency and purchase the property at foreclosure sale; when doing so the court costs, costs of publication, expense for clerical work

and other expenses incidental thereto shall be charged to and paid from the local improvement guaranty fund.

After acquiring title to property by purchase at general tax foreclosure sale or from the county after foreclosure, a city or town may lease it or sell it at public or private sale at such price on such terms as may be determined by resolution of the council. All proceeds shall belong to and be paid into the local improvement guaranty fund. [1965 c 7 § 35.54.080. Prior: 1933 c 109 § 1, part; 1927 c 209 § 3, part; 1925 ex.s. c 183 § 3, part; 1923 c 141 § 3, part; RRS § 9351-3, part.]

35.54.090 Warrants against fund. Warrants drawing interest at a rate established by the issuing officer under the direction of the legislative authority of the city or town shall be issued against the local improvement guaranty fund to meet any liability accruing against it. The warrants so issued shall at no time exceed five percent of the outstanding obligations guaranteed by the fund. [1981 c 323 § 8; 1965 c 7 § 35.54.090. Prior: 1933 c 109 § 1, part; 1927 c 209 § 3, part; 1925 ex.s. c 183 § 3, part; 1923 c 141 § 3, part; RRS § 9351-3, part.]

35.54.095 Transfer of assets to general fund—When authorized—Payment of claims as general obligation, when. (1) Any city or town maintaining a local improvement guaranty fund under this chapter, upon certification by the city or town treasurer that the local improvement guaranty fund has sufficient funds currently on hand to meet all valid outstanding obligations of the fund and all other obligations of the fund reasonably expected to be incurred in the near future, may by ordinance transfer assets from such fund to its general fund. The net cash of the local improvement guaranty fund may be reduced by such transfer to an amount not less than ten percent of the net outstanding obligations guaranteed by such fund.

(2) If, at any time within five years of any transfer of assets from the local improvement guaranty fund to the general fund of a city or town, the net cash of the local improvement guaranty fund is reduced below the minimum amount specified in subsection (1) of this section, the city or town shall, to the extent of the amount transferred, pay valid claims against the local improvement guaranty fund as a general obligation of the city or town. In addition, such city or town shall pay all reasonable costs of collection necessarily incurred by the holders of valid claims against the local improvement guaranty fund. [1979 c 55 § 1.]

35.54.100 Deferral of collection of assessments for economically disadvantaged persons—Payment from guaranty fund—Lien—Payment dates for deferred obligations. Whenever payment of a local improvement district assessment is deferred pursuant to the provisions of RCW 35.43.250 the amount of the deferred assessment shall be paid out of the local improvement guaranty fund. The local improvement guaranty fund shall have a lien on the benefited property in an amount equal to the deferral together with interest as provided for by the establishing ordinance.

The lien may accumulate up to an amount not to exceed the sum of two installments: PROVIDED, That the ordi-

nance creating the local improvement district may provide for one or additional deferrals of up to two installments. Local improvement assessment obligations deferred under *this 1972 amendatory act shall become payable upon the earliest of the following dates:

- (1) Upon the date and pursuant to conditions established by the political subdivision granting the deferral; or
- (2) Upon the sale of property which has a deferred assessment lien upon it from the purchase price; or
- (3) Upon the death of the person to whom the deferral was granted from the value of his estate; except a surviving spouse shall be allowed to continue the deferral which shall then be payable by that spouse as provided in this section. [1972 ex.s. c 137 § 3.]

*Reviser's note: "this 1972 amendatory act" [1972 ex.s. c 137] consists of RCW 35.43.250 and 35.54.100 and the 1972 ex.s. amendments to RCW 35.49.010 and 35.50.050.

Severability—1972 ex.s. c 137: See note following RCW 35.49.010.

Chapter 35.55

LOCAL IMPROVEMENTS—FILLING LOWLANDS

Sections

35.55.010	Authority—Second and third class cities.
35.55.020	Alternative methods of financing.
35.55.030	Boundaries—Excepted property.
35.55.040	Damages—Eminent domain.
35.55.050	Estimates—Plans and specifications.
35.55.060	Assessment roll—Items—Assessment units—Installments.
35.55.070	Hearing on assessment roll—Notice—Council's authority.
35.55.080	Hearings—Appellate review.
35.55.090	Lien—Collection of assessments.
35.55.100	Interest on assessments.
35.55.110	Payment of cost of improvement—Interest on warrants.
35.55.120	Local improvement bonds—Terms.
35.55.130	Local improvement bonds—Guaranties.
35.55.140	Local improvement bonds and warrants—Sale to pay damages, preliminary financing.
35.55.150	Local improvement fund—Investment.
35.55.160	Letting contract for improvement—Excess or deficiency of fund.
35.55.170	Payment of contractor—Bonds, warrants, cash.
35.55.180	Reassessments.
35.55.190	Provisions of chapter not exclusive.

35.55.010 Authority—Second and third class cities. If the city council of any city of the second and third class deems it necessary or expedient on account of the public health, sanitation, the general welfare, or other cause, to fill or raise the grade of any marshlands, swamplands, tidelands, shorelands, or lands commonly known as tideflats, or any other lowlands situated within the limits of the city, and to clear and prepare the lands for such filling, it may do so and assess the expense thereof, including the cost of making compensation for property taken or damaged, and all other costs and expense incidental to such improvement, to the property benefited, except such amount of such expense as the city council may direct to be paid out of the current or general expense fund.

If, in the judgment of the city council the special benefits for any such improvement shall extend beyond the boundaries of the filled area, the council may create an enlarged district which shall include, as near as may be, all the property, whether actually filled or not, which will be specially benefited by such improvement, and in such case

the council shall specify and describe the boundaries of such enlarged district in the ordinance providing for such improvement and shall specify that such portion of the total cost and expense of such improvement as may not be borne by the current or general expense fund, shall be distributed and assessed against all the property of such enlarged district. [1965 c 7 § 35.55.010. Prior: 1917 c 63 § 1; 1909 c 147 § 1; RRS § 9432.]

35.55.020 Alternative methods of financing. If the city council desires to make any improvement authorized by the provisions of this chapter it shall provide therefor by ordinance and unless the ordinance provides that the improvement shall be paid for wholly or in part by special assessments upon the property benefited, compensation therefor shall be made from any general funds of the city applicable thereto. If the ordinance provides that the improvement shall be paid for wholly or in part by special assessments upon property benefited, the proceedings for the making of the special assessments shall be as hereinafter provided. [1965 c 7 § 35.55.020. Prior: 1909 c 147 § 2, part; RRS § 9433, part.]

Special assessments or taxation for local improvements: State Constitution Art. 7 § 9.

35.55.030 Boundaries—Excepted property. Such ordinance shall specify the boundaries of the proposed improvement district and shall describe the lands which it is proposed to assess for said improvement. If any parcel of land within the boundaries of such proposed improvement district has been wholly filled to the proposed grade elevation of the proposed fill, such parcel of land may be excluded from the lists of lands to be assessed, when in the opinion of the city council justice and equity require its exclusion. The boundaries of any improvement district may be altered so as to exclude land therefrom at any time up to the levying of the assessment but such changing of the boundaries shall be by ordinance. [1965 c 7 § 35.55.030. Prior: 1909 c 147 § 2, part; RRS § 9433, part.]

35.55.040 Damages—Eminent domain. If an ordinance has been passed as in this chapter provided, and it appears that in making of the improvement so authorized, private property will be taken or damaged thereby, the city shall file a petition in the superior court of the county in which such city is situated, in the name of the city, praying that just compensation to be made for the property to be taken or damaged for the improvement specified in the ordinance be ascertained, and conduct proceedings in eminent domain in accordance with the statutes relating to cities for the ascertainment of the compensation to be made for the taking and damaging of property, except insofar as the same may be inconsistent with this chapter.

The filling of unimproved and uncultivated lowlands of the character mentioned in RCW 35.55.010 shall not be considered as damaging or taking of such lands. The damage if any, done to cultivated lands or growing crops thereon, or to buildings and other improvements situated within the district proposed to be filled, shall be ascertained and determined in the manner above provided; but no damage shall be awarded to any property owner for build-

ings or improvements placed upon lands included within said district after the publication of the ordinance defining the boundaries of the proposed improvement district: PROVIDED, That the city shall after the passage of such ordinance, proceed with said improvement with due diligence. If the improvement is to be made at the expense of the property benefited, no account shall be taken of benefits by the jury or court in assessing the amount of compensation to be made to the owner of any property within such district, but such compensation shall be assessed without regard to benefits to the end that said property for which damages may be so awarded, may be assessed the same as other property within the district for its just share and proportion of the expense of making said improvement, and the fact that compensation has been awarded for the damaging or taking of any parcel of land shall not preclude the assessment of such parcel of land for its just proportion of said improvement. [1965 c 7 § 35.55.040. Prior: 1909 c 147 § 3; RRS § 9434.]

Eminent domain by cities: Chapter 8.12 RCW.

35.55.050 Estimates—Plans and specifications. At the time of the initiation of the proceedings for any improvement as contemplated by this chapter, or at any time afterward, the city council shall cause plans and specifications for said improvement to be prepared and shall cause an estimate to be made of the cost and expense of making said improvement, including the cost of supervision and engineering, abstractor's fees, interest and discounts and all other expenses incidental to said improvement, including an estimate of the amount of damages for property taken or damaged, which plans, specifications and estimates shall be approved by the city council. [1965 c 7 § 35.55.050. Prior: 1909 c 147 § 4; RRS § 9435.]

35.55.060 Assessment roll—Items—Assessment units—Installments. When such plans and specifications have been prepared and the estimates of the cost and expense of making the improvement have been adopted by the council and when an estimate has been made of the compensation to be paid for property damaged or taken, either before or after the compensation has been ascertained in the eminent domain proceedings, the city council shall cause an assessment roll to be prepared containing a list of all of the property within the improvement district which it is proposed to assess for the improvement, together with the names of the owners, if known, and if unknown the property shall be assessed to an unknown owner, and opposite each description shall be set the amount assessed to such description.

When so ordered by the council, the entire amount of compensation paid or to be paid for property damaged or taken, including all of the costs and expenses incidental to the condemnation proceedings together with the entire cost and expense of making the improvement, may be assessed against the property within the district subject to assessment, but the council may order any portion of the costs paid out of the current or general expense fund of the city.

The assessments shall be made according to and in proportion to surface area one square foot of surface to be the unit of assessment, except that the several parcels of land in any enlarged district not actually filled shall be assessed

in accordance with special benefits: PROVIDED, That where any parcel of land was partially filled by the owner prior to the initiation of the improvement, an equitable deduction for such partial filling may be allowed.

The cost and expense incidental to the filling of the streets, alleys and public places within such assessment district shall be borne by the private property within such district subject to assessment when so ordered by the council. When the assessments are payable in installments, the assessment roll when equalized, shall show the number of installments and the amounts thereof. The assessments may be made payable in any number of equal annual installments not exceeding ten in number. [1965 c 7 § 35.55.060. Prior: 1917 c 63 § 2; 1909 c 147 § 5; RRS § 9436.]

35.55.070 Hearing on assessment roll—Notice—Council's authority. When such assessment roll has been prepared it shall be filed in the office of the city clerk and thereupon the city clerk shall give notice by publication in at least three issues of the official paper that such roll is on file in his office and that at a date mentioned in said notice, which shall be at least twenty days after the date of the first publication thereof, the city council will sit as a board of equalization to equalize said roll and to hear, consider and determine protests and objections against the same.

At the time specified in the notice, the city council shall sit as a board of equalization to equalize the roll and they may adjourn the sitting from time to time until the equalization of such roll is completed. The city council as board of equalization may hear, consider and determine objections and protests against any assessment and may make such alterations and modifications in the assessment roll as justice and equity may require. [1965 c 7 § 35.55.070. Prior: 1909 c 147 § 6; RRS § 9437.]

35.55.080 Hearings—Appellate review. Any person who has made objections to the assessment as equalized, shall have the right to appeal from the equalization as made by the city council to the superior court of the county. The appeal shall be made by filing a written notice of appeal with the city clerk within ten days after the equalization of the assessments by the council. The notice of appeal shall describe the property and the objections of such appellant to such assessment.

The appellant shall also file with the clerk of the superior court within ten days from the time of taking the appeal a copy of the notice of appeal together with a copy of the assessment roll and proceedings thereon, certified by the city clerk and a bond to the city conditioned to pay all costs that may be awarded against appellant in such sum not less than two hundred dollars and with such security as shall be approved by the clerk of the court.

The case shall be docketed by the clerk of the court in the name of the person taking the appeal as plaintiff and the city as defendant. The cause shall then be at issue and shall be tried immediately by the court as in the case of equitable causes; no further pleadings shall be necessary. The judgment of the court shall be either to confirm, modify or annul the assessment insofar as the same affects the property of the appellant. Appellate review of the superior court's

decision may be sought as in other causes. [1988 c 202 § 38; 1971 c 81 § 94; 1965 c 7 § 35.55.080. Prior: 1909 c 147 § 7; RRS § 9438.]

Severability—1988 c 202: See note following RCW 2.24.050.

35.55.090 Lien—Collection of assessments. From and after the equalization of the roll, the several assessments therein shall become a lien upon the real estate described therein and shall remain a lien until paid. The assessment lien shall take precedence of all other liens against such property, except the lien of general taxes. The assessments shall be collected by the same officers and enforced in the same manner as provided by law for the collection and enforcement of local assessments for street improvements. All of the provisions of laws and ordinances relative to the enforcement and collection of local assessments for street improvements shall be applicable to these assessments. [1965 c 7 § 35.55.090. Prior: 1909 c 147 § 8; RRS § 9439.]

Assessments for local improvements, collection and foreclosure: Chapters 35.49, 35.50 RCW.

35.55.100 Interest on assessments. The local assessments shall bear interest at such rate as may be fixed by the council after the expiration of thirty days after the equalization of the assessment roll and shall bear such interest after delinquency as may be provided by general ordinance of the city. [1981 c 156 § 3; 1965 c 7 § 35.55.100. Prior: 1909 c 147 § 12, part; RRS § 9443, part.]

35.55.110 Payment of cost of improvement—Interest on warrants. If the improvement contemplated by this chapter is ordered to be made upon the immediate payment plan, the city council shall provide for the payment thereof by the issuance of local improvement fund warrants against the local improvement district, which warrants shall be paid only out of the funds derived from the local assessments in the district and shall bear interest at a rate determined by the city council from date of issuance. If the improvement is ordered to be made upon the bond installment plan, the city council shall provide for the issuance of bonds against the improvement district. [1981 c 156 § 4; 1965 c 7 § 35.55.110. Prior: (i) 1909 c 147 § 12, part; RRS § 9443, part. (ii) 1909 c 147 § 9; RRS § 9440.]

35.55.120 Local improvement bonds—Terms. The city council shall have full authority to provide for the issuance of bonds against the improvement district fund in such denominations as the city council may provide which shall bear such rate of interest as the city council may fix. Interest shall be paid annually and the bonds shall become due and payable at such time, not exceeding ten years from the date thereof, as may be fixed by the council and shall be payable out of the local assessment district fund.

If so ordered by the council, the bonds may be issued in such a way that different numbers of the bonds may become due and payable at different intervals of time, or they may be so issued that all of the bonds against said district mature together. [1981 c 156 § 5; 1965 c 7 § 35.55.120. Prior: 1909 c 147 § 10, part; RRS § 9441, part.]

35.55.130 Local improvement bonds—Guaranties. The city may guarantee the payment of the whole or any part of the bonds issued against a local improvement district, but the guaranties on the part of the city, other than a city operating under the council-manager form or the commission form, shall be made only by ordinance passed by the vote of not less than nine councilmen and the approval of the mayor in cities of the second class, and six councilmen and approval of the mayor in cities of the third class. In a city under the council-manager form of government, such guaranties shall be made only in an ordinance passed by a vote of three out of five or five out of seven councilmen, as the case may be, and approval of the mayor. In a city under the commission form of government, such guaranties shall be made only in an ordinance passed by a vote of two out of three of the commissioners. The mayor's approval shall not be necessary in commission form cities. [1965 c 7 § 35.55.130. Prior: 1909 c 147 § 10, part; RRS § 9441, part.]

35.55.140 Local improvement bonds and warrants—Sale to pay damages, preliminary financing. The city council may negotiate sufficient warrants or bonds against any local improvement district at a price not less than ninety-five percent of their par value to raise sufficient money to pay any and all compensation which may be awarded for property damaged or taken in the eminent domain proceedings including the costs of such proceedings. In lieu of so doing, the city council may negotiate current or general expense fund warrants at par to raise funds for the payment of such compensation and expenses in the first instance, but in that event the current or general expense fund shall be reimbursed out of the first moneys collected in any such local assessment district or realized from the negotiation or sale of local improvement warrants or bonds. [1965 c 7 § 35.55.140. Prior: 1909 c 147 § 11; RRS § 9442.]

35.55.150 Local improvement fund—Investment. If money accumulates in an improvement fund and is likely to lie idle awaiting the maturity of the bonds against the district, the city council, under proper safeguards, may invest it temporarily, or may borrow it temporarily, at a reasonable rate of interest, but when so invested or borrowed, the city shall be responsible and liable for the restoration to such fund of the money so invested or borrowed with interest thereon, whenever required for the redemption of bonds maturing against such district. [1965 c 7 § 35.55.150. Prior: 1909 c 147 § 15; RRS § 9446.]

35.55.160 Letting contract for improvement—Excess or deficiency of fund. The contract for the making of the improvement may be let either before or after the making up of the equalization of the assessment roll, and warrants, or bonds may be issued against the local improvement district fund either before or after the equalization of the roll as in the judgment of the council may best subserve the public interest.

If, after the assessment roll is made up and equalized, based in whole or in part upon an estimate of the cost of the improvement, and it is found that the estimate was too high, the excess shall be rebated pro rata to the property owners

on the assessment roll, the rebates to be deducted from the last installment, or installments, when the assessment is upon the installment plan.

If it is found that the estimated cost was too low and that the actual bona fide cost of the improvement is greater than the estimate, the city council, after due notice and a hearing, as in case of the original equalization of the roll, may add the required additional amount to the assessment roll to be apportioned among the several parcels of property upon the same rules and principles as if it had been originally included, except that the additional amount shall be added to the last installment of an assessment if assessments are payable upon the installment plan. The same notice shall be required for adding to the assessment roll in this manner as is required for the original equalization of the roll, and the property owner shall have the right of appeal. [1965 c 7 § 35.55.160. Prior: 1909 c 147 § 13; RRS § 9444.]

35.55.170 Payment of contractor—Bonds, warrants, cash. The city council may provide in letting the contract for an improvement, that the contractor shall accept special fund warrants or local improvement bonds against the local improvement district within which such improvement is to be made, in payment for the contract price of the work, and that the warrants or bonds may be issued to the contractor from time to time as the work progresses, or the city council may negotiate the special fund warrants or bonds against the local improvement district at not less than ninety-five cents in money for each dollar of warrants or bonds, and with the proceeds pay the contractor for the work and pay the other costs of such improvement. [1965 c 7 § 35.55.170. Prior: 1909 c 147 § 14; RRS § 9445.]

35.55.180 Reassessments. If any assessment is found to be invalid for any cause or if it is set aside for any reason in judicial proceeding, a reassessment may be made and all laws relative to the reassessment of local assessments, for street or other improvements, shall, as far as practicable, be applicable hereto. [1965 c 7 § 35.55.180. Prior: 1909 c 147 § 16; RRS § 9447.]

35.55.190 Provisions of chapter not exclusive. The provisions of this chapter shall not be construed as repealing or in any wise affecting any existing laws relative to the making of any such improvements, but shall be considered as concurrent therewith. [1965 c 7 § 35.55.190. Prior: 1909 c 147 § 17; RRS § 9448.]

Chapter 35.56

LOCAL IMPROVEMENTS—FILLING AND DRAINING LOWLANDS—WATERWAYS

Sections

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35.56.010 Authority—First, second and third class cities. If the city council or commission of any city of the first, second or third class in this state deems it necessary or expedient on account of the public health, sanitation, the general welfare, or other cause, to fill or raise the grade or elevation of any marshlands, swamplands, tidelands or lands commonly known as tideflats, or any other lands situated within the limits of such city and to clear and prepare said lands for such filling it may do so by proceeding in accordance with the provisions of this chapter.

For the purpose of filling and raising the grade or elevation of such lands and to secure material therefor and to provide for the proper drainage thereof after such fill has been effected, the city council or commission may acquire rights of way (and where necessary or desirable, may vacate, use and appropriate streets and alleys for such purposes) and lay out, build, construct and maintain over and across such lowlands, canals or artificial waterways of at least sufficient width, depth and length to provide and afford the quantity of earth, dirt and material required to complete such fill, and with the earth, dirt and material removed in digging and constructing such canals and waterways, fill and raise the grade or elevation of such marshlands, swamplands, tidelands or tideflats; and such canals or waterways shall be constructed of such width and depth (provided that all the earth, dirt and other suitable material removed in constructing the same shall be used to fill the lowlands as herein provided) as will make them available, convenient and suitable to provide water frontage for landings, wharves and other conveniences of navigation and commerce for the use and benefit of the city and the public. If canals or waterways are to be constructed as herein provided, such city may construct and maintain the necessary bridges over and across the same; such canals or waterways shall be forever under the control of such city and shall be and become public thoroughfares and waterways for the use and benefit of commerce, shipping, the city and the public generally.

The expense of making such improvement and in doing, accomplishing and effecting all the work provided for in this chapter including the cost of making compensation for property taken or damaged, and all other cost and expense

incidental to such improvement, shall be assessed to the property benefited, except such amount of such expense as the city council or commission, in its discretion, may direct to be paid out of the current or general expense fund. [1965 c 7 § 35.56.010. Prior: 1929 c 63 § 1; 1913 c 16 § 1; RRS § 9449.]

35.56.020 Alternative methods of financing. If the city council or commission desires to make any improvement authorized by the provisions of this chapter it shall provide therefor by ordinance and unless the ordinance provides that the improvement shall be paid for wholly or in part by special assessment upon the property benefited, compensation therefor shall be made from any general or special funds of the city applicable thereto. If the ordinance provides that the improvement shall be paid for wholly or in part by special assessments upon property benefited, the proceedings for the making of such special assessment shall be as hereafter provided. [1965 c 7 § 35.56.020. Prior: 1913 c 16 § 2, part; RRS § 9450, part.]

Special assessments or taxation for local improvements: State Constitution Art. 7 § 9.

35.56.030 Boundaries—Excepted property. Such ordinance shall specify the boundaries of the proposed improvement district and shall describe the lands which it is proposed to assess for said improvement, and shall provide for the filling of such lowlands and shall outline the general scheme or plan of such fill. If any parcel of land within the boundaries of such proposed improvement district prior to the initiation of the improvement has been wholly filled to the proposed grade or elevation of the proposed fill, such parcel of land may be excluded from the lands to be assessed when in the opinion of the city council or commission justice and equity require its exclusion. The boundaries of any improvement district may be altered so as to exclude land therefrom at any time up to the levying of the assessment but such changing of the boundaries shall be by ordinance. [1965 c 7 § 35.56.030. Prior: 1913 c 16 § 2, part; RRS § 9450, part.]

35.56.040 Conditions precedent to passage of ordinance—Protests. Upon the introduction of an ordinance providing for such fill, if the city council or commission desires to proceed, it shall fix a time, not less than ten days, in which protests against said fill may be filed in the office of the city clerk. Thereupon it shall be the duty of the clerk of said city to publish in the official newspaper of said city in at least two consecutive issues thereof before the time fixed for the filing of protests, a notice of the time fixed for the filing of protests together with a copy of the proposed ordinance as introduced.

Protests against the proposed fill to be effective must be filed by the owners of more than half of the area of land situated within the proposed filling district exclusive of streets, alleys and public places on or before the date fixed for such filing. If an effective protest is filed the council shall not proceed further unless two-thirds of the members of the city council vote to proceed with the work; if the city is operating under a commission form of government composed of three commissioners, the commission shall not

proceed further except by a unanimous affirmative vote of all the members thereof, if the commission is composed of five members, at least four affirmative votes thereof shall be necessary before proceeding.

If no effective protest is filed or if an effective protest is filed and two-thirds of the councilmen vote to proceed with the work or in cases where cities are operating under the commission form of government, the commissioners vote unanimously or four out of five commissioners vote to proceed with the work, the city council or commission shall at such meeting or in a succeeding meeting proceed to pass the proposed ordinance for the work, with such amendments and modifications as to the said city council or commission of said city may seem proper. The local improvement district shall be called "filling district No. . . ." [1965 c 7 § 35.56.040. Prior: 1913 c 16 § 2, part; RRS § 9450, part.]

35.56.050 Damages—Eminent domain. If an ordinance is passed as in this chapter provided, and it appears that in making of the improvements so authorized, private property will be taken or damaged thereby within or without the city, the city shall file a petition in the superior court of the county in which such city is situated, in the name of the city, praying that just compensation be made for the property to be taken or damaged for the improvement specified in the ordinance and conduct proceedings in eminent domain in accordance with the statutes relating to cities for the ascertainment of the compensation to be made for the taking and damaging of property, except insofar as the same may be inconsistent with this chapter.

The filling of unimproved and uncultivated lowlands of the character mentioned in RCW 35.56.010 shall not be considered as a damaging or taking of such lands. The damage, if any, done to cultivated lands or growing crops thereon, or to buildings and other improvements situated within the district proposed to be filled shall be ascertained and determined in the manner above provided; but no damage shall be awarded to any property owner for buildings or improvements placed upon lands included within said district after the publication of the ordinance defining the boundaries of the proposed improvement district: PROVIDED, That the city shall, after the passage of such ordinance, proceed with said improvement with due diligence.

If the improvement is to be made at the expense of the property benefited, no account shall be taken of benefits by the jury or court in assessing the amount of compensation to be made to the owner of any property within such district, but such compensation shall be assessed without regard to benefits to the end that said property for which damages may be so awarded, may be assessed the same as other property within the district for its just share and proportion of the expense of making said improvement, and the fact that compensation has been awarded for the damaging or taking of any parcel of land shall not preclude the assessment of such parcel of land for its just proportion of said improvement. [1965 c 7 § 35.56.050. Prior: (i) 1913 c 16 § 3; RRS § 9451. (ii) 1929 c 63 § 4; 1913 c 16 § 21; RRS § 9469.]

Eminent domain, cities: Chapter 8.12 RCW.

35.56.060 Estimates—Plans and specifications. At the time of the initiation of the proceedings for any improvement as contemplated by this chapter or at any time afterward, the city council or commission shall cause plans and specifications for said improvement to be prepared and shall cause an estimate to be made of the cost and expense of making said improvement, including the cost of supervision and engineering, abstractor's fees, interest and discounts and all other expenses incidental to said improvement, including an estimate of the amount of damages for property taken or damaged, which plans, specifications and estimates shall be approved by the city council or commission. [1965 c 7 § 35.56.060. Prior: 1913 c 16 § 4; RRS § 9452.]

35.56.070 Assessment roll—Items—Assessment units—Installments. When such plans and specifications shall have been prepared and the estimate of the cost and expense of making the improvement has been adopted by the council or commission and when an estimate has been made of the compensation to be paid for property damaged or taken, either before or after the compensation has been ascertained in the eminent domain proceedings, the city council or commission shall cause an assessment roll to be prepared containing a list of all the property within the improvement district which it is proposed to assess for the improvements together with the names of the owners, if known, and if unknown, the property shall be assessed to an unknown owner, and opposite each description shall be set the amount assessed to such description.

When so ordered by the city council or commission, the entire amount of compensation paid or to be paid for property damaged or taken, including all of the costs and expenses incidental to the condemnation proceedings together with the entire cost and expense of making the improvement may be assessed against the property within the district subject to assessment, but the city council or commission may order any portion of the costs paid out of the current or general expense fund of the city. The assessments shall be made according to and in proportion to surface area, one square foot of surface to be the unit of assessment: PROVIDED, That where any parcel of land was wholly or partially filled by the owner prior to the initiation of the improvement an equitable deduction for such filling or partial filling may be allowed.

The cost and expense incidental to the filling of the streets, alleys and public places within said assessment district shall be borne by the private property within such district subject to assessment when so ordered by the city council or commission. When the assessments are payable in installments, the assessment roll when equalized shall show the number of installments and the amounts thereof. The assessment may be made payable in any number of equal annual installments not exceeding fifteen in number. [1965 c 7 § 35.56.070. Prior: 1913 c 16 § 5; RRS § 9453.]

35.56.080 Hearing on assessment roll—Notice—Council's authority. When such assessment roll has been prepared it shall be filed in the office of the city clerk and thereupon the city clerk shall give notice by publication in at least three issues of the official paper that such roll is on file in his office and on a date mentioned in said notice,

which shall be at least twenty days after the date of the first publication thereof, the city council or commission will sit as a board of equalization to equalize said roll and to hear, consider and determine protests and objections against the same.

At the time specified in the notice, the city council or commission shall sit as a board of equalization to equalize the roll and they may adjourn the sitting from time to time until the equalization of such roll is completed. The city council or commission as such board of equalization may hear, consider and determine objections and protests against any assessment and make such alterations and modifications in the assessment roll as justice and equity may require. [1965 c 7 § 35.56.080. Prior: 1913 c 16 § 6; RRS § 9454.]

35.56.090 Hearing—Appellate review. Any person who has made objections to the assessment as equalized, shall have the right to appeal from the equalization as made by the city council or commission to the superior court of the county. The appeal shall be made by filing a written notice of appeal with the city clerk within ten days after the equalization of the assessments by the council or commission. The notice of appeal shall describe the property and the objections of such appellant to such assessment.

The appellant shall also file with the clerk of the superior court within ten days from the time of taking the appeal a copy of the notice of appeal together with a copy of the assessment roll and proceedings thereon, certified by the city clerk and a bond to the city conditioned to pay all costs that may be awarded against appellant in such sum not less than two hundred dollars, and with such security as shall be approved by the clerk of the court.

The case shall be docketed by the clerk of the court in the name of the person taking the appeal as plaintiff, and the city as defendant. The cause shall then be at issue and shall be tried immediately by the court as in the case of equitable causes; no further pleadings shall be necessary. The judgment of the court shall be either to confirm, modify or annul the assessment insofar as the same affects the property of the appellant. Appellate review of the superior court's decision may be sought as in other causes. [1988 c 202 § 39; 1971 c 81 § 95; 1965 c 7 § 35.56.090. Prior: 1913 c 16 § 7; RRS § 9455.]

Severability—1988 c 202: See note following RCW 2.24.050.

35.56.100 Lien—Collection of assessments. From and after the equalization of the roll, the several assessments therein shall become a lien upon the real estate described therein and shall remain a lien until paid. The assessment lien shall take precedence of all other liens against such property, except the lien of general taxes. The assessments shall be collected by the same officers and enforced in the same manner as provided by law for the collection and enforcement of local assessments for street improvements. All of the provisions of laws and ordinances relative to the guaranty, enforcement, and collection of local assessments for street improvements, including foreclosure in case of delinquency, shall be applicable to these assessments. [1965 c 7 § 35.56.100. Prior: 1929 c 63 § 2; 1913 c 16 § 8; RRS § 9456.]

Assessments for local improvements, collection and foreclosure: Chapters 35.49, 35.50 RCW.

35.56.110 Interest on assessments. The local assessments shall bear interest at such rate as may be fixed by the council or commission from and after the expiration of thirty days after the equalization of the assessment roll and shall bear such interest after delinquency as may be provided by general ordinance of the city. [1981 c 156 § 6; 1965 c 7 § 35.56.110. Prior: 1929 c 63 § 3; 1913 c 16 § 12; RRS § 9460.]

35.56.120 Payment of cost of improvement—Interest on warrants. If the improvement contemplated by this chapter is ordered to be made upon the immediate payment plan, the city council or commission shall provide for the payment thereof by the issuance of local improvement fund warrants against the local improvement district, which warrants shall be paid only out of the funds derived from the local assessments in the district and shall bear interest at a rate determined by the city council or commission from date of issuance. If the improvement is ordered to be made upon the bond installment plan, the city council or commission shall provide for the issuance of bonds against the improvement district. [1981 c 156 § 7; 1965 c 7 § 35.56.120. Prior: 1913 c 16 § 9; RRS § 9457.]

35.56.130 Local improvement bonds—Terms. The city council or commission shall have full authority to provide for the issuance of such bonds against the improvement district fund in such denominations as the city council or commission may provide, which shall bear such rate of interest as the city council or commission may fix. Interest shall be paid annually and the bonds shall become due and payable at such time, not exceeding fifteen years from the date thereof, as may be fixed by the said council or commission and shall be payable out of the assessment district funds.

If so ordered by the council or commission, the bonds may be issued in such a way that different numbers of the bonds may become due and payable at different intervals of time, or they may be so issued that all of the bonds against said district mature together. The city may reserve the right to call or mature any bond on any interest paying date when sufficient funds are on hand for its redemption; but bonds shall be called in numerical order. [1981 c 156 § 8; 1965 c 7 § 35.56.130. Prior: 1913 c 16 § 10, part; RRS § 9458, part.]

35.56.140 Local improvement bonds—Guaranties. The city may guarantee the payment of the whole or any part of the bonds issued against a local improvement district, but the guaranties on the part of the city shall be made only by ordinance passed by the vote of not less than two-thirds of the councilmen and the approval of the mayor, or three commissioners in case the governing body consist of three commissioners, or four where such city is governed by five commissioners. [1965 c 7 § 35.56.140. Prior: 1913 c 16 § 10, part; RRS § 9458, part.]

35.56.150 Local improvement bonds and warrants—Sale to pay damages—Preliminary financing. The city council or commission may negotiate sufficient warrants or bonds against any local improvement district at a price not less than ninety-five percent of their par value to raise sufficient money to pay any and all compensation which may be awarded for property damaged or taken in the eminent domain proceedings, including the costs of such proceedings. In lieu of so doing, the city council or commission may negotiate current or general expense fund warrants at par to raise funds for the payment of such compensation and expenses in the first instance, but in that event the current or general expense fund shall be reimbursed out of the first moneys collected in any such local assessment district or realized from the negotiation or sale of local improvement warrants or bonds. [1965 c 7 § 35.56.150. Prior: 1913 c 16 § 11; RRS § 9459.]

35.56.160 Local improvement fund—Investment. If money accumulates in an improvement fund and is likely to lie idle waiting the maturity of the bonds against the district, the city council or commission, under proper safeguards, may invest it temporarily, or may borrow it temporarily, at a reasonable rate of interest, but when so invested or borrowed, the city shall be responsible and liable for the restoration to such fund of the money so invested or borrowed with interest thereon, whenever required for the redemption of bonds maturing against such district. [1965 c 7 § 35.56.160. Prior: 1913 c 16 § 15; RRS § 9463.]

35.56.170 Letting contracts for improvement—Excess or deficiency of fund. The contract for the making of the improvement may be let either before or after the making up of the equalization of the assessment roll, and warrants or bonds may be issued against the local improvement district fund either before or after the equalization of the roll as in the judgment of the council or commission may best subserve the public interest.

If after the assessment roll is made up and equalized, based in whole or in part upon an estimate of the cost of the improvement, and it is found that the estimate was too high, the excess shall be rebated pro rata to the property owners on the assessment roll, the rebates to be deducted from the last installment, or installments, when the assessment is upon the installment plan.

If it is found that the estimated cost was too low and that the actual bona fide cost of the improvement is greater than the estimate, the city council or commission after due notice and a hearing, as in case of the original equalization of the roll, may add the required additional amount to the assessment roll to be apportioned among the several parcels of property upon the same rules and principles as if it had been originally included except that the additional amount shall be added to the last installment of an assessment if assessments are payable upon the installment plan. The same notice shall be required for adding to the assessment roll in this manner as is required for the original equalization of the roll, and the property owner shall have the right of appeal. [1965 c 7 § 35.56.170. Prior: 1913 c 16 § 13; RRS § 9461.]

35.56.180 Payment of contractor—Bonds—Warrants—Cash. The city council or commission may provide in letting the contract for an improvement, that the contractor shall accept special fund warrants or local improvement bonds against the local improvement district within which such improvement is to be made, in payment for the contract price of the work, and that the warrants or bonds may be issued to the contractor from time to time as the work progresses, or the city council or commission may negotiate the special fund warrants or bonds against the local improvement district at not less than ninety-five cents in money for each dollar of warrants or bonds, and with the proceeds pay the contractor for the work and pay the other costs of such improvement. [1965 c 7 § 35.56.180. Prior: 1913 c 16 § 14; RRS § 9462.]

35.56.190 Tax levy—General—Purposes—Limit. For the purpose of raising revenues to carry on any project under this chapter including funds for the payment for the lands taken, purchased, acquired or condemned and the expenses incident to the acquiring thereof, or any other cost or expenses incurred by the city under the provisions of this chapter but not including the cost of actually filling the lands for which the local improvement district was created, a city may levy an annual tax of not exceeding seventy-five cents per thousand dollars of assessed valuation of all property within the city. The city council or commission may create a fund into which all moneys so derived from taxation and moneys derived from rents and issues of the lands shall be paid and against which special fund warrants may be drawn or negotiable bonds issued to meet expenditures under this chapter. [1973 1st ex.s. c 195 § 22; 1965 c 7 § 35.56.190. Prior: 1913 c 16 § 19; RRS § 9467.]

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

35.56.200 Waterways constructed—Requirements. In the filling of any marshland, swampland, tideland or tideflats no canal or waterway shall be constructed in connection therewith less than three hundred feet wide at the top between the shore lines and with sufficient slope to the sides or banks thereof to as nearly as practicable render bulkheadings or other protection against caving or falling in of said sides or banks unnecessary and of sufficient depth to meet all ordinary requirements of navigation and commerce. [1965 c 7 § 35.56.200. Prior: 1913 c 16 § 17, part; RRS § 9465, part.]

35.56.210 Waterways constructed—Control. The canal or waterway shall be and remain under the control of the city and immediately upon its completion the city shall establish outer dock lines lengthwise of said canal or waterway on both sides thereof in such manner and position that not less than two hundred feet of the width thereof shall always remain open between such lines and beyond and between which lines no right shall ever be granted to build wharves or other obstructions except bridges; nor shall any permanent obstruction to the free use of the channel so laid out between said wharf or dock lines excepting bridges, their approaches, piers, abutments and spans, ever be permitted

but the same shall be kept open for navigation. [1965 c 7 § 35.56.210. Prior: 1913 c 16 § 17, part; RRS § 9465, part.]

35.56.220 Waterways constructed—Leasing facilities. The city shall have the right to lease the area so created between the said shore lines and the wharf lines so established or any part, parts or parcels thereof during times when the use thereof is not required by the city, for periods not exceeding thirty years, to private individuals or concerns for wharf, warehouse or manufacturing purposes at such annual rate or rental per lineal foot of frontage on the canal or waterway as it may deem reasonable.

The rates of wharfage, and other charges to the public which any lessee may impose shall be reasonable; and the city council or commission may regulate such rates. The lease so granted by the city shall never be transferred or assigned without the consent of the city council or commission having been first obtained.

A city shall never lease to any individual or concern more than four hundred lineal feet of frontage of the area lying between the shore lines and the dock lines and no individual or concern shall ever hold or occupy by lease, sublease or otherwise more than the said four hundred lineal feet of frontage of such area: PROVIDED, That any individual or concern may acquire by lease or sublease whatever additional number of lineal feet of frontage of such area may in the judgment of the city council or commission be necessary for the use of such individual or concern, upon petition therefor to the city council or commission signed by not less than five hundred resident freeholders of the city. [1965 c 7 § 35.56.220. Prior: 1913 c 16 § 17, part; RRS § 9465, part.]

35.56.230 Waterway shoreline front—Lessee must lease abutting property. If the city owns the land abutting upon any part of the area between the shore lines and dock lines, no portion of the area which has city owned property abutting upon it shall ever be leased unless an equal frontage of the abutting property immediately adjoining it is leased at the same time for the same period to the same individual or concern. [1965 c 7 § 35.56.230. Prior: 1913 c 16 § 17, part; RRS § 9465, part.]

35.56.240 Waterways constructed—Acquisition of abutting property. While acquiring the rights of way for such canals or waterways or at any time thereafter such city may acquire for its own use and public use by purchase, gift, condemnation or otherwise, and pay therefor by any lawful means including but not restricted to payment out of the current expense fund of such city or by bonding the city or by pledging revenues to be derived from rents and issues therefrom, lands abutting upon the shore lines or right-of-way of such canals or waterways to a distance, depth or width of not more than three hundred feet back from the banks or shore lines of such canals or waterways on either side or both sides thereof, or not more than three hundred lineal feet back from and abutting on the outer lines of such rights-of-way on either side or both sides of such rights-of-way, and such area of such abutting lands as the council or commission may deem necessary for its use for public docks, bridges, wharves, streets and other conveniences of

navigation and commerce and for its own use and benefit generally. [1965 c 7 § 35.56.240. Prior: 1913 c 16 § 18, part; RRS § 9466, part.]

35.56.250 Waterways—Abutting city owned lands—Lease of. If the city is not using the abutting lands so acquired it may lease any parcels thereof as may be deemed for the best interest and convenience of navigation, commerce and the public interest and welfare to private individuals or concerns for terms not exceeding thirty years each at such annual rate or rental as the city council or commission of such city may deem just, proper and fair, for the purpose of erecting wharves for wholesale and retail warehouses and for general commercial purposes and manufacturing sites, but the said city shall never convey or part with title to the abutting lands above mentioned and so acquired nor with the control other than in the manner herein specified. Any lease or leases granted by the city on such abutting lands shall never be transferred or assigned without the consent of the city council or commission having been first obtained.

A city shall never lease to any individual or concern more than four hundred lineal feet of canal or waterway frontage of said land and no individual or concern shall ever hold or occupy by lease, sublease, or otherwise more than the said four hundred lineal feet of said frontage: PROVIDED, That any individual or concern may acquire by lease or sublease whatever additional frontage of such abutting land may be in the judgment of the city council or commission necessary for the use of such individual or concern, upon petition presented to the city council or commission therefor signed by not less than five hundred resident freeholders of such city. [1965 c 7 § 35.56.250. Prior: 1913 c 16 § 18, part; RRS § 9466, part.]

35.56.260 Waterways—Abutting lands—Lessee must lease shoreline property. At the time that the city leases to any individual or concern any of the land abutting on the area between the shore lines and the dock lines the same individual or concern must likewise for the same period of time lease all of the area between the shore line and dock line of such canal or waterway lying contiguous to and immediately in front of the abutting land so leased. [1965 c 7 § 35.56.260. Prior: 1913 c 16 § 18, part; RRS § 9466, part.]

35.56.270 Work by day labor. When a city undertakes any improvement authorized by this chapter and the expenditures required exceed the sum of five hundred dollars, it shall be done by contract and shall be let to the lowest responsible bidder, after due notice, under such regulation as may be prescribed by ordinance: PROVIDED, That the city council or commission may reject all bids presented and readvertise, or, if in the judgment of the city council or commission the work can be performed, or supplies or materials furnished by the city independent of contract, cheaper than under the bid submitted, it may after having so advertised and examined the bids, cause the work to be performed or supplies or materials to be furnished independent of contract. This section shall be construed as a concurrent and cumulative power conferred on cities and shall not be construed as in any wise repealing or affecting

any law now in force relating to the performing, execution and construction of public works. [1965 c 7 § 35.56.270. Prior: 1913 c 16 § 20; RRS § 9468.]

35.56.280 Reassessments. If any assessment is found to be invalid for any cause or if it is set aside for any reason in judicial proceeding, a reassessment may be made and all laws then in force relative to the reassessment of local assessments, for street or other improvements, shall, as far as practical, be applicable hereto. [1965 c 7 § 35.56.280. Prior: 1913 c 16 § 16; RRS § 9464.]

Local improvements, assessments and reassessments: Chapter 35.44 RCW.

35.56.290 Provisions of chapter not exclusive. The provisions of this chapter shall not be construed as repealing or in any wise affecting other existing laws relative to the making of any such improvements but shall be considered as concurrent therewith. [1965 c 7 § 35.56.290. Prior: 1929 c 63 § 5; 1913 c 16 § 22; RRS § 9470.]

Chapter 35.58

METROPOLITAN MUNICIPAL CORPORATIONS

Sections

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County assumption of metropolitan municipal corporation functions: Chapter 36.56 RCW.

Local governmental organizations, actions affecting boundaries, etc., review by boundary review board: Chapter 36.93 RCW.

School districts, educational service districts, agreements with other governmental entities for transportation of students, the public or other noncommon school purposes—Limitations: RCW 28A.160.120.

Transportation centers authorized: Chapter 81.75 RCW.

35.58.010 Declaration of policy and purpose. It is hereby declared to be the public policy of the state of Washington to provide for the people of the populous metropolitan areas in the state the means of obtaining essential services not adequately provided by existing agencies of local government. The growth of urban population and the movement of people into suburban areas has created problems of water pollution abatement, garbage disposal, water supply, transportation, planning, parks and parkways which extend beyond the boundaries of cities, counties and special districts. For reasons of topography, location and movement of population, and land conditions and development, one or more of these problems cannot be adequately met by the individual cities, counties and districts of many metropolitan areas.

It is the purpose of this chapter to enable cities and counties to act jointly to meet these common problems in order that the proper growth and development of the metropolitan areas of the state may be assured and the health and welfare of the people residing therein may be secured. [1974 ex.s. c 70 § 1; 1965 c 7 § 35.58.010. Prior: 1957 c 213 § 1.]

35.58.020 Definitions. The definitions set forth in this section apply throughout this chapter.

(1) "Metropolitan municipal corporation" means a municipal corporation of the state of Washington created pursuant to this chapter, or a county which has by ordinance or resolution assumed the rights, powers, functions, and obligations of a metropolitan municipal corporation pursuant to the provisions of chapter 36.56 RCW.

(2) "Metropolitan area" means the area contained within the boundaries of a metropolitan municipal corporation, or within the boundaries of an area proposed to be organized as such a corporation.

(3) "City" means an incorporated city or town.

(4) "Component city" means an incorporated city or town within a metropolitan area.

(5) "Component county" means a county, all or part of which is included within a metropolitan area.

(6) "Central city" means the city with the largest population in a metropolitan area.

(7) "Central county" means the county containing the city with the largest population in a metropolitan area.

(8) "Special district" means any municipal corporation of the state of Washington other than a city, county, or metropolitan municipal corporation.

(9) "Metropolitan council" means the legislative body of a metropolitan municipal corporation, or the legislative body of a county which has by ordinance or resolution assumed the rights, powers, functions, and obligations of a metropolitan municipal corporation pursuant to the provisions of chapter 36.56 RCW.

(10) "City council" means the legislative body of any city or town.

(11) "Population" means the number of residents as shown by the figures released for the most recent official state, federal, or county census, or population determination made under the direction of the office of financial management.

(12) "Metropolitan function" means any of the functions of government named in RCW 35.58.050.

(13) "Authorized metropolitan function" means a metropolitan function which a metropolitan municipal corporation shall have been authorized to perform in the manner provided in this chapter.

(14) "Metropolitan public transportation" or "metropolitan transportation" for the purposes of this chapter means the transportation of packages, passengers, and their incidental baggage by means other than by chartered bus, sightseeing bus, or any other motor vehicle not on an individual fare-paying basis, together with the necessary passenger terminals and parking facilities or other properties necessary for passenger and vehicular access to and from such people-moving systems: PROVIDED, That nothing in this chapter shall be construed to prohibit a metropolitan municipal corporation from leasing its buses to private certified carriers; to prohibit a metropolitan municipal corporation from providing school bus service for the transportation of pupils; or to prohibit a metropolitan municipal corporation from chartering an electric streetcar on rails which it operates entirely within a city.

(15) "Pollution" has the meaning given in RCW 90.48.020. [1982 c 103 § 1; 1979 c 151 § 28; 1977 ex.s. c 277 § 12. Prior: 1974 ex.s. c 84 § 1; 1974 ex.s. c 70 § 2; 1971 ex.s. c 303 § 2; 1965 c 7 § 35.58.020; prior: 1957 c 213 § 2.]

Severability—Construction—Effective date—1977 ex.s. c 277: See RCW 36.56.900 and 36.56.910.

Population determinations, office of financial management: Chapter 43.62 RCW.

35.58.030 Corporations authorized. Any area of the state containing two or more cities, at least one of which is a city of the first class, may organize as a metropolitan municipal corporation for the performance of certain functions, as provided in this chapter. [1965 c 7 § 35.58.030. Prior: 1957 c 213 § 3.]

Inclusion of code cities in metropolitan municipal corporations: Chapter 35A.57 RCW.

35.58.040 Territory which must be included or excluded—Boundaries. At the time of its formation no metropolitan municipal corporation shall include only a part of any city, and every city shall be either wholly included or wholly excluded from the boundaries of such corporation. If subsequent to the formation of a metropolitan municipal corporation a part only of any city shall be included within the boundaries of a metropolitan municipal corporation such part shall be deemed to be "unincorporated" for the purpose of selecting a member of the metropolitan council pursuant to RCW 35.58.120(3) and such city shall neither select nor participate in the selection of a member on the metropolitan council pursuant to RCW 35.58.120.

Any metropolitan municipal corporation now existing or hereafter created, within a 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, or within a county with a population of one million or more, shall, upon May 21, 1971, as to metropolitan corporations existing on such date or upon the date of formation as to metropolitan corporations formed after May 21, 1971, have the same boundaries as those of the respective central county of such metropolitan corporation: PROVIDED, That the boundaries of such metropolitan corporation may be enlarged after such date by annexation as provided in chapter 35.58 RCW as now or hereafter amended. Any contiguous metropolitan municipal corporations may be consolidated into a single metropolitan municipal corporation upon such terms, for the purpose of performing such metropolitan function or functions, and to be effective at such time as may be approved by resolutions of the respective metropolitan councils. In the event of such consolidation the component city with the largest population shall be the central city of such consolidated metropolitan municipal corporation and the component county with the largest population shall be the central county of such consolidated metropolitan municipal corporation. [1991 c 363 § 39; 1971 ex.s. c 303 § 3; 1967 c 105 § 1; 1965 c 7 § 35.58.040. Prior: 1957 c 213 § 4.]

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

35.58.050 Functions authorized. A metropolitan municipal corporation shall have the power to perform any one or more of the following functions, when authorized in the manner provided in this chapter:

- (1) Metropolitan water pollution abatement.
- (2) Metropolitan water supply.
- (3) Metropolitan public transportation.
- (4) Metropolitan garbage disposal.
- (5) Metropolitan parks and parkways.
- (6) Metropolitan comprehensive planning. [1974 ex.s. c 70 § 3; 1965 c 7 § 35.58.050. Prior: 1957 c 213 § 5.]

35.58.060 Unauthorized functions to be performed under other law. All functions of local government which are not authorized as provided in this chapter to be performed by a metropolitan municipal corporation, shall continue to be performed by the counties, cities and special districts within the metropolitan area as provided by law. [1965 c 7 § 35.58.060. Prior: 1957 c 213 § 6.]

35.58.070 Resolution, petition for election—Requirements, procedure. A metropolitan municipal corporation may be created by vote of the qualified electors residing in a metropolitan area in the manner provided in this chapter. An election to authorize the creation of a metropolitan municipal corporation may be called pursuant to resolution or petition in the following manner:

(1) A resolution or concurring resolutions calling for such an election may be adopted by either:

- (a) The city council of a central city; or
- (b) The city councils of two or more component cities other than a central city; or
- (c) The board of commissioners of a central county.

A certified copy of such resolution or certified copies of such concurring resolutions shall be transmitted to the board of commissioners of the central county.

(2) A petition calling for such an election shall be signed by at least four percent of the qualified voters residing within the metropolitan area and shall be filed with the auditor of the central county.

Any resolution or petition calling for such an election shall describe the boundaries of the proposed metropolitan area, name the metropolitan function or functions which the metropolitan municipal corporation shall be authorized to perform initially and state that the formation of the metropolitan municipal corporation will be conducive to the welfare and benefit of the persons and property within the metropolitan area. After the filing of a first sufficient petition or resolution with such county auditor or board of county commissioners respectively, action by such auditor or board shall be deferred on any subsequent petition or resolution until after the election has been held pursuant to such first petition or resolution.

Upon receipt of such a petition, the auditor shall examine the same and certify to the sufficiency of the signatures thereon. For the purpose of examining the signatures on such petition, the auditor shall be permitted access to the voter registration books of each component county and each component city. No person may withdraw his name from a petition after it has been filed with the auditor. Within thirty days following the receipt of such petition, the auditor shall transmit the same to the board of commissioners of the central county, together with his certificate as to the sufficiency thereof. [1965 c 7 § 35.58.070. Prior: 1957 c 213 § 7.]

35.58.080 Hearings on petition, resolution—Inclusion, exclusion of territory—Boundaries—Calling election. Upon receipt of a duly certified petition or a valid resolution calling for an election on the formation of a metropolitan municipal corporation, the board of commissioners of the central county shall fix a date for a public hearing thereon which shall be not more than sixty nor less than forty days following the receipt of such resolution or petition. Notice of such hearing shall be published once a week for at least four consecutive weeks in one or more newspapers of general circulation within the metropolitan area. The notice shall contain a description of the boundaries of the proposed metropolitan area, shall name the initial metropolitan function or functions and shall state the time and place of the hearing and the fact that any changes in the

boundaries of the metropolitan area will be considered at such time and place. At such hearing or any continuation thereof, any interested person may appear and be heard on all matters relating to the effect of the formation of the proposed municipal metropolitan corporation. The commissioners may make such changes in the boundaries of the metropolitan area as they shall deem reasonable and proper, but may not delete any portion of the proposed area which will create an island of included or excluded lands, may not delete a portion of any city, and may not delete any portion of the proposed area which is contributing or may reasonably be expected to contribute to the pollution of any water course or body of water in the proposed area when the petition or resolution names metropolitan water pollution abatement as a function to be performed by the proposed metropolitan municipal corporation. If the commissioners shall determine that any additional territory should be included in the metropolitan area, a second hearing shall be held and notice given in the same manner as for the original hearing. The commissioners may adjourn the hearing on the formation of a metropolitan municipal corporation from time to time not exceeding thirty days in all. At the next regular meeting following the conclusion of such hearing the commissioners shall adopt a resolution fixing the boundaries of the proposed metropolitan municipal corporation, declaring that the formation of the proposed metropolitan municipal corporation will be conducive to the welfare and benefit of the persons and property therein and providing for the calling of a special election on the formation of the metropolitan municipal corporation to be held not more than one hundred twenty days nor less than sixty days following the adoption of such resolution. [1974 ex.s. c 70 § 4; 1965 c 7 § 35.58.080. Prior: 1957 c 213 § 8.]

Elections: Title 29 RCW.

35.58.090 Election procedure to form corporation and levy tax—Qualified voters—Establishment of corporation—First meeting of council. The election on the formation of the metropolitan municipal corporation shall be conducted by the auditor of the central county in accordance with the general election laws of the state and the results thereof shall be canvassed by the county canvassing board of the central county, which shall certify the result of the election to the board of county commissioners of the central county, and shall cause a certified copy of such canvass to be filed in the office of the secretary of state. Notice of the election shall be published in one or more newspapers of general circulation in each component county in the manner provided in the general election laws. No person shall be entitled to vote at such election unless he is a qualified voter under the laws of the state in effect at the time of such election and has resided within the metropolitan area for at least thirty days preceding the date of the election. The ballot proposition shall be in substantially the following form:

"FORMATION OF METROPOLITAN MUNICIPAL CORPORATION

Shall a metropolitan municipal corporation be established for the area described in a resolution of the board of commissioners of county

adopted on the day of, 19. . . ., to perform the metropolitan functions of (here insert the title of each of the functions to be authorized as set forth in the petition or initial resolution).

YES
NO

If a majority of the persons voting on the proposition residing within the central city shall vote in favor thereof and a majority of the persons voting on the proposition residing in the metropolitan area outside of the central city shall vote in favor thereof, the metropolitan municipal corporation shall thereupon be established and the board of commissioners of the central county shall adopt a resolution setting a time and place for the first meeting of the metropolitan council which shall be held not later than thirty days after the date of such election. A copy of such resolution shall be transmitted to the legislative body of each component city and county and of each special district which shall be affected by the particular metropolitan functions authorized.

At the same election there shall be submitted to the voters residing within the metropolitan area, for their approval or rejection, a proposition authorizing the metropolitan municipal corporation, if formed, to levy at the earliest time permitted by law on all taxable property located within the metropolitan municipal corporation a general tax, for one year, of twenty-five cents per thousand dollars of assessed value in excess of any constitutional or statutory limitation for authorized purposes of the metropolitan municipal corporation. The proposition shall be expressed on the ballots in substantially the following form:

"ONE YEAR TWENTY-FIVE CENTS PER THOUSAND DOLLARS OF ASSESSED VALUE LEVY

Shall the metropolitan municipal corporation, if formed, levy a general tax of twenty-five cents per thousand dollars of assessed value for one year upon all the taxable property within said corporation in excess of the constitutional and/or statutory tax limits for authorized purposes of the corporation?

YES
NO

Such proposition to be effective must be approved by a majority of at least three-fifths of the persons voting on the proposition to levy such tax 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. [1973 1st ex.s. c 195 § 23; 1965 c 7 § 35.58.090. Prior: 1957 c 213 § 9.]

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

Canvassing the returns, generally: Chapter 29.62 RCW.

Conduct of elections—Canvass: RCW 29.13.040.

Notice of elections: RCW 29.27.080.

35.58.100 Additional functions—Authorized by election. A metropolitan municipal corporation may be

authorized to perform one or more metropolitan functions in addition to those which it has previously been authorized to perform, with the approval of the voters at an election, in the manner provided in this section.

An election to authorize a metropolitan municipal corporation to perform one or more additional metropolitan functions may be called pursuant to a resolution or a petition in the following manner:

(1) A resolution calling for such an election may be adopted by:

- (a) The city council of the central city; or
- (b) The city councils of at least one-half in number of the component cities other than the central city; or

(c) The board of commissioners of the central county. Such resolution shall be transmitted to the metropolitan council.

(2) A petition calling for such an election shall be signed by at least four percent of the registered voters residing within the metropolitan area and shall be filed with the auditor of the central county.

Any resolution or petition calling for such an election shall name the additional metropolitan functions which the metropolitan municipal corporation shall be authorized to perform.

Upon receipt of such a petition, the auditor shall examine the signatures thereon and certify to the sufficiency thereof. For the purpose of examining the signatures on such petition, the auditor shall be permitted access to all voter registration books of any component county and of all component cities. No person may withdraw his name from a petition after it has been filed with the auditor. Within thirty days following the receipt of such petition, the auditor shall transmit the same to the metropolitan council, together with his certificate as to the sufficiency of signatures thereon.

Upon receipt of a valid resolution or duly certified petition calling for an election on the authorization of the performance of one or more additional metropolitan functions, the metropolitan council shall cause to be called a special election to be held not more than one hundred and twenty days nor less than sixty days following such receipt. Such special election shall be conducted and canvassed as provided in this chapter for an election on the question of forming a metropolitan municipal corporation. The ballot proposition shall be in substantially the following form:

"Shall the metropolitan municipal corporation be authorized to perform the additional metropolitan functions of (here insert the title of each of the additional functions to be authorized as set forth in the petition or resolution)?

YES
NO

If a majority of the persons voting on the proposition shall vote in favor thereof, the metropolitan municipal corporation shall be authorized to perform such additional metropolitan function or functions. [1967 c 105 § 2; 1965 c 7 § 35.58.100. Prior: 1957 c 213 § 10.]

35.58.110 Additional functions—Authorized without election. A metropolitan municipal corporation may be

authorized to perform one or more metropolitan functions in addition to those which it previously has been authorized to perform, without an election, in the manner provided in this section. A resolution providing for the performance of such additional metropolitan function or functions shall be adopted by the metropolitan council. A copy of such resolution shall be transmitted by registered mail to the legislative body of each component city and county. If, within ninety days after the date of such mailing, a concurring resolution is adopted by the legislative body of each component county, of each component city of the first class, and of at least two-thirds of all other component cities, and such concurring resolutions are transmitted to the metropolitan council, such council shall by resolution declare that the metropolitan municipal corporation has been authorized to perform such additional metropolitan function or functions. A copy of such resolution shall be transmitted by registered mail to the legislative body of each component city and county and of each special district which will be affected by the particular additional metropolitan function authorized. [1965 c 7 § 35.58.110. Prior: 1957 c 213 § 11.]

35.58.112 Recommended comprehensive plan for performance of additional function—Study and preparation. The metropolitan council of a metropolitan municipal corporation upon the affirmative vote of two-thirds of the members of such council may make planning, engineering, legal, financial and feasibility studies preliminary to or incident to the preparation of a recommended comprehensive plan for any metropolitan function, and may prepare such a recommended comprehensive plan before the metropolitan municipal corporation has been authorized to perform such function. The studies and plan may cover territory within and without the metropolitan municipal corporation. A recommended comprehensive plan prepared pursuant to this section for any metropolitan function may not be adopted by the metropolitan council unless the metropolitan municipal corporation shall have been authorized to perform such function. [1967 c 105 § 7.]

35.58.114 Recommended comprehensive plan for performance of additional function—Resolution for special election to authorize additional function—Contents—Hearings—Election procedure. Whenever a recommended comprehensive plan for the performance of any additional metropolitan function shall have been prepared and the metropolitan council shall have found the plan to be feasible the council may by resolution call a special election to authorize the performance of such additional function without the filing of the petitions or resolutions provided for in RCW 35.58.100.

If the metropolitan council shall determine that the performance of such function requires enlargement of the metropolitan area, such resolution shall contain a description of the boundaries of the proposed metropolitan area and may be adopted only after a public hearing thereon before the council. Notice of such hearing shall be published once a week for at least two consecutive weeks in one or more newspapers of general circulation within the proposed metropolitan area. The notice shall contain a description of the boundaries of the proposed metropolitan area, shall name

the additional function or functions to be performed and shall state the time and place of the hearing and the fact that any changes in the boundaries of the proposed metropolitan area will be considered at such time and place. At such hearing any interested person may appear and be heard. The council may make such changes in the proposed metropolitan area as they shall deem reasonable and proper, but may not delete any portion of the existing metropolitan area and may not delete any portion of the proposed additional area which will create an island of included or excluded lands. If the council shall determine that the proposed additional area should be further enlarged, a second hearing shall be held and notice given in the same manner as for the original hearing. The council may adjourn the hearing or hearings from time to time.

Following the conclusion of such hearing or hearings the council may adopt a resolution fixing the boundaries of the proposed metropolitan area and calling a special election on the performance of such additional function. If the metropolitan municipal corporation is then authorized to perform the function of metropolitan sewage disposal the council may provide in such resolution that local governmental agencies collecting sewage from areas outside the metropolitan area as same is constituted on the date of adoption of such resolution will not thereafter be required to discharge such sewage into the metropolitan sewer system or to secure approval of local construction plans from the metropolitan municipal corporation unless such local agency shall first have entered into a contract with the metropolitan municipal corporation for the disposal of such sewage. The metropolitan council may also provide in such resolution that the authorization to perform such additional function be effective only if the voters at such election also authorize the issuance of any general obligation bonds required to carry out the recommended comprehensive plan.

The resolution calling such election shall fix the form of the ballot proposition and the same may vary from that specified in RCW 35.58.100. If the metropolitan council shall find that the issuance of general obligation bonds is necessary to perform such additional function and to carry out such recommended comprehensive plan then the ballot proposition shall set forth the principal amount of such bonds and the maximum maturity thereof and the proposition shall be so worded that the voters may by a single yes or no vote authorize the performance of the designated function in the area described in the resolution and the issuance of such general obligation bonds.

The persons voting at such election shall be all of the qualified voters who have resided within the boundaries of the proposed metropolitan area for at least thirty days preceding the date of the election. The election shall be conducted and canvassed as provided in RCW 35.58.090.

If the resolution calling such election does not require the approval of general obligation bonds as a condition of the performance of such additional function and if a majority of the persons voting on the ballot proposition residing within the existing metropolitan municipal corporation shall vote in favor thereof and a majority of the persons residing within the area proposed to be added to the existing metropolitan municipal corporation shall vote in favor thereof the boundaries described in the resolution calling the election shall become the boundaries of the metropolitan municipal

corporation and the metropolitan municipal corporation shall be authorized to perform the additional function described in the proposition.

If the resolution calling such election shall require the authorization of general obligation bonds as a condition of the performance of such additional function, then to be effective the ballot proposition must be approved as provided in the preceding paragraph and must also be approved by at least three-fifths of the persons voting thereon and the number of persons voting on such proposition must constitute not less than forty percent of the total number of votes cast within such area at the last preceding state general election. [1967 c 105 § 8.]

35.58.116 Proposition for issuance of general obligation bonds or levy of general tax—Submission at same election or special election. The metropolitan council may at the same election called to authorize the performance of an additional function or at a special election called by the council after it has been authorized to perform any metropolitan function submit a proposition for the issuance of general obligation bonds for capital purposes as provided in RCW 35.58.450 or a proposition for the levy of a general tax for any authorized purpose for one year in such total dollar amount as the metropolitan council may determine and specify in such proposition. Any such proposition to be effective must be assented to by at least three-fifths of the persons voting thereon and the number of persons voting on such proposition shall constitute not less than forty percent of the total number of votes cast within the metropolitan area at the last preceding state general election. Any such proposition shall only be effective if the performance of the additional function shall be authorized at such election or shall have been authorized prior thereto. [1967 c 105 § 9.]

35.58.118 Commission or council form of management of metropolitan transportation function—Submission of proposition to voters—Effect when no proposition submitted. The metropolitan council may at any time by resolution determine whether the metropolitan transportation function shall be performed with an appointed commission pursuant to RCW 35.58.270 or by the metropolitan council without the appointment of such a commission: PROVIDED, That any resolution to perform the metropolitan transportation function with an appointed commission pursuant to RCW 35.58.270 shall not become effective until approved by the voters residing within the boundaries of the metropolitan municipal corporation. [1971 ex.s. c 303 § 4; 1967 c 105 § 10.]

35.58.120 Metropolitan council—Composition—Chairman. A metropolitan municipal corporation shall be governed by a metropolitan council composed of the following:

(1) One member (a) who shall be the elected county executive of the central county, or (b) if there shall be no elected county executive, one member who shall be selected by, and from, the board of commissioners of the central county.

(2) One additional member for each county commissioner district or county council district which shall contain

fifteen thousand or more persons residing within the metropolitan municipal corporation, who shall be the county commissioner or county councilman from such district;

(3) One additional member selected by the board of commissioners or county council of each component county for each county commissioner district or county council district containing fifteen thousand or more persons residing in the unincorporated portion of such commissioner district lying within the metropolitan municipal corporation each such appointee to be a resident of such unincorporated portion;

(4) One member from each component city which shall have a population of fifteen thousand or more persons, who shall be the mayor of such city, if such city shall have the mayor-council form of government, and in other cities shall be selected by, and from, the mayor and city council of each of such cities.

(5) One member representing all component cities which have less than fifteen thousand population each, to be selected by and from the mayors of such smaller cities in the following manner: The mayors of all such cities shall meet prior to July 1 of each even-numbered year at a time and place to be fixed by the metropolitan council. The chairperson of the metropolitan council shall preside. After nominations are made, successive ballots shall be taken until one candidate receives a majority of all votes cast.

(6) One additional member selected by the city council of each component city containing a population of fifteen thousand or more for each fifty thousand population over and above the first fifteen thousand, such members to be selected from such city council until all councilmen are members and thereafter to be selected from other officers of such city.

(7) For any metropolitan municipal corporation which shall be authorized to perform the function of metropolitan water pollution abatement, two additional members who shall be commissioners of a sewer district or a water district which is operating a sewer system and is a component part of the metropolitan municipal corporation and shall participate only in those council actions which relate to the performance of the function of metropolitan water pollution abatement. The commissioners of all such sewer districts and water districts which are component parts of the metropolitan municipal corporation shall meet on the first Tuesday of the month following May 21, 1971 and thereafter on the second Tuesday of June of each even-numbered year at seven o'clock p.m. at the office of the board of county commissioners of the central county. After election of a chairman, nominations shall be made to select members to serve on the metropolitan council and successive ballots taken for each member until one candidate receives a majority of votes cast. The two members so selected shall not be from districts whose boundaries come within ten miles of each other.

(8) One member, who shall be chairman of the metropolitan council, selected by the other members of the council. The member shall not hold any public office of or be an employee of any component city or component county of the metropolitan municipal corporation. [1983 c 92 § 1; 1981 c 190 § 3; 1974 ex.s. c 70 § 5; 1971 ex.s. c 303 § 5; 1969 ex.s. c 135 § 1; 1967 c 105 § 3; 1965 c 7 § 35.58.120. Prior: 1957 c 213 § 12.]

35.58.130 Metropolitan council—Organization, chairman, procedures. At the first meeting of the metropolitan council following the formation of a metropolitan municipal corporation, the mayor of the central city shall serve as temporary chairman. As its first official act the council shall elect a chairman. The chairman shall be a voting member of the council and shall preside at all meetings. In the event of his absence or inability to act the council shall select one of its members to act as chairman pro tempore. A majority of all members of the council shall constitute a quorum for the transaction of business. A smaller number of council members than a quorum may adjourn from time to time and may compel the attendance of absent members in such manner and under such penalties as the council may provide. The council shall determine its own rules and order of business, shall provide by resolution for the manner and time of holding all regular and special meetings and shall keep a journal of its proceedings which shall be a public record. Every legislative act of the council of a general or permanent nature shall be by resolution. [1965 c 7 § 35.58.130. Prior: 1957 c 213 § 13.]

35.58.140 Metropolitan council—Terms. Each member of a metropolitan council except those selected under the provisions of RCW 35.58.120(1)(a), (5), (7), and (8), shall hold office at the pleasure of the body which selected him. Each member, who shall hold office ex officio, may not hold office after he ceases to hold the position of elected county executive, mayor, commissioner, or councilman. The chairman shall hold office until the second Tuesday in July of each even-numbered year and may, if reelected, serve more than one term. Each member shall hold office until his successor has been selected as provided in this chapter. [1971 ex.s. c 303 § 6; 1969 ex.s. c 135 § 2; 1967 c 105 § 4; 1965 c 7 § 35.58.140. Prior: 1957 c 213 § 14.]

35.58.150 Metropolitan council—Vacancies. A vacancy in the office of a member of the metropolitan council shall be filled in the same manner as provided for the original selection. The meeting of mayors to fill a vacancy of the member selected under the provisions of RCW 35.58.120(4) or of special district representatives to fill a vacancy of a member selected under RCW 35.58.120(7) shall be held at such time and place as shall be designated by the chairman of the metropolitan council after ten days' written notice mailed to the mayors of each of the cities specified in RCW 35.58.120(4) or to the representatives of the special purpose districts specified in RCW 35.58.120(7), whichever is applicable. [1984 c 44 § 1; 1967 c 105 § 5; 1965 c 7 § 35.58.150. Prior: 1957 c 213 § 15.]

35.58.160 Metropolitan council—Compensation—Waiver of compensation. The chairman and committee chairmen of the metropolitan council except elected public officials serving on a full-time salaried basis may receive such compensation as the other members of the metropolitan council shall provide. Members of the council other than the chairman and committee chairmen shall receive compensation of fifty dollars per day or portion thereof for attendance at metropolitan council or committee meetings, or for

performing other services on behalf of the metropolitan municipal corporation, but not exceeding a total of four thousand eight hundred dollars in any year, in addition to any compensation which they may receive as officers of component cities or counties: PROVIDED, That elected public officers serving in such capacities on a full-time basis shall not receive compensation for attendance at metropolitan, council, or committee meetings, or otherwise performing services on behalf of the metropolitan municipal corporation: PROVIDED FURTHER, That committee chairmen shall not receive compensation in any one year greater than one-third of the compensation authorized for the county commissioners or county councilmen of the central county.

Any member of the council may waive all or any portion of his or her compensation payable under this section as to any month or months during his or her term of office, by a written waiver filed with the council as provided in this section. The waiver, to be effective, must be filed any time after the member's selection and prior to the date on which the compensation would otherwise be paid. The waiver shall specify the month or period of months for which it is made.

All members of the council shall be reimbursed for expenses actually incurred by them in the conduct of official business for the metropolitan municipal corporation. [1985 c 330 § 1; 1974 ex.s. c 84 § 2; 1965 c 7 § 35.58.160. Prior: 1957 c 213 § 16.]

35.58.170 Corporation name and seal. The name of a metropolitan municipal corporation shall be established by its metropolitan council. Each metropolitan municipal corporation shall adopt a corporate seal containing the name of the corporation and the date of its formation. [1965 c 7 § 35.58.170. Prior: 1957 c 213 § 17.]

35.58.180 General powers of corporation. In addition to the powers specifically granted by this chapter a metropolitan municipal corporation shall have all powers which are necessary to carry out the purposes of the metropolitan municipal corporation and to perform authorized metropolitan functions. A metropolitan municipal corporation may contract with the United States or any agency thereof, any state or agency thereof, any other metropolitan municipal corporation, any county, city, special district, or governmental agency and any private person, firm or corporation for the purpose of receiving gifts or grants or securing loans or advances for preliminary planning and feasibility studies, or for the design, construction or operation of metropolitan facilities and a metropolitan municipal corporation may contract with any governmental agency or with any private person, firm or corporation for the use by either contracting party of all or any part of the facilities, structures, lands, interests in lands, air rights over lands and rights of way of all kinds which are owned, leased or held by the other party and for the purpose of planning, constructing or operating any facility or performing any service which the metropolitan municipal corporation may be authorized to operate or perform, on such terms as may be agreed upon by the contracting parties: PROVIDED, That before any contract for the lease or operation of any metropolitan public transportation facilities shall be let to any private person, firm or corporation, a general schedule of rental rates for bus

equipment with or without drivers shall be publicly posted applicable to all private certificated carriers, and for other facilities competitive bids shall first be called upon such notice, bidder qualifications and bid conditions as the metropolitan council shall determine.

A metropolitan municipal corporation may sue and be sued in its corporate capacity in all courts and in all proceedings. [1974 ex.s. c 84 § 3; 1967 c 105 § 6; 1965 c 7 § 35.58.180. Prior: 1957 c 213 § 18.]

35.58.190 Performance of function or functions—Commencement date. The metropolitan council shall provide by resolution the effective date on which the metropolitan municipal corporation will commence to perform any one or more of the metropolitan functions which it shall have been authorized to perform. [1965 c 7 § 35.58.190. Prior: 1957 c 213 § 19.]

35.58.200 Powers relative to water pollution abatement. If a metropolitan municipal corporation shall be authorized to perform the function of metropolitan water pollution abatement, it shall have the following powers in addition to the general powers granted by this chapter:

(1) To prepare a comprehensive water pollution abatement plan including provisions for waterborne pollutant removal, water quality improvement, sewage disposal, and storm water drainage for the metropolitan area.

(2) To acquire by purchase, condemnation, gift, or grant and to lease, construct, add to, improve, replace, repair, maintain, operate and regulate the use of metropolitan facilities for water pollution abatement, including but not limited to, removal of waterborne pollutants, water quality improvement, sewage disposal and storm water drainage within or without the metropolitan area, including but not limited to trunk, interceptor and outfall sewers, whether used to carry sanitary waste, storm water, or combined storm and sanitary sewage, lift and pumping stations, pipelines, drains, sewage treatment plants, flow control structures together with all lands, property rights, equipment and accessories necessary for such facilities. Sewer facilities which are owned by a county, city, or special district may be acquired or used by the metropolitan municipal corporation only with the consent of the legislative body of the county, city, or special districts owning such facilities. Counties, cities, and special districts are hereby authorized to convey or lease such facilities to metropolitan municipal corporations or to contract for their joint use on such terms as may be fixed by agreement between the legislative body of such county, city, or special district and the metropolitan council, without submitting the matter to the voters of such county, city, or district.

(3) To require counties, cities, special districts and other political subdivisions to discharge sewage collected by such entities from any portion of the metropolitan area which can drain by gravity flow into such metropolitan facilities as may be provided to serve such areas when the metropolitan council shall declare by resolution that the health, safety, or welfare of the people within the metropolitan area requires such action.

(4) To fix rates and charges for the use of metropolitan water pollution abatement facilities, and to expend the

moneys so collected for authorized water pollution abatement activities.

(5) To establish minimum standards for the construction of local water pollution abatement facilities and to approve plans for construction of such facilities by component counties or cities or by special districts, which are connected to the facilities of the metropolitan municipal corporation. No such county, city, or special district shall construct such facilities without first securing such approval.

(6) To acquire by purchase, condemnation, gift, or grant, to lease, construct, add to, improve, replace, repair, maintain, operate and regulate the use of facilities for the local collection of sewage or storm water in portions of the metropolitan area not contained within any city or special district operating local public sewer facilities and, with the consent of the legislative body of any such city or special district, to exercise such powers within such city or special district and for such purpose to have all the powers conferred by law upon such city or special district with respect to such local collection facilities: PROVIDED, That such consent shall not be required if the department of ecology certifies that a water pollution problem exists within any such city or special district and notifies the city or special district to correct such problem and corrective construction of necessary local collection facilities shall not have been commenced within one year after notification. All costs of such local collection facilities shall be paid for by the area served thereby.

(7) To participate fully in federal and state programs under the federal water pollution control act (86 Stat. 816 et seq., 33 U.S.C. 1251 et seq.) and to take all actions necessary to secure to itself or its component agencies the benefits of that act and to meet the requirements of that act, including but not limited to the following:

(a) authority to develop and implement such plans as may be appropriate or necessary under the act.

(b) authority to require by appropriate regulations that its component agencies comply with all effluent treatment and limitation requirements, standards of performance requirements, pretreatment requirements, a user charge and industrial cost recovery system conforming to federal regulation, and all conditions of national permit discharge elimination system permits issued to the metropolitan municipal corporation or its component agencies. Adoption of such regulations and compliance therewith shall not constitute a breach of any sewage disposal contract between a metropolitan municipal corporation and its component agencies nor a defense to an action for the performance of all terms and conditions of such contracts not inconsistent with such regulations and such contracts, as modified by such regulations, shall be in all respects valid and enforceable. [1975 c 36 § 1; 1974 ex.s. c 70 § 6; 1971 ex.s. c 303 § 7; 1965 c 7 § 35.58.200. Prior: 1957 c 213 § 20.]

35.58.210 Metropolitan water pollution abatement advisory committee. If a metropolitan municipal corporation shall be authorized to perform the function of metropolitan water pollution abatement, the metropolitan council shall, prior to the effective date of the assumption of such function, cause a metropolitan water pollution abatement advisory committee to be formed by notifying the legislative body of

each component city and county which operates a sewer system to appoint one person to serve on such advisory committee and the board of commissioners of each sewer district and water district which operates a sewer system, any portion of which lies within the metropolitan area, to appoint one person to serve on such committee who shall be a commissioner of such a sewer or water district. The metropolitan water pollution abatement advisory committee shall meet at the time and place provided in the notice and elect a chairman. The members of such committee shall serve at the pleasure of the appointing bodies and shall receive no compensation other than reimbursement for expenses actually incurred in the performance of their duties. The function of such advisory committee shall be to advise the metropolitan council in matters relating to the performance of the water pollution [abatement] function. [1974 ex.s. c 70 § 7; 1965 c 7 § 35.58.210. Prior: 1957 c 213 § 21.]

35.58.220 Powers relative to water supply. If a metropolitan municipal corporation shall be authorized to perform the function of metropolitan water supply, it shall have the following powers in addition to the general powers granted by this chapter:

(1) To prepare a comprehensive plan for the development of sources of water supply, trunk supply mains and water treatment and storage facilities for the metropolitan area.

(2) To acquire by purchase, condemnation, gift or grant and to lease, construct, add to, improve, replace, repair, maintain, operate and regulate the use of metropolitan facilities for water supply within or without the metropolitan area, including buildings, structures, water sheds, wells, springs, dams, settling basins, intakes, treatment plants, trunk supply mains and pumping stations, together with all lands, property, equipment and accessories necessary to enable the metropolitan municipal corporation to obtain and develop sources of water supply, treat and store water and deliver water through trunk supply mains. Water supply facilities which are owned by a city or special district may be acquired or used by the metropolitan municipal corporation only with the consent of the legislative body of the city or special district owning such facilities. Cities and special districts are hereby authorized to convey or lease such facilities to metropolitan municipal corporations or to contract for their joint use on such terms as may be fixed by agreement between the legislative body of such city or special district and the metropolitan council, without submitting the matter to the voters of such city or district.

(3) To fix rates and charges for water supplied by the metropolitan municipal corporation.

(4) To acquire by purchase, condemnation, gift or grant and to lease, construct, add to, improve, replace, repair, maintain, operate and regulate the use of facilities for the local distribution of water in portions of the metropolitan area not contained within any city or water district and, with the consent of the legislative body of any city or water district, to exercise such powers within such city or water district and for such purpose to have all the powers conferred by law upon such city or water district with respect to such local distribution facilities. All costs of such local

distribution facilities shall be paid for by the area served thereby. [1965 c 7 § 35.58.220. Prior: 1957 c 213 § 22.]

35.58.230 Metropolitan water advisory committee.

If a metropolitan municipal corporation shall be authorized to perform the function of metropolitan water supply, the metropolitan council shall, prior to the effective date of the assumption of such function, cause a metropolitan water advisory committee to be formed by notifying the legislative body of each component city which operates a water system to appoint one person to serve on such advisory committee and the board of commissioners of each water district, any portion of which lies within the metropolitan area, to appoint one person to serve on such committee who shall be a water district commissioner. The metropolitan water advisory committee shall meet at the time and place provided in the notice and elect a chairman. The members of such committee shall serve at the pleasure of the appointing bodies and shall receive no compensation other than reimbursement for expenses actually incurred in the performance of their duties. The function of such advisory committee shall be to advise the metropolitan council with respect to matters relating to the performance of the water supply function. [1965 c 7 § 35.58.230. Prior: 1957 c 213 § 23.]

35.58.240 Powers relative to transportation. If a metropolitan municipal corporation shall be authorized to perform the function of metropolitan transportation, it shall have the following powers in addition to the general powers granted by this chapter:

(1) To prepare, adopt, and carry out a general comprehensive plan for public transportation service which will best serve the residents of the metropolitan area and to amend said plan from time to time to meet changed conditions and requirements.

(2) To acquire by purchase, condemnation, gift, or grant and to lease, construct, add to, improve, replace, repair, maintain, operate, and regulate the use of metropolitan transportation facilities and properties within or without the metropolitan area, including systems of surface, underground, or overhead railways, tramways, buses, or any other means of local transportation except taxis, and including escalators, moving sidewalks, or other people-moving systems, passenger terminal and parking facilities and properties, and such other facilities and properties as may be necessary for passenger and vehicular access to and from such people-moving systems, terminal and parking facilities and properties, together with all lands, rights of way, property, equipment, and accessories necessary for such systems and facilities. Public transportation facilities and properties which are owned by any city may be acquired or used by the metropolitan municipal corporation only with the consent of the city council of the city owning such facilities. Cities are hereby authorized to convey or lease such facilities to metropolitan corporations or to contract for their joint use on such terms as may be fixed by agreement between the city council of such city and the metropolitan council, without submitting the matter to the voters of such city.

The facilities and properties of a metropolitan public transportation system whose vehicles will operate primarily within the rights of way of public streets, roads, or high-

ways, may be acquired, developed and operated without the corridor and design hearings which are required by RCW 35.58.273 for mass transit facilities operating on a separate right of way.

(3) To fix rates, tolls, fares, and charges for the use of such facilities and to establish various routes and classes of service. Fares or charges may be adjusted or eliminated for any distinguishable class of users including, but not limited to, senior citizens, handicapped persons, and students. Classes of service and fares will be maintained in the several parts of the metropolitan area at such levels as will provide, insofar as reasonably practicable, that the portion of any annual transit operating deficit of the metropolitan municipal corporation attributable to the operation of all routes, taken as a whole, which are located within the central city is approximately in proportion to the portion of total taxes collected by or on behalf of the metropolitan municipal corporation for transit purposes within the central city, and that the portion of such annual transit operating deficit attributable to the operation of all routes, taken as a whole, which are located outside the central city, is approximately in proportion to the portion of such taxes collected outside the central city.

In the event any metropolitan municipal corporation shall extend its metropolitan transportation function to any area or service already offered by any company holding a certificate of public convenience and necessity from the Washington utilities and transportation commission under RCW 81.68.040, it shall by purchase or condemnation acquire at the fair market value, from the person holding the existing certificate for providing the services, that portion of the operating authority and equipment representing the services within the area of public operation. [1981 c 25 § 1; 1971 ex.s. c 303 § 8; 1967 c 105 § 11; 1965 c 7 § 35.58.240. Prior: 1957 c 213 § 24.]

35.58.245 Public transportation function—Authorization by election required—Procedure. Notwithstanding any other provision of chapter 35.58 RCW a metropolitan municipal corporation may perform the function of metropolitan public transportation only if the performance of such function is authorized by election. The metropolitan council may call such election and certify the ballot proposition. The election shall be conducted and canvassed as provided in RCW 35.58.090 and the municipality shall be authorized to perform the function of metropolitan public transportation if a majority of the persons voting on the proposition shall vote in favor. [1971 ex.s. c 303 § 1.]

35.58.250 Other local public passenger transportation service prohibited—Agreements—Purchase—Condemnation. Except in accordance with an agreement made as provided herein, upon the effective date on which the metropolitan municipal corporation commences to perform the metropolitan transportation function, no person or private corporation shall operate a local public passenger transportation service within the metropolitan area with the exception of taxis, busses owned or operated by a school district or private school, and busses owned or operated by any corporation or organization solely for the purposes of the

corporation or organization and for the use of which no fee or fare is charged.

An agreement may be entered into between the metropolitan municipal corporation and any person or corporation legally operating a local public passenger transportation service wholly within or partly within and partly without the metropolitan area and on said effective date under which such person or corporation may continue to operate such service or any part thereof for such time and upon such terms and conditions as provided in such agreement. Where any such local public passenger transportation service will be required to cease to operate within the metropolitan area, the commission may agree with the owner of such service to purchase the assets used in providing such service, or if no agreement can be reached, the commission shall condemn such assets in the manner provided herein for the condemnation of other properties.

Wherever a privately owned public carrier operates wholly or partly within a metropolitan municipal corporation, the Washington utilities and transportation commission shall continue to exercise jurisdiction over such operation as provided by law. [1965 c 7 § 35.58.250. Prior: 1957 c 213 § 25.]

35.58.260 Transportation function—Acquisition of city system. If a metropolitan municipal corporation shall be authorized to perform the metropolitan transportation function, it shall, upon the effective date of the assumption of such power, have and exercise all rights with respect to the construction, acquisition, maintenance, operation, extension, alteration, repair, control and management of passenger transportation which any component city shall have been previously empowered to exercise and such powers shall not thereafter be exercised by such component cities without the consent of the metropolitan municipal corporation: PROVIDED, That any city owning and operating a public transportation system on such effective date may continue to operate such system within such city until such system shall have been acquired by the metropolitan municipal corporation and a metropolitan municipal corporation may not acquire such system without the consent of the city council of such city. [1965 c 7 § 35.58.260. Prior: 1957 c 213 § 26.]

35.58.265 Acquisition of existing transportation system—Assumption of labor contracts—Transfer of employees—Preservation of employee benefits—Collective bargaining. If a metropolitan municipal corporation shall perform the metropolitan transportation function and shall acquire any existing transportation system, it shall assume and observe all existing labor contracts relating to such system and, to the extent necessary for operation of facilities, all of the employees of such acquired transportation system whose duties are necessary to operate efficiently the facilities acquired shall be appointed to comparable positions to those which they held at the time of such transfer, and no employee or retired or pensioned employee of such systems shall be placed in any worse position with respect to pension seniority, wages, sick leave, vacation or other benefits that he enjoyed as an employee of such system prior to such acquisition. The metropolitan municipal corporation shall

engage in collective bargaining with the duly appointed representatives of any employee labor organization having existing contracts with the acquired transportation system and may enter into labor contracts with such employee labor organization. [1965 c 91 § 1.]

Retention of employees, preservation of pension rights and other benefits upon acquisition of metropolitan facility: RCW 35.58.380 through 35.58.400.

35.58.268 Public transportation employees—Payroll deduction for political action committees. Any public official authorized to disburse funds in payment of salaries and wages of public transportation employees may, upon written request of the employee, deduct from the salary or wages of the employee, contributions for payment of voluntary deductions for political action committees sponsored by labor or employee organizations with public transportation employees as members. For the purposes of this section, "public transportation employees" means employees of a public transportation system specified in RCW 35.58.272 who are covered by a collective bargaining agreement. [1985 c 204 § 1.]

35.58.270 Metropolitan transit commission. If a metropolitan municipal corporation shall be authorized to perform the function of metropolitan transportation with a commission form of management, a metropolitan transit commission shall be formed prior to the effective date of the assumption of such function. Except as provided in this section, the metropolitan transit commission shall exercise all powers of the metropolitan municipal corporation with respect to metropolitan transportation facilities, including but not limited to the power to construct, acquire, maintain, operate, extend, alter, repair, control and manage a local public transportation system within and without the metropolitan area, to establish new passenger transportation services and to alter, curtail, or abolish any services as the commission may deem desirable and to fix tolls and fares.

The comprehensive plan for public transportation service and any amendments thereof shall be adopted by the metropolitan council and the metropolitan transit commission shall provide transportation facilities and service consistent with such plan. The metropolitan transit commission shall authorize expenditures for transportation purposes within the budget adopted by the metropolitan council. Tolls and fares may be fixed or altered by the commission only after approval thereof by the metropolitan council. Bonds of the metropolitan municipal corporation for public transportation purposes shall be issued by the metropolitan council as provided in this chapter.

The metropolitan transit commission shall consist of seven members. Six of such members shall be appointed by the metropolitan council and the seventh member shall be the chairman of the metropolitan council who shall be ex officio the chairman of the metropolitan transit commission. Three of the six appointed members of the commission shall be residents of the central city and three shall be residents of the metropolitan area outside of the central city. The three central city members of the first metropolitan transit commission shall be selected from the existing transit commission of the central city, if there be a transit commission in such city. The terms of first appointees shall be for one,

two, three, four, five and six years, respectively. Thereafter, commissioners shall serve for a term of four years. Compensation of transit commissioners shall be determined by the metropolitan council. [1967 c 105 § 12; 1965 c 7 § 35.58.270. Prior: 1957 c 213 § 27.]

Submission of commission or council form of management of transportation function to voters: RCW 35.58.118.

35.58.271 Public transportation in cities and metropolitan municipal corporations—Financing. See chapter 35.95 RCW.

35.58.2711 Local sales and use taxes for financing public transportation systems. See RCW 82.14.045 through 82.14.060.

35.58.2712 Public transportation feasibility study—Advanced financial support payments. Any municipality, as defined in RCW 35.95.020, may be eligible to receive a one-time advanced financial support payment to perform a feasibility study to determine the need for public transportation to serve its residents. This payment shall be governed by the following conditions:

(1) The payment shall precede any advanced financial support payment to develop a plan pursuant to RCW 36.57A.150;

(2) The amount of such payment shall be commensurate with the number of residents in and the size of the land area of such municipality and the number and size of school districts in such municipality and shall not exceed one hundred ten thousand dollars; and

(3) Repayment of an advanced financial support payment shall be made to the general fund by the municipality within two years after the date such advanced payment was received. The study shall be completed within one year after the date such advanced payment was received. The study and its recommendations shall then be presented to the legislative authority of the municipality. Within six months of its receipt of the study and its recommendations, the legislative authority shall pass a resolution adopting or rejecting all or part of the study. A copy of the resolution shall be transmitted to the state agency administering this section. Such repayment shall be waived within two years of the date such advanced payment was received if the legislative authority or the voters in such municipality do not elect to levy and collect taxes to support public transportation in their area. Such repayment shall not be waived in the event any of the provisions of this subsection are not followed;

(4) The feasibility study shall give consideration to consolidating or coordinating all or any portion of the K-12 pupil transportation system within the proposed boundaries of the municipality. Any school district lying wholly or in part within the proposed boundaries shall fully cooperate in the study unless the school board shall pass a resolution to the contrary setting forth the reasons therefor. A copy of the resolution shall be forwarded to the secretary of the department of transportation for inclusion in the municipality's application file.

The department of transportation shall provide technical assistance in the preparation of feasibility studies, and shall

adopt reasonable rules and regulations to carry out the provisions of this section. [1979 c 59 § 1; 1977 ex.s. c 44 § 6.]

Severability—Effective date—1977 ex.s. c 44: See notes following RCW 36.57A.030.

35.58.272 Public transportation systems—Definitions. "Municipality" as used in RCW 35.58.272 through 35.58.279, as now or hereafter amended, and in RCW 36.57.080, 36.57.100, 36.57.110, 35.58.2721, 35.58.2794, and chapter 36.57A RCW, means any metropolitan municipal corporation which shall have been authorized to perform the function of metropolitan public transportation; any county performing the public transportation function as authorized by RCW 36.57.100 and 36.57.110 or which has established a county transportation authority pursuant to chapter 36.57 RCW; any public transportation benefit area established pursuant to chapter 36.57A RCW; and any city, which is not located within the boundaries of a metropolitan municipal corporation, county transportation authority, or public transportation benefit area, and which owns, operates or contracts for the services of a publicly owned or operated system of transportation: PROVIDED, That the term "municipality" shall mean in respect to any county performing the public transportation function pursuant to RCW 36.57.100 and 36.57.110 only that portion of the unincorporated area lying wholly within such unincorporated transportation benefit area.

"Motor vehicle" as used in RCW 35.58.272 through 35.58.279, as now or hereafter amended, shall have the same meaning as in RCW 82.44.010.

"County auditor" shall mean the county auditor of any county or any person designated to perform the duties of a county auditor pursuant to RCW 82.44.140.

"Person" shall mean any individual, corporation, firm, association or other form of business association. [1975 1st ex.s. c 270 § 1; 1969 ex.s. c 255 § 7.]

Severability—1975 1st ex.s. c 270: "If any provision of this 1975 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 1st ex.s. c 270 § 30.]

Effective date—1975 1st ex.s. c 270: "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 270 § 31.]

Construction—1969 ex.s. c 255: "The powers and authority conferred upon municipalities under the provisions of this 1969 act shall be in addition to and supplemental to powers or authority conferred by any other law, and nothing contained herein limits any other power or authority of such municipalities." [1969 ex.s. c 255 § 21.]

Severability—1969 ex.s. c 255: "If any provision of this 1969 act, or its application to any municipality, person or circumstance is held invalid, the remainder of this 1969 act or the application of the provisions to other municipalities, persons or circumstances is not affected." [1969 ex.s. c 255 § 22.]

Contracts between political subdivisions for services and use of public transportation systems: RCW 39.33.050.

35.58.2721 Public transportation systems—Authority of municipalities to acquire, operate, etc.—Indebtedness—Bond issues. (1) In addition to any other authority now provided by law, and subject only to constitutional limitations, the governing body of any municipality shall be authorized to acquire, construct, operate, and

maintain a public transportation system and additions and betterments thereto, and to issue general obligation bonds for public mass transportation capital purposes including but not limited to replacement of equipment: PROVIDED, That the general indebtedness incurred under this section when considered together with all the other outstanding general indebtedness of the municipality shall not exceed the amounts of indebtedness authorized by chapter 39.36 RCW and chapter 35.58 RCW, as now or hereafter amended, to be incurred without and with the assent of the voters. Such bonds may be in any form, including bearer bonds or registered bonds as provided in RCW 39.46.030.

Any municipality is authorized to pledge for the payment or security of the principal of and interest on any bonds issued for authorized public transportation purposes all or any portion of any taxes authorized to be levied by the issuer, including, but not limited to, the local sales and use tax authorized pursuant to RCW 82.14.045, as now or hereafter amended. No motor vehicle excise taxes under RCW 35.58.273 may be pledged for bonds.

(2) Notwithstanding subsection (1) of this section, such bonds may be issued and sold in accordance with chapter 39.46 RCW. [1990 c 42 § 315; 1983 c 167 § 46; 1979 ex.s. c 175 § 1; 1975 1st ex.s. c 270 § 7.]

Purpose—Headings—Severability—Effective dates—Application—Implementation—1990 c 42: See notes following RCW 82.36.025.

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

Severability—Effective date—1975 1st ex.s. c 270: See notes following RCW 35.58.272.

Financing of public transportation systems in metropolitan municipal corporations: Chapter 35.95 RCW and RCW 82.14.045.

35.58.273 Public transportation systems—Motor vehicle excise tax authorized—Credits—Public hearing on route and design. (Effective until January 1, 1993.)

(1) Through June 30, 1992, any municipality, as defined in this subsection, is authorized to levy and collect a special excise tax not exceeding .7824 percent and beginning July 1, 1992, .725 percent on the value, as determined under chapter 82.44 RCW, of every motor vehicle owned by a resident of such municipality for the privilege of using such motor vehicle provided that in no event shall the tax be less than one dollar and, subject to RCW 82.44.150 (3) and (4), the amount of such tax shall be credited against the amount of the excise tax levied by the state under RCW 82.44.020. As used in this subsection, the term "municipality" means a municipality that is located within (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 subsection (a) of this subsection.

(2) Through June 30, 1992, any other municipality is authorized to levy and collect a special excise tax not exceeding .815 percent, and beginning July 1, 1992, .725 percent on the value, as determined under chapter 82.44 RCW, of every motor vehicle owned by a resident of such municipality for the privilege of using such motor vehicle provided that in no event shall the tax be less than one dollar and, subject to RCW 82.44.150 (3) and (4), the amount of

such tax shall be credited against the amount of the excise tax levied by the state under RCW 82.44.020. Before utilization of any excise tax moneys collected under authorization of this section for acquisition of right of way or construction of a mass transit facility on a separate right of way the municipality shall adopt rules affording the public an opportunity for "corridor public hearings" and "design public hearings" as herein defined, which rule shall provide in detail the procedures necessary for public participation in the following instances: (a) Prior to adoption of location and design plans having a substantial social, economic or environmental effect upon the locality upon which they are to be constructed or (b) on such mass rapid transit systems operating on a separate right of way whenever a substantial change is proposed relating to location or design in the adopted plan. In adopting rules the municipality shall adhere to the provisions of the Administrative Procedure Act.

(3) A "corridor public hearing" is a public hearing that: (a) Is held before the municipality is committed to a specific mass transit route proposal, and before a route location is established; (b) is held to afford an opportunity for participation by those interested in the determination of the need for, and the location of, the mass rapid transit system; (c) provides a public forum that affords a full opportunity for presenting views on the mass rapid transit system route location, and the social, economic and environmental effects on that location and alternate locations: PROVIDED, That such hearing shall not be deemed to be necessary before adoption of an overall mass rapid transit system plan by a vote of the electorate of the municipality.

(4) A "design public hearing" is a public hearing that: (a) Is held after the location is established but before the design is adopted; and (b) is held to afford an opportunity for participation by those interested in the determination of major design features of the mass rapid transit system; and (c) provides a public forum to afford a full opportunity for presenting views on the mass rapid transit system design, and the social, economic, environmental effects of that design and alternate designs. [1991 c 339 § 29; 1991 c 309 § 1; (1991 c 363 § 40 repealed by 1991 c 309 § 6); 1990 c 42 § 316; 1987 c 428 § 2; 1979 ex.s. c 175 § 2; 1969 ex.s. c 255 § 8.]

Reviser's note: This section was amended by 1991 c 309 § 1 and by 1991 c 339 § 29, 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 date—1987 c 428: See note following RCW 47.78.010.

Administrative procedure act: Chapter 34.05 RCW.

35.58.273 Public transportation systems—Motor vehicle excise tax authorized—Credits—Public hearing on route and design—Sales and use tax on rental cars. (Effective January 1, 1993.) (1) Through June 30, 1992, any municipality, as defined in this subsection, is authorized to levy and collect a special excise tax not exceeding .7824 percent and beginning July 1, 1992, .725 percent on the value, as determined under chapter 82.44 RCW, of every motor vehicle owned by a resident of such municipality for the privilege of using such motor vehicle provided that in no event shall the tax be less than one dollar and, subject to

RCW 82.44.150 (3) and (4), the amount of such tax shall be credited against the amount of the excise tax levied by the state under RCW 82.44.020(1). As used in this subsection, the term "municipality" means a municipality that is located within (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 subsection (a) of this subsection.

(2) Through June 30, 1992, any other municipality is authorized to levy and collect a special excise tax not exceeding .815 percent, and beginning July 1, 1992, .725 percent on the value, as determined under chapter 82.44 RCW, of every motor vehicle owned by a resident of such municipality for the privilege of using such motor vehicle provided that in no event shall the tax be less than one dollar and, subject to RCW 82.44.150 (3) and (4), the amount of such tax shall be credited against the amount of the excise tax levied by the state under RCW 82.44.020(1). Before utilization of any excise tax moneys collected under authorization of this section for acquisition of right of way or construction of a mass transit facility on a separate right of way the municipality shall adopt rules affording the public an opportunity for "corridor public hearings" and "design public hearings" as herein defined, which rule shall provide in detail the procedures necessary for public participation in the following instances: (a) Prior to adoption of location and design plans having a substantial social, economic or environmental effect upon the locality upon which they are to be constructed or (b) on such mass rapid transit systems operating on a separate right of way whenever a substantial change is proposed relating to location or design in the adopted plan. In adopting rules the municipality shall adhere to the provisions of the Administrative Procedure Act.

(3) A "corridor public hearing" is a public hearing that: (a) Is held before the municipality is committed to a specific mass transit route proposal, and before a route location is established; (b) is held to afford an opportunity for participation by those interested in the determination of the need for, and the location of, the mass rapid transit system; (c) provides a public forum that affords a full opportunity for presenting views on the mass rapid transit system route location, and the social, economic and environmental effects on that location and alternate locations: PROVIDED, That such hearing shall not be deemed to be necessary before adoption of an overall mass rapid transit system plan by a vote of the electorate of the municipality.

(4) A "design public hearing" is a public hearing that: (a) Is held after the location is established but before the design is adopted; and (b) is held to afford an opportunity for participation by those interested in the determination of major design features of the mass rapid transit system; and (c) provides a public forum to afford a full opportunity for presenting views on the mass rapid transit system design, and the social, economic, environmental effects of that design and alternate designs.

(5) A municipality imposing a tax under subsection (1) or (2) of this section may also impose a sales and use tax, in addition to the tax authorized by RCW 82.14.030, upon retail car rentals within the municipality that are taxable by the state under chapters 82.08 and 82.12 RCW. The rate of tax

shall bear the same ratio to the rate imposed under RCW 82.08.020(2) as the excise tax rate imposed under subsection (1) of this section bears to the excise tax rate imposed under RCW 82.44.020 (1) and (2). The base of the tax shall be the selling price in the case of a sales tax or the rental value of the vehicle used in the case of a use tax. The tax imposed under this section shall be deducted from the amount of tax otherwise due under RCW 82.08.020(2). The revenue collected under this subsection shall be distributed in the same manner as special excise taxes under subsections (1) and (2) of this section. [1992 c 194 § 11; 1991 c 339 § 29; 1991 c 309 § 1; (1991 c 363 § 40 repealed by 1991 c 309 § 6); 1990 c 42 § 316; 1987 c 428 § 2; 1979 ex.s. c 175 § 2; 1969 ex.s. c 255 § 8.]

Legislative intent—1992 c 194: See note following RCW 82.08.020.

Effective dates—1992 c 194: See note following RCW 46.04.466.

Purpose—Headings—Severability—Effective dates—Application—Implementation—1990 c 42: See notes following RCW 82.36.025.

Effective date—1987 c 428: See note following RCW 47.78.010.

Administrative procedure act: Chapter 34.05 RCW.

35.58.274 Public transportation systems—Motor vehicles exempt from tax. Any vehicle for which an excise tax is payable under RCW 82.44.030 shall be exempt from the tax imposed by RCW 35.58.273. [1985 c 7 § 100; 1969 ex.s. c 255 § 9.]

35.58.275 Public transportation systems—Provisions of motor vehicle excise tax chapter applicable. The schedule and basis for the excise tax imposed under RCW 35.58.273 shall be as provided in *RCW 82.44.040 and RCW 82.44.050. Penalties, receipts, abatements, refunds and all other similar matters relating to the tax shall be as provided in chapter 82.44 RCW. [1969 ex.s. c 255 § 10.]

***Reviser's note:** RCW 82.44.040 and 82.44.050 were repealed by 1990 c 42 § 328, effective September 1, 1990. Cf. RCW 82.44.041.

35.58.276 Public transportation systems—When tax due and payable—Collection. The excise tax authorized by RCW 35.58.273 shall be due and payable as set forth in RCW 82.44.060 and shall be collected by the county auditor of the county or counties in which such municipality is located or by a designee of the director under RCW 82.44.140, and remitted to the state at no cost to the municipality imposing the tax. [1971 ex.s. c 199 § 1; 1969 ex.s. c 255 § 11.]

35.58.277 Public transportation systems—Remittance of tax by county auditor. When remitting license fee receipts to the state pursuant to RCW 82.44.110, the county auditor shall at the same time remit the special excise taxes collected for the municipality and, subject to the provisions of subsection (2) of RCW 82.44.150, the sum so collected and paid over on behalf of the municipality shall be credited against the amount of the tax the auditor would otherwise be required to collect and pay over to the director of licensing for ultimate distribution to the general fund under chapter 82.44 RCW. [1979 c 158 § 91; 1969 ex.s. c 255 § 12.]

35.58.278 Public transportation systems—Distribution of tax. Distribution of the special excise taxes paid into the general fund on behalf of any municipality shall be made to such municipality as provided in RCW 82.44.150, as now or hereafter amended. [1975 1st ex.s. c 270 § 2; 1974 ex.s. c 54 § 1; 1969 ex.s. c 255 § 13.]

Severability—Effective date—1975 1st ex.s. c 270: See notes following RCW 35.58.272.

Severability—Effective dates—1974 ex.s. c 54: See notes following RCW 82.44.110.

35.58.279 Public transportation systems—Crediting and use of tax revenues. All taxes levied and collected under RCW 35.58.273 shall be credited to a special fund in the treasury of the municipality imposing such tax. Such taxes shall be levied and used solely for the purpose of paying all or any part of the cost of acquiring, constructing, equipping or operating a publicly owned mass transportation system, or contracting for the services thereof, or to pay or secure the payment of all or part of the principal of or interest on any general obligation bonds or revenue bonds issued for public transportation capital purposes and until withdrawn for use, the moneys accumulated in such fund or funds may be invested by the treasurer of such municipality in the manner authorized by the legislative body of the municipality.

No municipality may use any of the proceeds of the taxes levied and collected under RCW 35.58.273 for the purpose of financing ambulance services nor shall the expenditure of sales and use tax authorized pursuant to RCW 82.14.045 for ambulance services be counted as locally generated tax revenues for apportionment and distribution of the proceeds of the motor vehicle excise tax authorized pursuant to RCW 35.58.273, in the manner prescribed by chapter 82.44 RCW as now or hereafter amended.

If any of the revenue from any such special excise tax shall have been pledged by any municipality to secure the payment of any bonds as herein authorized, then as long as that pledge shall be in effect the legislature shall not withdraw from the municipality the authority to levy and collect the tax. After August 11, 1969, any municipality is authorized to pledge that the tax authorized by RCW 35.58.273 shall be levied, collected and applied as provided by law to pay or secure the payment of any bonds issued by such municipality after such date but before May 14, 1979, for authorized public transportation purposes. [1981 c 319 § 3; 1979 ex.s. c 175 § 3; 1969 ex.s. c 255 § 14.]

35.58.2791 Public transportation systems—Internal combustion equipment to comply with pollution control standards. No new internal combustion powered equipment shall be acquired with funds derived from the taxes levied and collected under RCW 35.58.273 or with funds derived from general obligation bonds wholly or partially secured by the taxes levied and collected under RCW 35.58.273 unless they meet the standards for control of pollutants emitted by internal combustion engines as determined by the state air pollution control board, which standards shall not be less than those required by similar federal standards. [1969 ex.s. c 255 § 19.]

35.58.2792 Public transportation systems—Parking facilities to be in conjunction with system stations or transfer facilities. The construction of parking facilities to be wholly or partially financed with funds derived from the taxes levied and collected under RCW 35.58.273 or with funds derived from general obligation bonds wholly or partially secured by taxes levied and collected under RCW 35.58.273 shall be in conjunction with and adjacent to public transportation stations or transfer facilities. [1969 ex.s. c 255 § 20.]

35.58.2794 Public transportation systems—Research, testing, development, etc., of systems—Powers to comply with federal laws. Any city, county, public transportation benefit area authority, county transportation authority, or metropolitan municipal corporation operating a public transportation system shall be authorized to conduct, contract for, participate in and support research, demonstration, testing and development of public transportation systems, equipment and use incentives and shall have all powers necessary to comply with any criteria, standards, and regulations which may be adopted under the urban mass transportation act (78 Stat. 302 et seq., 49 U.S.C. 1601 et seq.) and to take all actions necessary to meet the requirements of that act. Any county in which a county transportation authority or public transportation benefit area shall have been established and any metropolitan municipal corporation which shall have been authorized to perform the function of metropolitan public transportation shall have, in addition to such powers, the authority to prepare, adopt and carry out a comprehensive transit plan and to make such other plans and studies and to perform such programs as the governing body of the county authority public transportation benefit area authority or metropolitan municipal corporation shall deem necessary to implement and comply with said federal act. [1975 1st ex.s. c 270 § 8.]

Severability—Effective date—1975 1st ex.s. c 270: See notes following RCW 35.58.272.

35.58.2795 Public transportation systems—Municipalities to prepare six-year transit program. By April 1st of each year, the legislative authority of each municipality, as defined in RCW 35.58.272, shall prepare a six-year transit development and financial program for that calendar year and the ensuing five years. The program shall be consistent with the comprehensive plans adopted by counties, cities, and towns, pursuant to chapter 35.63, 35A.63, or 36.70 RCW, the inherent authority of a first class city or charter county derived from its charter, or chapter 36.70A RCW. The program shall contain information as to how the municipality intends to meet state and local long-range priorities for public transportation, capital improvements, significant operating changes planned for the system, and how the municipality intends to fund program needs. Each municipality shall file the six-year program with the state department of transportation, the transportation improvement board, and cities, counties, and regional planning councils within which the municipality is located.

In developing its program, the municipality shall consider those policy recommendations affecting public transportation contained in the state transportation policy

plan approved by the state transportation commission and, where appropriate, adopted by the legislature. The municipality shall conduct one or more public hearings while developing its program and for each annual update. [1990 1st ex.s. c 17 § 60; 1989 c 396 § 1.]

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

35.58.2796 Public transportation systems—Annual report by department. The department of transportation shall develop an annual report summarizing the status of public transportation systems in the state. By September 1st of each year, copies of the report shall be submitted to the legislative transportation committee and to each municipality, as defined in RCW 35.58.272, and to individual members of the municipality's legislative authority. The department shall prepare and submit a preliminary report by December 1, 1989.

To assist the department with preparation of the report, each municipality shall file a system report by April 1st of each year with the state department of transportation identifying its public transportation services for the previous calendar year and its objectives for improving the efficiency and effectiveness of those services. The system report shall address those items required for each public transportation system in the department's report.

The department report shall describe individual public transportation systems, including contracted transportation services and dial-a-ride services, and include a state-wide summary of public transportation issues and data. The descriptions shall include the following elements and such other elements as the department deems appropriate after consultation with the municipalities and the legislative transportation committee:

- (1) Equipment and facilities, including vehicle replacement standards;
- (2) Services and service standards;
- (3) Revenues, expenses, and ending balances, by fund source;
- (4) Policy issues and system improvement objectives, including community participation in development of those objectives and how those objectives address state-wide transportation priorities;
- (5) Operating indicators applied to public transportation services, revenues, and expenses. Operating indicators shall include operating cost per passenger trip, operating cost per revenue vehicle service hour, passenger trips per revenue service hour, passenger trips per vehicle service mile, vehicle service hours per employee, and farebox revenue as a percent of operating costs. [1989 c 396 § 2.]

35.58.280 Powers relative to garbage disposal. If a metropolitan municipal corporation shall be authorized to perform the function of metropolitan garbage disposal, it shall have the following powers in addition to the general powers granted by this chapter:

- (1) To prepare a comprehensive garbage disposal plan for the metropolitan area.
- (2) To acquire by purchase, condemnation, gift, or grant and to lease, construct, add to, improve, replace, repair, maintain, operate and regulate the use of metropolitan

facilities for garbage disposal within or without the metropolitan area, including garbage disposal sites, central collection station sites, structures, machinery and equipment for the operation of central collection stations and for the hauling and disposal of garbage by any means, together with all lands, property, equipment and accessories necessary for such facilities. Garbage disposal facilities which are owned by a city or county may be acquired or used by the metropolitan municipal corporation only with the consent of the legislative body of the city or county owning such facilities. Cities and counties are hereby authorized to convey or lease such facilities to metropolitan municipal corporations or to contract for their joint use on such terms as may be fixed by agreement between the legislative body of such city or county and the metropolitan council, without submitting the matter to the voters of such city or county.

(3) To fix rates and charges for the use of metropolitan garbage disposal facilities.

(4) With the consent of any component city, to acquire by purchase, condemnation, gift or grant and to lease, construct, add to, improve, replace, repair, maintain, operate and regulate the use of facilities for the local collection of garbage within such city, and for such purpose to have all the powers conferred by law upon such city with respect to such local collection facilities. Nothing herein contained shall be deemed to authorize the local collection of garbage except in component cities. All costs of such local collection facilities shall be paid for by the area served thereby. [1965 c 7 § 35.58.280. Prior: 1957 c 213 § 28.]

35.58.290 Powers relative to parks and parkways. If a metropolitan municipal corporation shall be authorized to perform the function of metropolitan parks and parkways, it shall have the following powers in addition to the general powers granted by this chapter:

- (1) To prepare a comprehensive plan of metropolitan parks and parkways.
- (2) To acquire by purchase, condemnation, gift or grant, to lease, construct, add to, improve, develop, replace, repair, maintain, operate and regulate the use of metropolitan parks and parkways, together with all lands, rights of way, property, equipment and accessories necessary therefor. A park or parkway shall be considered to be a metropolitan facility if the metropolitan council shall by resolution find it to be of use and benefit to all or a major portion of the residents of the metropolitan area. Parks or parkways which are owned by a component city or county may be acquired or used by the metropolitan municipal corporation only with the consent of the legislative body of such city or county. Cities and counties are hereby authorized to convey or lease such facilities to metropolitan municipal corporations or to contract for their joint use on such terms as may be fixed by agreement between the legislative bodies of such city or county and the metropolitan council, without submitting the matter to the voters of such city or county. If parks or parkways which have been acquired or used as metropolitan facilities shall no longer be used for park purposes by the metropolitan municipal corporation, such facilities shall revert to the component city or county which formerly owned them.

(3) To fix fees and charges for the use of metropolitan park and parkway facilities. [1965 c 7 § 35.58.290. Prior: 1957 c 213 § 29.]

35.58.300 Metropolitan park board. If a metropolitan municipal corporation shall be authorized to perform the function of metropolitan parks and parkways, a metropolitan park board shall be formed prior to the effective date of the assumption of such function. Except as provided in this section, the metropolitan park board shall exercise all powers of the metropolitan municipal corporation with respect to metropolitan park and parkway facilities.

The metropolitan park board shall authorize expenditures for park and parkway purposes within the budget adopted by the metropolitan council. Bonds of the metropolitan municipal corporation for park and parkway purposes shall be issued by the metropolitan council as provided in this chapter.

The metropolitan park board shall consist of five members appointed by the metropolitan council at least two of whom shall be residents of the central city. The terms of first appointees shall be for one, two, three, four and five years, respectively. Thereafter members shall serve for a term of four years. Compensation of park board members shall be determined by the metropolitan council. [1965 c 7 § 35.58.300. Prior: 1957 c 213 § 30.]

35.58.310 Powers relative to planning. If a metropolitan municipal corporation shall be authorized to perform the function of metropolitan comprehensive planning, it shall have the following powers in addition to the general powers granted by this chapter:

(1) To prepare a recommended comprehensive land use and capital facilities plan for the metropolitan area.

(2) To review proposed zoning ordinances and resolutions or comprehensive plans of component cities and counties and make recommendations thereon. Such proposed zoning ordinances and resolutions or comprehensive plans must be submitted to the metropolitan council prior to adoption and may not be adopted until reviewed and returned by the metropolitan council. The metropolitan council shall cause such ordinances, resolutions and plans to be reviewed by the planning staff of the metropolitan municipal corporation and return such ordinances, resolutions and plans, together with their findings and recommendations thereon within sixty days following their submission.

(3) To provide planning services for component cities and counties upon request and upon payment therefor by the cities or counties receiving such service. [1965 c 7 § 35.58.310. Prior: 1957 c 213 § 31.]

35.58.320 Eminent domain. A metropolitan municipal corporation shall have power to acquire by purchase and condemnation all lands and property rights, both within and without the metropolitan area, which are necessary for its purposes. Such right of eminent domain shall be exercised by the metropolitan council in the same manner and by the same procedure as is or may be provided by law for cities of the first class, except insofar as such laws may be inconsistent with the provisions of this chapter. [1965 c 7 § 35.58.320. Prior: 1957 c 213 § 32.]

Eminent domain by cities: Chapter 8.12 RCW.

35.58.330 Powers may be exercised with relation to public rights of way without franchise—Conditions. A metropolitan municipal corporation shall have power to construct or maintain metropolitan facilities in, along, on, under, over, or through public streets, bridges, viaducts, and other public rights of way without first obtaining a franchise from the county or city having jurisdiction over the same: PROVIDED, That such facilities shall be constructed and maintained in accordance with the ordinances and resolutions of such city or county relating to construction, installation and maintenance of similar facilities in such public properties. [1965 c 7 § 35.58.330. Prior: 1957 c 213 § 33.]

35.58.340 Disposition of unneeded property. Except as otherwise provided herein, a metropolitan municipal corporation may sell, or otherwise dispose of any real or personal property acquired in connection with any authorized metropolitan function and which is no longer required for the purposes of the metropolitan municipal corporation in the same manner as provided for cities of the first class. When the metropolitan council determines that a metropolitan facility or any part thereof which has been acquired from a component city or county without compensation is no longer required for metropolitan purposes, which is required as a local facility by the city or county from which it was acquired, the metropolitan council shall by resolution transfer it to such city or county. [1965 c 7 § 35.58.340. Prior: 1957 c 213 § 34.]

35.58.350 Powers of metropolitan council. All the powers and functions of a metropolitan municipal corporation shall be vested in the metropolitan council unless expressly vested in specific officers, boards, or commissions by this chapter. Without limitation of the foregoing authority, or of other powers given it by this chapter, the metropolitan council shall have the following powers:

(1) To establish offices, departments, boards and commissions in addition to those provided by this chapter which are necessary to carry out the purposes of the metropolitan municipal corporation, and to prescribe the functions, powers and duties thereof.

(2) To appoint or provide for the appointment of, and to remove or to provide for the removal of, all officers and employees of the metropolitan municipal corporation except those whose appointment or removal is otherwise provided by this chapter.

(3) To fix the salaries, wages and other compensation of all officers and employees of the metropolitan municipal corporation unless the same shall be otherwise fixed in this chapter.

(4) To employ such engineering, legal, financial, or other specialized personnel as may be necessary to accomplish the purposes of the metropolitan municipal corporation. [1965 c 7 § 35.58.350. Prior: 1957 c 213 § 35.]

35.58.360 Rules and regulations—Penalties—Enforcement. A metropolitan municipal corporation shall have power to adopt by resolution such rules and regulations as shall be necessary or proper to enable it to carry out

authorized metropolitan functions and may provide penalties for the violation thereof. Actions to impose or enforce such penalties may be brought in the superior court of the state of Washington in and for the central county. [1965 c 7 § 35.58.360. Prior: 1957 c 213 § 36.]

35.58.370 Merit system. The metropolitan council shall establish and provide for the operation and maintenance of a personnel merit system for the employment, classification, promotion, demotion, suspension, transfer, layoff and discharge of its appointive officers and employees solely on the basis of merit and fitness without regard to political influence or affiliation. The person appointed or body created for the purpose of administering such personnel system shall have power to make, amend and repeal rules and regulations as are deemed necessary for such merit system. Such rules and regulations shall provide:

(1) That the person to be discharged or demoted must be presented with the reasons for such discharge or demotion specifically stated; and

(2) That he shall be allowed a reasonable time in which to reply thereto in writing and that he be given a hearing thereon within a reasonable time. [1965 c 7 § 35.58.370. Prior: 1957 c 213 § 37.]

35.58.380 Retention of existing personnel. A metropolitan municipal corporation shall offer to employ every person who on the date such corporation acquires a metropolitan facility is employed in the operation of such facility by a component city or county or by a special district. [1965 c 7 § 35.58.380. Prior: 1957 c 213 § 38.]

Assumption of labor contracts upon acquisition of transportation system: RCW 35.58.265.

35.58.390 Prior employees pension rights preserved. Where a metropolitan municipal corporation employs a person employed immediately prior thereto by a component city or county, or by a special district, such employee shall be deemed to remain an employee of such city, county, or special district for the purposes of any pension plan of such city, county, or special district, and shall continue to be entitled to all rights and benefits thereunder as if he had remained as an employee of the city, county, or special district, until the metropolitan municipal corporation has provided a pension plan and such employee has elected, in writing, to participate therein.

Until such election, the metropolitan municipal corporation shall deduct from the remuneration of such employee the amount which such employee is or may be required to pay in accordance with the provisions of the plan of such city, county, or special district and the metropolitan municipal corporation shall pay to the city, county, or special district any amounts required to be paid under the provisions of such plan by employer or employee. [1965 c 7 § 35.58.390. Prior: 1957 c 213 § 39.]

Preservation of pension rights upon acquisition of transportation system: RCW 35.58.265.

Public employment, civil service and pensions: Title 41 RCW.

35.58.400 Prior employees sick leave and vacation rights preserved. Where a metropolitan municipal corpora-

tion employs a person employed immediately prior thereto by a component city or county or by a special district, the employee shall be deemed to remain an employee of such city, county, or special district for the purposes of any sick leave credit plan of the component city, county, or special district until the metropolitan municipal corporation has established a sick leave credit plan for its employees, whereupon the metropolitan municipal corporation shall place to the credit of the employee the sick leave credits standing to his credit in the plan of such city, county, or special district.

Where a metropolitan municipal corporation employs a person theretofore employed by a component city, county, or by a special district, the metropolitan municipal corporation shall, during the first year of his employment by the metropolitan municipal corporation, provide for such employee a vacation with pay equivalent to that which he would have been entitled if he had remained in the employment of the city, county, or special district. [1965 c 7 § 35.58.400. Prior: 1957 c 213 § 40.]

Preservation of sick leave, vacation, and other benefits upon acquisition of transportation system: RCW 35.58.265.

35.58.410 Budget—Expenditures—"Supplemental income" designated. On or before the third Monday in June of each year, each metropolitan municipal corporation shall adopt a budget for the following calendar year. Such budget shall include a separate section for each authorized metropolitan function. Expenditures shall be segregated as to operation and maintenance expenses and capital and betterment outlays. Administrative and other expense general to the corporation shall be allocated between the authorized metropolitan functions. 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 and counties in the manner provided in this chapter. The metropolitan council shall not be required to confine capital or betterment expenditures made from bond proceeds or emergency expenditures to items provided in the budget. The affirmative vote of three-fourths of all members of the metropolitan council shall be required to authorize emergency expenditures. [1965 c 7 § 35.58.410. Prior: 1957 c 213 § 41.]

35.58.420 Supplemental income payments by component city and county. Each component city shall pay such proportion of the supplemental income of the metropolitan municipal corporation as the assessed valuation of property within its limits bears to the total assessed valuation of taxable property within the metropolitan area. Each component county shall pay such proportion of such supplemental income as the assessed valuation of the property within the unincorporated area of such county lying within the metropolitan area bears to the total assessed valuation of taxable property within the metropolitan area. In making such determination, the metropolitan council shall use the last available assessed valuations. The metropolitan council shall certify to each component city and county,

prior to the fourth Monday in June of each year, the share of the supplemental income to be paid by such component city or county for the next calendar year. The latter shall then include such amount in its budget for the ensuing calendar year, and during such year shall pay to the metropolitan municipal corporation, in equal quarterly installments, the amount of its supplemental income share from whatever sources may be available to it. [1965 c 7 § 35.58.420. Prior: 1957 c 213 § 42.]

35.58.430 Funds—Disbursements—Treasurer—Expenses—Election expenses. The treasurer of each component county shall create a separate fund into which shall be paid all money collected from taxes levied by the metropolitan municipal corporation on property in such county and such money shall be forwarded quarterly by the treasurer of each such county to the treasurer of the central county as directed by the metropolitan council. The treasurer of the central county shall act as the treasurer of the metropolitan municipal corporation and shall establish and maintain such funds as may be authorized by the metropolitan council. Money shall be disbursed from such funds upon warrants drawn by the auditor of the central county as authorized by the metropolitan council. The central county shall be reimbursed by the metropolitan municipal corporation for services rendered by the treasurer and auditor of the central county in connection with the receipt and disbursement of such funds. The expense of all special elections held pursuant to this chapter shall be paid by the metropolitan municipal corporation. [1965 c 7 § 35.58.430. Prior: 1957 c 213 § 43.]

35.58.440 County assessor's duties. It shall be the duty of the assessor of each component county to certify annually to the metropolitan council the aggregate assessed valuation of all taxable property in his county situated in any metropolitan municipal corporation as the same appears from the last assessment roll of his county. [1965 c 7 § 35.58.440. Prior: 1957 c 213 § 44.]

35.58.450 General obligation bonds—Issuance, sale, form, term, election, payment. Notwithstanding the limitations of chapter 39.36 RCW and any other statutory limitations otherwise applicable and limiting municipal debt, a metropolitan municipal corporation shall have the power to contract indebtedness and issue general obligation bonds and to pledge the full faith and credit of the corporation to the payment thereof, for any authorized capital purpose of the metropolitan municipal corporation, not to exceed an amount, together with any outstanding nonvoter approved general indebtedness, equal to three-fourths of one percent of the value of the taxable property within the metropolitan municipal corporation, as the term "value of the taxable property" is defined in RCW 39.36.015. A metropolitan municipal corporation may additionally contract indebtedness and issue general obligation bonds, for any authorized capital purpose of a metropolitan municipal corporation, together with any other outstanding general indebtedness, not to exceed an amount equal to five percent of the value of the taxable property within the corporation, as the term "value of the taxable property" is defined in RCW 39.36.015, when

a proposition authorizing the indebtedness has been approved by three-fifths of the persons voting on said proposition at said election at which such election the total number of persons voting on such bond proposition shall constitute not less than forty percent of the total number of votes cast within the area of said metropolitan municipal corporation at the last preceding state general election. Such general obligation bonds may be authorized in any total amount in one or more propositions and the amount of such authorization may exceed the amount of bonds which could then lawfully be issued. Such bonds may be issued in one or more series from time to time out of such authorization. The elections shall be held pursuant to RCW 39.36.050.

Whenever the voters of a metropolitan municipal corporation have, pursuant to RCW 84.52.056, approved excess property tax levies to retire such bond issues, both the principal of and interest on such general obligation bonds may be made payable from annual tax levies to be made upon all the taxable property within the metropolitan municipal corporation in excess of the constitutional and/or statutory tax limit. The principal of and interest on any general obligation bond may be made payable from any other taxes or any special assessments which the metropolitan municipal corporation may be authorized to levy or from any otherwise unpledged revenue which may be derived from the ownership or operation of properties or facilities incident to the performance of the authorized function for which such bonds are issued or may be made payable from any combination of the foregoing sources. The metropolitan council may include in the principal amount of such bond issue an amount for engineering, architectural, planning, financial, legal, urban design and other services incident to acquisition or construction solely for authorized capital purposes and may include an amount to establish a guaranty fund for revenue bonds issued solely for capital purposes.

General obligation bonds shall be issued and sold by the metropolitan council as provided in chapter 39.46 RCW and shall mature in not to exceed forty years from the date of issue. [1984 c 186 § 18; 1983 c 167 § 47; 1973 1st ex.s. c 195 § 24; 1971 ex.s. c 303 § 9; 1970 ex.s. c 56 § 38; 1970 ex.s. c 42 § 13; 1970 ex.s. c 11 § 1. Prior: 1969 ex.s. c 255 § 17; 1969 ex.s. c 232 § 16; 1967 c 105 § 13; 1965 c 7 § 35.58.450; prior: 1957 c 213 § 45.]

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—Effective 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.

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

Limitations upon indebtedness: State Constitution Art. 7 § 2 (Amendments 55, 59), Art. 8 § 6 (Amendment 27), chapter 39.36 RCW, RCW 84.52.050.

35.58.460 Revenue bonds—Issuance, sale, form, term, payment, reserves, actions. (1) A metropolitan municipal corporation may issue revenue bonds to provide funds to carry out its authorized metropolitan water pollution abatement, water supply, garbage disposal or transportation purposes, without submitting the matter to the voters of the metropolitan municipal corporation. The metropolitan

council shall create a special fund or funds for the sole purpose of paying the principal of and interest on the bonds of each such issue, into which fund or funds the metropolitan council may obligate the metropolitan municipal corporation to pay such amounts of the gross revenue of the particular utility constructed, acquired, improved, added to, or repaired out of the proceeds of sale of such bonds, as the metropolitan council shall determine and may obligate the metropolitan municipal corporation to pay such amounts out of otherwise unpledged revenue which may be derived from the ownership, use or operation of properties or facilities owned, used or operated incident to the performance of the authorized function for which such bonds are issued or out of otherwise unpledged fees, tolls, charges, tariffs, fares, rentals, special taxes or other sources of payment lawfully authorized for such purpose, as the metropolitan council shall determine. The principal of, and interest on, such bonds shall be payable only out of such special fund or funds, and the owners of such bonds shall have a lien and charge against the gross revenue of such utility or any other revenue, fees, tolls, charges, tariffs, fares, special taxes or other authorized sources pledged to the payment of such bonds.

Such revenue bonds and the interest thereon issued against such fund or funds shall be a valid claim of the owners thereof only as against such fund or funds and the revenue pledged therefor, and shall not constitute a general indebtedness of the metropolitan municipal corporation.

Each such revenue bond shall state upon its face that it is payable from such special fund or funds, and all revenue bonds issued under this chapter shall be negotiable securities within the provisions of the law of this state. Such revenue bonds may be registered either as to principal only or as to principal and interest as provided in RCW 39.46.030, or may be bearer bonds; shall be in such denominations as the metropolitan council shall deem proper; shall be payable at such time or times and at such places as shall be determined by the metropolitan council; shall bear interest at such rate or rates as shall be determined by the metropolitan council; shall be signed by the chairman and attested by the secretary of the metropolitan council, one of which signatures may be a facsimile signature, and the seal of the metropolitan municipal corporation shall be impressed or imprinted thereon; any attached interest coupons shall be signed by the facsimile signatures of said officials.

Such revenue bonds shall be sold in such manner, at such price and at such rate or rates of interest as the metropolitan council shall deem to be for the best interests of the metropolitan municipal corporation, either at public or private sale.

The metropolitan council may at the time of the issuance of such revenue bonds make such covenants with the owners of said bonds as it may deem necessary to secure and guarantee the payment of the principal thereof and the interest thereon, including but not being limited to covenants to set aside adequate reserves to secure or guarantee the payment of such principal and interest, to maintain rates sufficient to pay such principal and interest and to maintain adequate coverage over debt service, to appoint a trustee or trustees for the bond owners to safeguard the expenditure of the proceeds of sale of such bonds and to fix the powers and duties of such trustee or trustees and to make such other

covenants as the metropolitan council may deem necessary to accomplish the most advantageous sale of such bonds. The metropolitan council may also provide that revenue bonds payable out of the same source may later be issued on a parity with revenue bonds being issued and sold.

The metropolitan council may include in the principal amount of any such revenue bond issue an amount to establish necessary reserves, an amount for working capital and an amount necessary for interest during the period of construction of any such metropolitan facilities plus six months. The metropolitan council may, if it deems it to be the best interest of the metropolitan municipal corporation, provide in any contract for the construction or acquisition of any metropolitan facilities or additions or improvements thereto or replacements or extensions thereof that payment therefor shall be made only in such revenue bonds at the par value thereof.

If the metropolitan municipal corporation shall fail to carry out or perform any of its obligations or covenants made in the authorization, issuance and sale of such bonds, the owner of any such bond may bring action against the metropolitan municipal corporation and compel the performance of any or all of such covenants.

(2) Notwithstanding subsection (1) of this section, such bonds may be issued and sold in accordance with chapter 39.46 RCW. [1983 c 167 § 48; 1974 ex.s. c 70 § 8; 1970 ex.s. c 56 § 39; 1970 ex.s. c 11 § 2; 1969 ex.s. c 255 § 18; 1969 ex.s. c 232 § 17; 1967 c 105 § 14; 1965 c 7 § 35.58.460. Prior: 1957 c 213 § 46.]

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.

35.58.470 Funding, refunding bonds. The metropolitan council may, by resolution, without submitting the matter to the voters of the metropolitan municipal corporation, provide for the issuance of funding or refunding general obligation bonds to refund any outstanding general obligation bonds or any part thereof at maturity, or before maturity if they are by their terms or by other agreement subject to prior redemption, with the right in the metropolitan council to combine various series and issues of the outstanding bonds by a single issue of funding or refunding bonds, and to issue refunding bonds to pay any redemption premium payable on the outstanding bonds being refunded. The funding or refunding general obligation bonds shall, except as specifically provided in this section, be issued in accordance with the provisions of this chapter with respect to general obligation bonds.

The metropolitan council may, by resolution, without submitting the matter to the voters of the metropolitan municipal corporation, provide for the issuance of funding or refunding revenue bonds to refund any outstanding revenue bonds or any part thereof at maturity, or before maturity if they are by their terms or by agreement subject to prior redemption, with the right in the metropolitan council to combine various series and issues of the outstanding bonds by a single issue of refunding bonds, and to issue refunding bonds to pay any redemption premium payable on the outstanding bonds being refunded. The funding or refunding

revenue bonds shall be payable only out of a special fund created out of the gross revenue of the particular utility, and shall be a valid claim only as against such special fund and the amount of the revenue of the utility pledged to the fund. The funding or refunding revenue bonds shall, except as specifically provided in this section, be issued in accordance with the provisions of this chapter with respect to revenue bonds.

The metropolitan council may exchange the funding or refunding bonds at par for the bonds which are being funded or refunded, or it may sell them in such manner, at such price and at such rate or rates of interest as it deems for the best interest of the metropolitan municipal corporation. [1970 ex.s. c 56 § 40; 1969 ex.s. c 232 § 18; 1965 c 7 § 35.58.470. Prior: 1957 c 213 § 47.]

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.

35.58.480 Borrowing money from component city or county. A metropolitan municipal corporation shall have the power when authorized by a majority of all members of the metropolitan council to borrow money from any component city or county and such cities or counties are hereby authorized to make such loans or advances on such terms as may be mutually agreed upon by the legislative bodies of the metropolitan municipal corporation and any such component city or county to provide funds to carry out the purposes of the metropolitan municipal corporation. [1965 c 7 § 35.58.480. Prior: 1957 c 213 § 48.]

35.58.490 Interest bearing warrants. If a metropolitan municipal corporation shall have been authorized to levy a general tax on all taxable property located within the metropolitan municipal corporation in the manner provided in this chapter, either at the time of the formation of the metropolitan municipal corporation or subsequently, the metropolitan council shall have the power to authorize the issuance of interest bearing warrants on such terms and conditions as the metropolitan council shall provide, same to be repaid from the proceeds of such tax when collected. [1965 c 7 § 35.58.490. Prior: 1957 c 213 § 49.]

35.58.500 Local improvement districts—Utility local improvement districts. The metropolitan municipal corporation shall have the power to levy special assessments payable over a period of not exceeding twenty years on all property within the metropolitan area specially benefited by any improvement, on the basis of special benefits conferred, to pay in whole, or in part, the damages or costs of any such improvement, and for such purpose may establish local improvement districts and enlarged local improvement districts, issue local improvement warrants and bonds to be repaid by the collection of local improvement assessments and generally to exercise with respect to any improvements which it may be authorized to construct or acquire the same powers as may now or hereafter be conferred by law upon cities of the first class. Such local improvement districts shall be created and such special assessments levied and collected and local improvement warrants and bonds issued and sold in the same manner as shall now or hereafter be

provided by law for cities of the first class. The duties imposed upon the city treasurer under such acts shall be imposed upon the treasurer of the county in which such local improvement district shall be located.

A metropolitan municipal corporation may provide that special benefit assessments levied in any local improvement district may be paid into such revenue bond redemption fund or funds as may be designated by the metropolitan council to secure the payment of revenue bonds issued to provide funds to pay the cost of improvements for which such assessments were levied. If local improvement district assessments shall be levied for payment into a revenue bond fund, the local improvement district created therefor shall be designated a utility local improvement district. [1965 c 7 § 35.58.500. Prior: 1957 c 213 § 50.]

Local improvements, supplemental authority: Chapter 35.51 RCW.

Special assessments or taxation for local improvements: State Constitution Art. 7 § 9.

35.58.510 Obligations of corporation are legal investments and security for public deposits. All banks, trust companies, bankers, savings banks, and institutions, building and loan associations, savings and loan associations, investment companies and other persons carrying on a banking or investment business, all insurance companies, insurance associations, and other persons carrying on an insurance business, and all executors, administrators, curators, trustees and other fiduciaries, may legally invest any sinking funds, moneys, or other funds belonging to them or within their control in any bonds or other obligations issued by a metropolitan municipal corporation pursuant to this chapter. Such bonds and other obligations shall be authorized security for all public deposits. It is the purpose of this section to authorize any persons, political subdivisions and officers, public or private, to use any funds owned or controlled by them for the purchase of any such bonds or other obligations. Nothing contained in this section with regard to legal investments shall be construed as relieving any person of any duty of exercising reasonable care in selecting securities. [1965 c 7 § 35.58.510. Prior: 1957 c 213 § 51.]

35.58.520 Legal investments for corporate funds. A metropolitan municipal corporation shall have the power to invest its funds held in reserves or sinking funds or any such funds which are not required for immediate disbursement, in property or securities in which mutual savings banks may legally invest funds subject to their control. [1965 c 7 § 35.58.520. Prior: 1957 c 213 § 52.]

35.58.530 Annexation—Requirements, procedure. Territory annexed to a component city after the establishment of a metropolitan municipal corporation shall by such act be annexed to such corporation. Territory within a metropolitan municipal corporation may be annexed to a city which is not within such metropolitan municipal corporation in the manner provided by law and in such event either (1) such city may be annexed to such metropolitan municipal corporation by ordinance of the legislative body of the city concurred in by resolution of the metropolitan council, or (2) if such city shall not be so annexed such territory shall

remain within the metropolitan municipal corporation unless such city shall by resolution of its legislative body request the withdrawal of such territory subject to any outstanding indebtedness of the metropolitan corporation and the metropolitan council shall by resolution consent to such withdrawal.

Any territory contiguous to a metropolitan municipal corporation and lying wholly within an incorporated city or town may be annexed to such metropolitan municipal corporation by ordinance of the legislative body of such city or town requesting such annexation concurred in by resolution of the metropolitan council.

Any other territory adjacent to a metropolitan municipal corporation may be annexed thereto by vote of the qualified electors residing in the territory to be annexed, in the manner provided in this chapter. An election to annex such territory may be called pursuant to a petition or resolution in the following manner:

(1) A petition calling for such an election shall be signed by at least four percent of the qualified voters residing within the territory to be annexed and shall be filed with the auditor of the central county.

(2) A resolution calling for such an election may be adopted by the metropolitan council.

Any resolution or petition calling for such an election shall describe the boundaries of the territory to be annexed, and state that the annexation of such territory to the metropolitan municipal corporation will be conducive to the welfare and benefit of the persons or property within the metropolitan municipal corporation and within the territory proposed to be annexed.

Upon receipt of such a petition, the auditor shall examine the same and certify to the sufficiency of the signatures thereon. For the purpose of examining the signatures on such petition, the auditor shall be permitted access to the voter registration books of each city within the territory proposed to be annexed and of each county a portion of which shall be located within the territory proposed to be annexed. No person may withdraw his name from a petition after it has been filed with the auditor. Within thirty days following the receipt of such petition, the auditor shall transmit the same to the metropolitan council, together with his certificate as to the sufficiency thereof. [1969 ex.s. c 135 § 3; 1967 c 105 § 15; 1965 c 7 § 35.58.530. Prior: 1957 c 213 § 53.]

35.58.540 Annexation—Hearings—Inclusion, exclusion of territory—Boundaries—Calling election. Upon receipt of a duly certified petition calling for an election on the annexation of territory to a metropolitan municipal corporation, or if the metropolitan council shall determine without a petition being filed, that an election on the annexation of any adjacent territory shall be held, the metropolitan council shall fix a date for a public hearing thereon which shall be not more than sixty nor less than forty days following the receipt of such petition or adoption of such resolution. Notice of such hearing shall be published once a week for at least four consecutive weeks in one or more newspapers of general circulation within the territory proposed to be annexed. The notice shall contain a description of the boundaries of the territory proposed to be

annexed and shall state the time and place of the hearing thereon and the fact that any changes in the boundaries of such territory will be considered at such time and place. At such hearing or any continuation thereof, any interested person may appear and be heard on all matters relating to the proposed annexation. The metropolitan council may make such changes in the boundaries of the territory proposed to be annexed as it shall deem reasonable and proper, but may not delete any portion of the proposed area which will create an island of included or excluded lands and may not delete a portion of any city. If the metropolitan council shall determine that any additional territory should be included in the territory to be annexed, a second hearing shall be held and notice given in the same manner as for the original hearing. The metropolitan council may adjourn the hearing on the proposed annexation from time to time not exceeding thirty days in all. At the next regular meeting following the conclusion of such hearing, the metropolitan council shall, if it finds that the annexation of such territory will be conducive to the welfare and benefit of the persons and property therein and the welfare and benefit of the persons and property within the metropolitan municipal corporation, adopt a resolution fixing the boundaries of the territory to be annexed and causing to be called a special election on such annexation to be held not more than one hundred twenty days nor less than sixty days following the adoption of such resolution. [1965 c 7 § 35.58.540. Prior: 1957 c 213 § 54.]

Notice of election: RCW 29.27.080.

35.58.550 Annexation—Election—Favorable vote.

An election on the annexation of territory to a metropolitan municipal corporation shall be conducted and canvassed in the same manner as provided for the conduct of an election on the formation of a metropolitan municipal corporation except that notice of such election shall be published in one or more newspapers of general circulation in the territory proposed to be annexed and the ballot proposition shall be in substantially the following form:

ANNEXATION TO (here insert name of metropolitan municipal corporation).

"Shall the territory described in a resolution of the metropolitan council of (here insert name of metropolitan municipal corporation) adopted on the, 19. . . ., be annexed to such incorporation?"

YES
NO

If a majority of those voting on such proposition vote in favor thereof, the territory shall thereupon be annexed to the metropolitan municipal corporation. [1965 c 7 § 35.58.550. Prior: 1957 c 213 § 55.]

*Canvassing returns, generally: Chapter 29.62 RCW.
Conduct of elections—Canvass: RCW 29.13.040.*

35.58.560 Taxes—Counties or cities not to impose on certain operations—Credits or offsets against state taxes—Refund of motor vehicle fuel taxes paid. No county or city shall have the right to impose a tax upon the gross revenues derived by a metropolitan municipal corpora-

tion from the operation of a metropolitan sewage disposal, water supply, garbage disposal or public transportation system.

A metropolitan municipal corporation may credit or offset against the amount of any tax which is levied by the state during any calendar year upon the gross revenues derived by such metropolitan municipal corporation from the performance of any authorized function, the amount of any expenditures made from such gross revenues by such metropolitan municipal corporation during the same calendar year or any year prior to May 21, 1971 in planning for or performing the function of metropolitan public transportation and including interest on any moneys advanced for such purpose from other funds and to the extent of such credit a metropolitan municipal corporation may expend such revenues for such purposes.

A metropolitan municipal corporation authorized to perform the function of metropolitan public transportation and engaged in the operation of an urban passenger transportation system shall receive a refund of the amount of the motor vehicle fuel tax levied by the state and paid on each gallon of motor vehicle fuel used, whether such vehicle fuel tax has been paid either directly to the vendor from whom the motor vehicle fuel was purchased or indirectly by adding the amount of such tax to the price of such fuel: PROVIDED, That no refunds authorized by this section shall be granted on fuel used by any urban transportation vehicle on any trip where any portion of said trip is more than six road miles beyond the corporate limits of the metropolitan municipal corporation in which said trip originated. [1971 ex.s. c 303 § 10; 1967 c 105 § 16.]

35.58.570 Sewage facilities—Capacity charge. (1) A metropolitan municipal corporation that is engaged in the transmission, treatment, and disposal of sewage may impose a capacity charge on users of the metropolitan municipal corporation's sewage facilities when the user connects, reconnects, or establishes a new service. The capacity charge shall be approved by the council of the metropolitan municipal corporation and reviewed and reapproved annually.

(2) The capacity charge shall be based upon the cost of the sewage facilities' excess capacity that is necessary to provide sewerage treatment for new users to the system. The capacity charge, which may be collected over a period of fifteen years, shall not exceed:

(a) Seven dollars per month per residential customer equivalent for connections and reconnections occurring prior to January 1, 1996; and

(b) Ten dollars and fifty cents per month per residential customer equivalent for connections and reconnections occurring after January 1, 1996, and prior to January 1, 2001.

For connections and reconnections occurring after January 1, 2001, the capacity charge shall not exceed fifty percent of the basic sewer rate per residential customer equivalent established by the metropolitan municipal corporation at the time of the connection or reconnection.

(3) The capacity charge for a building other than a single-family residence shall be based on the projected

number of residential customer equivalents to be represented by the building, considering its intended use.

(4) The council of the metropolitan municipal corporation shall enforce the collection of the capacity charge in the same manner provided for the collection, enforcement, and payment of rates and charges for sewer districts provided in RCW 56.16.100 and 56.16.110. At least thirty days before commencement of an action to foreclose a lien for a capacity charge, the metropolitan municipal corporation shall send written notice of delinquency in payment of the capacity charge to any first mortgage or deed of trust holder of record at the address of record.

(5) As used in this section, "sewage facilities" means capital projects identified since January 1, 1982, to July 23, 1989, in the metropolitan municipal corporation's comprehensive water pollution abatement plan. "Residential customer equivalent" shall have the same meaning used by the metropolitan municipal corporation in determining rates and charges at the time the capacity charge is imposed. [1989 c 389 § 1.]

35.58.900 Liberal construction. The rule of strict construction shall have no application to this chapter, but the same shall be liberally construed in all respects in order to carry out the purposes and objects for which this chapter is intended. [1965 c 7 § 35.58.900. Prior: 1957 c 213 § 56.]

35.58.911 Prior proceedings validated, ratified, approved and confirmed. All proceedings which have been taken prior to the date *this 1967 amendatory act takes effect for the purpose of financing or aiding in the financing of any work, undertaking or project by any metropolitan municipal corporation, including all proceedings for the authorization and issuance of bonds and for the sale, execution, and delivery thereof, are hereby validated, ratified, approved, and confirmed, notwithstanding any lack of power (other than constitutional) of such metropolitan municipal corporation or the governing body or officers thereof, to authorize and issue such bonds, or to sell, execute, or deliver the same and notwithstanding any defects or irregularities (other than constitutional) in such proceedings. [1967 c 105 § 17.]

*Reviser's note: The effective date of "this 1967 amendatory act" [1967 c 105] is March 21, 1967; see preface to 1967 session laws. For codification of 1967 c 105, see Codification Tables, Volume 0.

35.58.920 Severability—1967 c 105. If any provision of this 1967 amendatory act, or its application to any person or circumstance is held invalid, the remainder of this 1967 amendatory act, or the application of the provision to other persons or circumstances is not affected. [1967 c 105 § 18.]

35.58.930 Severability—1971 ex.s. c 303. 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 303 § 11.]

35.58.931 Severability—1974 ex.s. c 70. 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 70 § 9.]

Chapter 35.59

MULTI-PURPOSE COMMUNITY CENTERS

Sections

- 35.59.010 Definitions.
- 35.59.020 Legislative finding—Purposes for which authority granted may be exercised.
- 35.59.030 Acquisition, construction, operation, etc., of community centers authorized.
- 35.59.040 Conveyance or lease of lands or facilities to other municipality for community center development—Participation in financing.
- 35.59.050 Powers of condemnation.
- 35.59.060 Appropriation and expenditure of public moneys, issuance of general obligation bonds authorized—Procedure.
- 35.59.070 Revenue bonds.
- 35.59.080 Lease or contract for use or operation of facilities.
- 35.59.090 Counties authorized to establish community centers.
- 35.59.100 Prior proceedings validated and ratified.
- 35.59.110 Powers and authority conferred deemed additional and supplemental.
- 35.59.900 Severability—1967 c 110.

35.59.010 Definitions. "Municipality" as used in this chapter means any county, city or town of the state of Washington.

"Government agency" as used in this chapter means the federal government or any agency thereof, or the state or any agency, subdivision, taxing district or municipal corporation thereof other than a county, city or town.

"Person" as used in this chapter means any private corporation, partnership, association or individual.

"Multi-purpose community center" as used in this chapter means the lands, interests in lands, property, property rights, equipment, buildings, structures and other improvements developed as an integrated, multi-purpose, public facility on a single site or immediately adjacent sites for the housing and furnishing of any combination of the following community or public services or facilities: Administrative, legislative or judicial offices and chambers of any municipality, public health facilities, public safety facilities including without limitation, adult and juvenile detention facilities, fire and police stations, public halls, auditoria, libraries and museums, public facilities for the teaching, practice or exhibition of arts and crafts, educational facilities, playfields, playgrounds, parks, indoor and outdoor sports and recreation facilities. The term multi-purpose community center shall also mean and include walks, ramps, bridges, terminal and parking facilities for private vehicles and public transportation vehicles and systems, utilities, accessories, landscaping, and appurtenances incident to and necessary for such centers. [1967 c 110 § 1.]

Effective date—1967 c 110: "This act shall take effect on June 9, 1967." [1967 c 110 § 13.]

35.59.020 Legislative finding—Purposes for which authority granted may be exercised. The legislature finds that in many areas of the state local services and facilities can be more effectively and economically provided by combining two or more services and/or facilities in a single multi-purpose community center or a system of such centers.

Any municipality shall have and exercise the authority and powers granted by this chapter whenever it appears to the legislative body of such municipality that the acquisition, construction, development and operation of a multi-purpose community center or a system of such centers will accomplish one or more of the following: Reduce costs of land acquisition, construction, maintenance or operation for affected public services or facilities; avoid duplication of structures, facilities or personnel; improve communication and coordination between departments of a municipality or governmental agency or between municipalities and governmental agencies; make local public services or facilities more convenient or useful to the residents and citizens of such municipality. [1967 c 110 § 2.]

35.59.030 Acquisition, construction, operation, etc., of community centers authorized. Any municipality is authorized either individually or jointly with any other municipality or municipalities or any governmental agency or agencies, or any combination thereof, to acquire by purchase, condemnation, gift or grant, to lease as lessee, and to construct, install, add to, improve, replace, repair, maintain, operate and regulate the use of multi-purpose community centers located within such municipality, and to pay for any investigations and any engineering, planning, financial, legal and professional services incident to the development and operation of such multi-purpose community centers. [1967 c 110 § 3.]

35.59.040 Conveyance or lease of lands or facilities to other municipality for community center development—Participation in financing. Any municipality, and any agency, subdivision, taxing district or municipal corporation of the state is authorized to convey or lease any lands, properties or facilities to any other municipality for the development by such other municipality of a multi-purpose community center or a system of such centers or to provide for the joint use of such lands, properties or facilities or any other facilities of a multi-purpose community center, and is authorized to participate in the financing of all or any part of such multi-purpose community center or system of such centers on such terms as may be fixed by agreement between the respective legislative bodies without submitting the matter to a vote of the electors thereof, unless the provisions of the Constitution or laws of this state applicable to the incurring of indebtedness shall require such submission. [1967 c 110 § 4.]

Joint operations by municipal corporations, deposit and control of funds: RCW 43.09.285.

35.59.050 Powers of condemnation. The accomplishment of the objectives authorized by this chapter is declared to be a strictly public purpose of the municipality or municipalities authorized to perform the same. Any such municipality shall have the power to acquire by condemnation and purchase any lands and property rights within its boundaries which are necessary to carry out the purposes authorized by this chapter. Such right of eminent domain shall be exercised by the legislative body of each such municipality in the manner provided by applicable general law. [1967 c 110 § 5.]

35.59.060 Appropriation and expenditure of public moneys, issuance of general obligation bonds authorized—Procedure. To carry out the purposes of this chapter any municipality shall have the power to appropriate and/or expend any public moneys available therefor and to issue general obligation bonds within the limitations now or hereafter prescribed by the Constitution and laws of this state. Such general obligation bonds shall be issued and sold as provided in chapter 39.46 RCW. If the governing body of any municipality shall submit a proposition for the approval of general obligation bonds at any general or special election and shall declare in the ordinance or resolution setting forth such proposition that its purpose is the creation of a single integrated multi-purpose community center or a city-wide or county-wide system of such centers, all pursuant to this chapter, and that the creation of such center or system of centers constitutes a single purpose, such declaration shall be presumed to be correct and, upon the issuance of the bonds, such presumption shall become conclusive. Any such election shall be held pursuant to RCW 39.36.050. [1984 c 186 § 19; 1983 c 167 § 49; 1967 c 110 § 6.]

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.

35.59.070 Revenue bonds. (1) To carry out the purposes authorized by this chapter the legislative body of any municipality shall have the power to issue revenue bonds, and to create a special fund or funds for the sole purpose of paying the principal of and interest on such bonds into which fund or funds the legislative body may obligate the municipality to pay all or part of the revenues derived from any one or more facilities or properties which will form part of the multi-purpose community center. The provisions of chapter 35.41 RCW not inconsistent with this chapter shall apply to the issuance and retirement of any revenue bonds issued for the purposes authorized in this chapter and for such purposes any municipality shall have and may exercise the powers, duties, and functions incident thereto held by cities and towns under such chapter 35.41 RCW. Such bonds may be in any form, including bearer bonds or registered bonds as provided in RCW 39.46.030. The legislative body of any municipality may fix the denominations of such bonds in any amount and the manner of executing such bonds, and may take such action as may be necessary and incidental to the issuance of such bonds and the retirement thereof.

(2) Notwithstanding subsection (1) of this section, such bonds may be issued and sold in accordance with chapter 39.46 RCW. [1983 c 167 § 50; 1967 c 110 § 7.]

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

35.59.080 Lease or contract for use or operation of facilities. The legislative body of any municipality owning or operating a multi-purpose community center acquired or developed pursuant to this chapter shall have power to lease to any municipality, governmental agency or person, or to contract for the use or operation by any municipality, governmental agency or person, of all or any part of the

multi-purpose community center facilities authorized by this chapter, for such period and under such terms and conditions and upon such rentals, fees and charges as such legislative body may determine, and may pledge all or any portion of such rentals, fees and charges and any other revenue derived from the ownership and/or operation of any facilities of a multi-purpose community center to pay and to secure the payment of general obligation bonds and/or revenue bonds of such municipality issued for multi-purpose community center purposes. [1967 c 110 § 8.]

35.59.090 Counties authorized to establish community centers. Counties may establish multi-purpose community centers, pursuant to this chapter, in unincorporated areas and/or within cities or towns: PROVIDED, That no such center shall be located in any city or town without the prior consent of the legislative body of such city or town. [1967 c 110 § 9.]

35.59.100 Prior proceedings validated and ratified. All proceedings which have been taken prior to the date this chapter takes effect for the purpose of financing or aiding in the financing of any work, undertaking or project authorized in this chapter by any municipality, including all proceedings for the authorization and issuance of bonds and for the sale, execution and delivery thereof, are hereby validated, ratified, approved and confirmed, notwithstanding any lack of power (other than constitutional) of such municipality or the legislative body or officers thereof to authorize and issue such bonds, or to sell, execute, or deliver the same and notwithstanding any defects or irregularities (other than constitutional) in such proceedings. [1967 c 110 § 10.]

35.59.110 Powers and authority conferred deemed additional and supplemental. The powers and authority conferred upon municipalities under the provisions of this chapter, shall be construed as in addition and supplemental to powers or authority conferred by any other law, and nothing contained herein shall be construed as limiting any other powers or authority of such municipalities. [1967 c 110 § 11.]

35.59.900 Severability—1967 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. [1967 c 110 § 12.]

Chapter 35.60

WORLD FAIRS OR EXPOSITIONS— PARTICIPATION BY MUNICIPALITIES

Sections

- 35.60.010 "Municipality" defined.
- 35.60.020 Participation, exercise of powers declared public purpose and necessity.
- 35.60.030 Participation authorized—Powers—Costs.
- 35.60.040 Bonds—Laws applicable to authorization and issuance.
- 35.60.050 Authorization to appropriate funds and levy taxes.
- 35.60.060 Cooperation between municipalities—Use of facilities after conclusion of fair or exposition—Intergovernmental disposition of property.

35.60.070 Chapter supplemental to other laws.

35.60.010 "Municipality" defined. "Municipality" as used in this chapter, means any political subdivision or municipal corporation of the state. [1965 c 7 § 35.60.010. Prior: 1961 c 149 § 1; prior: 1961 c 39 § 1.]

State participation in world fair and state international trade fairs: RCW 43.31.790 through 43.31.850.

35.60.020 Participation, exercise of powers declared public purpose and necessity. The participation of any municipality in any world fair or exposition, whether held within the boundaries of such municipality or within the boundaries of another municipality; the purchase, lease, or other acquisition of necessary lands therefor; the acquisition, lease, construction, improvements, maintenance, and equipping of buildings or other structures upon such lands or other lands; the operation and maintenance necessary for such participation, and the exercise of any other powers herein granted to such municipalities, are hereby declared to be public, governmental, county and municipal functions, exercised for a public purpose, and matters of public necessity, and such lands and other property acquired, constructed, improved, maintained, equipped, used, and disposed of by such municipalities in the manner and for the purposes enumerated in this chapter shall and are hereby declared to be acquired, constructed, improved, maintained, equipped, used, and disposed of for public, governmental, county, and municipal purposes and as a matter of public necessity. [1965 c 7 § 35.60.020. Prior: 1961 c 149 § 2; prior: 1961 c 39 § 2.]

35.60.030 Participation authorized—Powers—Costs. Municipalities are authorized to participate in any world fair or exposition to be held within the state by the state or any political subdivision or municipal corporation thereof, whether held within the boundaries of such municipality or within the boundaries of another municipality. Any municipality so participating is authorized, through its governing authorities, to purchase, lease, or otherwise acquire property, real or personal; to construct, improve, maintain and equip buildings or other structures; and expend moneys for investigations, planning, operations, and maintenance necessary for such participation.

The cost of any such acquisition, construction, improvement, maintenance, equipping, investigations, planning, operation, or maintenance necessary for such participation may be paid for by appropriation of moneys available therefor, gifts, or wholly or partly from the proceeds of bonds of the municipality, as the governing authority of the municipality may determine. [1965 c 7 § 35.60.030. Prior: 1961 c 149 § 3; prior: 1961 c 39 § 3.]

35.60.040 Bonds—Laws applicable to authorization and issuance. Any bonds to be issued by any municipality pursuant to the provisions of RCW 35.60.030, shall be authorized and issued in the manner and within the limitations prescribed by the Constitution and laws of this state or charter of the municipality for the issuance and authorization of bonds thereof for public purposes generally and secured by a general tax levy as provided by law. Such bonds shall

be issued and sold in accordance with chapter 39.46 RCW. [1984 c 186 § 20; 1983 c 167 § 51; 1965 c 7 § 35.60.040. Prior: 1961 c 149 § 4; prior: 1961 c 39 § 4.]

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.

35.60.050 Authorization to appropriate funds and levy taxes. The governing bodies having power to appropriate moneys within such municipalities for the purpose of purchasing, leasing or otherwise acquiring property, constructing, improving, maintaining, and equipping buildings or other structures, and the investigations, planning, operation or maintenance necessary to participation in any such world fair or exposition, are hereby authorized to appropriate and cause to be raised by taxation or otherwise in such municipalities, moneys sufficient to carry out such purpose. [1965 c 7 § 35.60.050. Prior: 1961 c 149 § 5; prior: 1961 c 39 § 5.]

35.60.060 Cooperation between municipalities—Use of facilities after conclusion of fair or exposition—Intergovernmental disposition of property. In any case where the participation of a municipality includes the construction of buildings or other structures on lands of another municipality, the governing authorities constructing such buildings or structures shall endeavor to cooperate with such other municipality for the construction and maintenance of such buildings or structures to a standard of health and safety common in the county where the world fair or exposition is being or will be held; and shall cooperate with such other municipality in any comprehensive plans it may promulgate for the general construction and maintenance of said world fair or exposition and utilization of the grounds and buildings or structures after the conclusion of such world fair or exposition to the end that a reasonable, economic use of said buildings or structures shall be returned for the life of said buildings or structures.

The governing authorities of any municipality are hereby authorized and empowered to sell, exchange, transfer, lease or otherwise dispose of any property, real or personal, acquired or constructed for the purpose of participation in such fair or exposition, in accordance with the provisions of RCW 39.33.010. [1965 c 7 § 35.60.060. Prior: 1961 c 149 § 6; prior: 1961 c 39 § 6.]

35.60.070 Chapter supplemental to other laws. The powers and authority conferred upon municipalities under the provisions of this chapter, shall be construed as in addition and supplemental to powers or authority conferred by any other law, and nothing contained herein shall be construed as limiting any other powers or authority of such municipalities. [1965 c 7 § 35.60.070. Prior: 1961 c 149 § 7; prior: 1961 c 39 § 7.]

Chapter 35.61

METROPOLITAN PARK DISTRICTS

Sections

- 35.61.001 Actions subject to review by boundary review board.
- 35.61.010 Authority to create—Withdrawal of fourth class municipalities.
- 35.61.020 Election—Petition—Area.
- 35.61.030 Election—Declaration of intention—Question stated.
- 35.61.040 Election—Creation of district.
- 35.61.050 Election of commissioners—Terms—Vacancies.
- 35.61.060 Election of commissioners—Nomination.
- 35.61.070 Election of commissioners—Filling vacancies.
- 35.61.080 Elections—Eligibility of voters.
- 35.61.090 Elections—Laws governing.
- 35.61.100 Indebtedness limit—Without popular vote.
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- 35.61.115 Revenue bonds.
- 35.61.120 Park commissioners as officers of district—Organization.
- 35.61.130 Park commissioners—Authority generally.
- 35.61.132 Disposition of surplus property.
- 35.61.133 Executory conditional sales contracts for purchase of property—Limit on indebtedness—Election, when.
- 35.61.140 Park commissioners—Civil service for employees.
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- 35.61.180 Designation of district treasurer.
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- 35.61.210 Park district tax levy—"Park district fund".
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- 35.61.230 Objections—Appeal.
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- 35.61.290 Transfer of city or county property—Authority—Emergency grant, loan, of funds by city.
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- 35.61.320 Withdrawal of fourth class municipality—Prior levies and assessments.
- 35.61.330 Withdrawal of fourth class municipality—Contracts with district.
- 35.61.340 Withdrawal of fourth class municipality—Disposition of property—Eminent domain.
- 35.61.350 Moorage facilities—Regulations authorized—Port charges, delinquency—Abandoned vessels, public sale.
- 35.61.360 Withdrawal or reannexation of areas.
- 35.61.370 Park district containing city with population over one hundred thousand—May commission police officers.

Acquisition of

land for and operation of public parks, beaches or camps: RCW 67.20.010.

real or personal property for park purposes, conditional sales contracts: RCW 39.30.010.

Appeal of assessments and reassessments: RCW 35.44.200 through 35.44.270.

Contracts with community service organizations for public improvements: RCW 35.21.278.

Limitations upon indebtedness: State Constitution Art. 7 § 2 (Amendments 55, 59), Art. 8 § 6 (Amendment 27), chapter 39.36 RCW, RCW 84.52.050.

Local governmental organizations, actions affecting boundaries, etc., review by boundary review board: Chapter 36.93 RCW.

Metropolitan park district property subject to assessment: RCW 35.44.170.

Park and recreation districts: Chapter 36.69 RCW.

Public bonds, form, terms of sale, payment, etc.: Chapter 39.44 RCW.

Shorelands, parks or playgrounds, application, grant or exchange: RCW 79.08.080, 79.08.090.

35.61.001 Actions subject to review by boundary review board. The creation of a metropolitan park district, and an annexation by, or dissolution or disincorporation of, a metropolitan park district may be subject to potential review by a boundary review board under chapter 36.93 RCW. [1989 c 84 § 31.]

35.61.010 Authority to create—Withdrawal of fourth class municipalities. Cities of five thousand or more population and such contiguous property the residents of which may decide in favor thereof in the manner set forth in this chapter may create a metropolitan park district for the management, control, improvement, maintenance, and acquisition of parks, parkways, and boulevards: PROVIDED, That no municipal corporation of the fourth class shall be included within such metropolitan park district, and any such fourth class municipal corporation heretofore included within such district is hereby automatically withdrawn. [1985 c 416 § 1; 1965 c 7 § 35.61.010. Prior: 1959 c 45 § 1; 1943 c 264 § 1; Rem. Supp. 1943 § 6741-1; prior: 1907 c 98 § 1; RRS § 6720.]

Validating—1943 c 264: "Acts of Metropolitan Park District Commissioners, and of the officers, employees and agents of Metropolitan Park Districts heretofore performed in good faith in accordance with the statutes which are hereby re-enacted, are hereby validated, and all assessments, levies and collections and all proceedings to assess, levy and collect as well as all debts, contracts and obligations heretofore made or incurred by or in favor of any Metropolitan Park District heretofore at any time existing and all bonds or other obligations thereof are hereby declared to be legal and valid and of full force and effect." [1943 c 264 § 23.]

Withdrawal conditions and provisions: RCW 35.61.320 through 35.61.340.

35.61.020 Election—Petition—Area. At any general election, or at any special election which may be called for that purpose, or at any city election held in the city in all of the various voting precincts thereof, the city council or commission may, or on petition of fifteen percent of the qualified electors of the city based upon the registration for the last preceding general city election, shall by ordinance, submit to the voters of the city the proposition of creating a metropolitan park district, the limits of which shall be coextensive with the limits of the city as now or hereafter established, inclusive of territory annexed to and forming a part of the city.

Territory by virtue of its annexation to any city having heretofore created a park district shall be deemed to be within the limits of the metropolitan park district.

The city council or commission shall submit the proposition at a special election to be called therefor when the petition so requests. [1965 c 7 § 35.61.020. Prior: 1943 c 264 § 2, part; Rem. Supp. 1943 § 6741-2, part; prior: 1909 c 131 § 1; 1907 c 98 § 2, part; RRS § 6721, part.]

35.61.030 Election—Declaration of intention—Question stated. In submitting the question to the voters for their approval or rejection, the city council or commission shall pass an ordinance declaring its intention to submit

the proposition of creating a metropolitan park district to the qualified voters of the city. The ordinance shall be published once a week for two consecutive weeks in the official newspaper of the city, and the city council or commission shall cause to be placed upon the ballot for the election, at the proper place, the proposition which shall be expressed in the following terms:

- "For the formation of a metropolitan park district."
- "Against the formation of a metropolitan park district."

[1985 c 469 § 32; 1965 c 7 § 35.61.030. Prior: 1943 c 264 § 2, part; Rem. Supp. 1943 § 6741-2, part; prior: 1909 c 131 § 1; 1907 c 98 § 2, part; RRS § 6721, part.]

35.61.040 Election—Creation of district. If at an election a majority of the voters voting thereon vote in favor of the formation of a metropolitan park district, the park district shall then be and become a municipal corporation and its name shall be "Metropolitan Park District of (inserting the name of the city)." [1965 c 7 § 35.61.040. Prior: 1943 c 264 § 3, part; Rem. Supp. 1943 § 6741-3, part; prior: 1909 c 131 § 2; 1907 c 98 § 3, part; RRS § 6722, part.]

35.61.050 Election of commissioners—Terms—Vacancies. At the same election at which the proposition is submitted to the voters as to whether a metropolitan park district is to be formed, five park commissioners shall be elected to hold office respectively for the following terms: Where the election is held in an odd-numbered year, one commissioner shall be elected to hold office for two years, two shall be elected to hold office for four years, and two shall be elected to hold office for six years. Where the election is held in an even-numbered year, one commissioner shall hold office for three years, two shall hold office for five years, and two shall hold office for seven years. The initial commissioners shall take office immediately when they are elected and qualified, and for purposes of computing their terms of office the terms shall be assumed to commence on the first day of January of the year they are elected. The term of each nominee for park commissioner shall be expressed on the ballot. Thereafter, all commissioners shall serve six-year terms of office and until their respective successors are elected and qualified and assume office in accordance with RCW 29.04.170. Vacancies shall be filled by majority action of the remaining commissioners appointing a voter to fill the remainder of the term of the vacant commissioner position. [1979 ex.s. c 126 § 24; 1965 c 7 § 35.61.050. Prior: 1943 c 264 § 3, part; Rem. Supp. 1943 § 6741-3, part; prior: 1909 c 131 § 2; 1907 c 98 § 3, part; RRS § 6722, part.]

Purpose—1979 ex.s. c 126: See RCW 29.04.170(1).

35.61.060 Election of commissioners—Nomination. The election of metropolitan park commissioners shall be held in conjunction with and in the manner provided by the laws of the state for cities and towns. Nominations for the metropolitan park commissioners shall be by petition of one hundred qualified electors of the park district to be filed with the auditor and must be filed and certified as provided by

statute for cities and districts. [1985 c 416 § 2; 1965 c 7 § 35.61.060. Prior: 1943 c 264 § 3, part; Rem. Supp. 1943 § 6741-3, part; prior: 1909 c 131 § 2; 1907 c 98 § 3, part; RRS § 6722, part.]

Elections in first class cities: RCW 29.13.021 through 29.13.024.

35.61.070 Election of commissioners—Filling vacancies. In the event of a vacancy caused by death, resignation, or otherwise, it shall be filled by appointment by a majority vote of the remaining commissioners until the next regular election for park commissioners. [1965 c 7 § 35.61.070. Prior: 1943 c 264 § 3, part; Rem. Supp. 1943 § 6741-3, part; prior: 1909 c 131 § 2; 1907 c 98 § 3, part; RRS § 6722, part.]

35.61.080 Elections—Eligibility of voters. Any elector, who is registered in accordance with the laws of this state entitling him to vote at a general or special election in the city or territory comprised within a metropolitan park district within time to constitute it a good registration for any general or special election of the metropolitan park district, shall be entitled to vote thereat without further or other registration. [1965 c 7 § 35.61.080. Prior: 1943 c 264 § 3, part; Rem. Supp. 1943 § 6741-3, part; prior: 1909 c 131 § 2; 1907 c 98 § 3, part; RRS § 6722, part.]

35.61.090 Elections—Laws governing. The manner of holding any general or special election in a metropolitan park district shall be in accordance with the general election laws of this state insofar as they are not inconsistent with the provisions of this chapter. [1985 c 416 § 3; 1965 c 7 § 35.61.090. Prior: 1943 c 264 § 3, part; Rem. Supp. 1943 § 6741-3, part; prior: 1909 c 131 § 2; 1907 c 98 § 3, part; RRS § 6722, part.]

Elections: Title 29 RCW.

35.61.100 Indebtedness limit—Without popular vote. Every metropolitan park district through its board of commissioners may contract indebtedness and evidence such indebtedness by the issuance and sale of warrants, short-term obligations as provided by chapter 39.50 RCW, or general obligation bonds, for park, boulevard, aviation landings, playgrounds, and parkway purposes, and the extension and maintenance thereof, not exceeding, together with all other outstanding nonvoter approved general indebtedness, one-eighth of one percent of the value of the taxable property in such metropolitan park district, as the term "value of the taxable property" is defined in RCW 39.36.015. General obligation bonds shall not be issued with a maximum term in excess of twenty years. Such general obligation bonds shall be issued and sold in accordance with chapter 39.46 RCW. [1989 c 319 § 2; 1984 c 186 § 21; 1983 c 61 § 1; 1970 ex.s. c 42 § 14; 1965 c 7 § 35.61.100. Prior: 1943 c 264 § 6; Rem. Supp. 1943 § 6741-6; prior: 1927 c 268 § 1; 1907 c 98 § 6; RRS § 6725.]

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.

35.61.110 Indebtedness limit—With popular vote. Every metropolitan park district may contract indebtedness

not exceeding in amount, together with existing voter-approved indebtedness and nonvoter-approved indebtedness, equal to two and one-half percent of the value of the taxable property in said district, as the term "value of the taxable property" is defined in RCW 39.36.015, whenever three-fifths of the voters voting at an election held in the metropolitan park district assent thereto; the election may be either a special or a general election, and the park commissioners of the metropolitan park district may cause the question of incurring such indebtedness, and issuing negotiable bonds of such metropolitan park district, to be submitted to the qualified voters of the district at any time. [1989 c 319 § 3; 1970 ex.s. c 42 § 15; 1965 c 7 § 35.61.110. Prior: 1943 c 264 § 7; Rem. Supp. 1943 § 6741-7; prior: 1907 c 98 § 7; RRS § 6726.]

Severability—Effective date—1970 ex.s. c 42: See notes following RCW 39.36.015.

Limitations upon indebtedness: State Constitution Art. 7 § 2 (Amendments 55, 59), Art. 8 § 6 (Amendment 27), chapter 39.36 RCW, RCW 84.52.050.

35.61.115 Revenue bonds. A metropolitan park district may issue and sell revenue bonds as provided in chapter 39.46 RCW to be made payable from the operating revenues of the metropolitan park district. [1989 c 319 § 1.]

35.61.120 Park commissioners as officers of district—Organization. The officers of a metropolitan park district shall be a board of park commissioners consisting of five members. The board shall annually elect one of their number as president and another of their number as clerk of the board. [1965 c 7 § 35.61.120. Prior: 1943 c 264 § 4, part; Rem. Supp. 1943 § 6741-4, part; prior: 1919 c 135 § 1, part; 1907 c 98 § 4; RRS § 6723, part.]

35.61.130 Park commissioners—Authority generally. A metropolitan park district has the right of eminent domain, and may purchase, acquire and condemn lands lying within or without the boundaries of said park district, for public parks, parkways, boulevards, aviation landings and playgrounds, and may condemn such lands to widen, alter and extend streets, avenues, boulevards, parkways, aviation landings and playgrounds, to enlarge and extend existing parks, and to acquire lands for the establishment of new parks, boulevards, parkways, aviation landings and playgrounds. The right of eminent domain shall be exercised and instituted pursuant to resolution of the board of park commissioners and conducted in the same manner and under the same procedure as is 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, HOWEVER, Funds to pay for condemnation allowed by this section shall be raised only as specified in this chapter. The board of park commissioners shall have power to employ counsel, and to regulate, manage and control the parks, parkways, boulevards, streets, avenues, aviation landings and playgrounds under its control, and to provide for park policemen, for a secretary of the board of park commissioners and for all necessary employees, to fix their salaries and duties. The board of park commissioners shall have power to improve, acquire, extend

and maintain, open and lay out, parks, parkways, boulevards, avenues, aviation landings and playgrounds, within or without the park district, and to authorize, conduct and manage the letting of boats, or other amusement apparatus, the operation of bath houses, the purchase and sale of foodstuffs or other merchandise, the giving of vocal or instrumental concerts or other entertainments, the establishment and maintenance of aviation landings and playgrounds, and generally the management and conduct of such forms of recreation or business as it shall judge desirable or beneficial for the public, or for the production of revenue for expenditure for park purposes; and may pay out moneys for the maintenance and improvement of any such parks, parkways, boulevards, avenues, aviation landings and playgrounds as now exist, or may hereafter be acquired, within or without the limits of said city and for the purchase of lands within or without the limits of said city, whenever it deems the purchase to be for the benefit of the public and for the interest of the park district, and for the maintenance and improvement thereof and for all expenses incidental to its duties: PROVIDED, That all parks, boulevards, parkways, aviation landings and playgrounds shall be subject to the police regulations of the city within whose limits they lie. [1969 c 54 § 1; 1965 c 7 § 35.61.130. Prior: (i) 1943 c 264 § 4, part; Rem. Supp. 1943 § 6741-4, part; prior: 1919 c 135 § 1, part; 1907 c 98 § 4; RRS § 6723, part. (ii) 1943 c 264 § 14; Rem. Supp. 1943 § 6741-14; prior: 1919 c 135 § 2; 1907 c 98 § 14; RRS § 6733.]

Outdoor recreation land acquisition or improvement under marine recreation land act: Chapter 43.99 RCW.

35.61.132 Disposition of surplus property. Every metropolitan park district may, by unanimous decision of its board of park commissioners, sell, exchange, or otherwise dispose of any real or personal property acquired for park or recreational purposes when such property is declared surplus for park or other recreational purposes: PROVIDED, That where the property is acquired by donation or dedication for park or recreational purposes, the consent of the donor or dedicator, his or her heirs, successors, or assigns is first obtained if the consent of the donor is required in the instrument conveying the property to the metropolitan park district. In the event the donor or dedicator, his or her heirs, successors, or assigns cannot be located after a reasonable search, the metropolitan park district may petition the superior court in the county where the property is located for approval of the sale. If sold, all sales shall be by public bids and sale made only to the highest and best bidder. [1989 c 319 § 4; 1965 c 7 § 35.61.132. Prior: 1959 c 93 § 1.]

35.61.133 Executory conditional sales contracts for purchase of property—Limit on indebtedness—Election, when. See RCW 39.30.010.

35.61.140 Park commissioners—Civil service for employees. A metropolitan park district may establish civil service for its employees by resolution upon the following plan:

(1) It shall create a civil service commission with authority to appoint a personnel officer and to make rules and regulations for classification based upon suitable

differences in pay for differences in work, and for like pay for like work, and for competitive entrance and promotional examinations; for certifications, appointments, probationary service periods and for dismissals therein; for demotions and promotions based upon merit and for reemployments, suspensions, transfers, sick leaves and vacations; for lay-offs when necessary according to seniority; for separations from the service by discharge for cause; for hearings and reinstatements, for establishing status for incumbent employees, and for prescribing penalties for violations.

(2) The civil service commission and personnel officer shall adopt rules to be known as civil service rules to govern the administration of personnel transactions and procedure. The rules so adopted shall have the force and effect of law, and, in any and all proceedings, the rules shall be liberally interpreted and construed to the end that the purposes and basic requirements of the civil service system may be given the fullest force and effect. [1965 c 7 § 35.61.140. Prior: 1943 c 264 § 4, part; Rem. Supp. 1943 § 6741-4, part; prior: 1919 c 135 § 1, part; 1907 c 98 § 4; RRS § 6723, part.]

Public employment, civil service and pensions: Title 41 RCW.

35.61.150 Park commissioners—Compensation. Metropolitan park commissioners shall perform their duties without compensation. [1965 c 7 § 35.61.150. Prior: 1943 c 264 § 3, part; Rem. Supp. 1943 § 6741-3, part; prior: 1909 c 131 § 2; 1907 c 98 § 3, part; RRS § 6722, part.]

35.61.180 Designation of district treasurer. The county treasurer of the county within which all, or the major portion, of the district lies shall be the ex officio treasurer of a metropolitan park district, but shall receive no compensation other than his or her regular salary for receiving and disbursing the funds of a metropolitan park district.

A metropolitan park district may designate someone other than the county treasurer who has experience in financial or fiscal affairs to act as the district treasurer if the board has received the approval of the county treasurer to designate this person. If the board designates someone other than the county treasurer to act as the district treasurer, the board shall purchase a bond from a surety company operating in the state that is sufficient to protect the district from loss. [1987 c 203 § 1; 1983 c 167 § 55; 1965 c 7 § 35.61.180. Prior: 1943 c 264 § 13; Rem. Supp. 1943 § 6741-13; prior: 1907 c 98 § 13; RRS § 6732.]

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

35.61.190 Park district bonds—Retirement. Whenever there is money in the metropolitan park district fund and the commissioners of the park district deem it advisable to apply any part thereof to the payment of bonded indebtedness, they shall advertise in a newspaper of general circulation within the park district for the presentation to them for payment of as many bonds as they may desire to pay with the funds on hand, the bonds to be paid in numerical order, beginning with the lowest number outstanding and called by number.

Thirty days after the first publication of the notice by the board calling in bonds they shall cease to bear interest, and this shall be stated in the notice. [1985 c 469 § 33;

1965 c 7 § 35.61.190. Prior: 1943 c 264 § 11; Rem. Supp. 1943 § 6741-11; prior: 1907 c 98 § 11; RRS § 6730.]

35.61.200 Park district bonds—Payment of interest. Any coupons for the payment of interest on metropolitan park district bonds shall be considered for all purposes as warrants drawn upon the metropolitan park district fund against which the bonds were issued, and when presented after maturity to the treasurer of the county having custody of the fund. If there are no funds in the treasury to pay the coupons, the county treasurer shall endorse said coupons as presented for payment, in the same manner as county warrants are endorsed, and thereafter the coupon shall bear interest at the same rate as the bond to which it was attached. If there are no funds in the treasury to make payment on a bond not having coupons, the interest payment shall continue bearing interest at the bond rate until it is paid, unless otherwise provided in the proceedings authorizing the sale of the bonds. [1983 c 167 § 56; 1965 c 7 § 35.61.200. Prior: 1943 c 264 § 12; Rem. Supp. 1943 § 6741-12; prior: 1907 c 98 § 12; RRS § 6731.]

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

35.61.210 Park district tax levy—"Park district fund". The board of park commissioners may levy or cause to be levied a general tax on all the property located in said park district each year not to exceed fifty cents per thousand dollars of assessed value of the property in such park district. In addition, the board of park commissioners may levy or cause to be levied a general tax on all property located in said park district each year not to exceed twenty-five cents per thousand dollars of assessed valuation. Although park 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.

The board is hereby authorized to levy a general tax in excess of its regular property tax levy or levies when authorized so to do at a special election conducted in accordance with and subject to all the requirements of the Constitution and laws of the state now in force or hereafter enacted governing the limitation of tax levies. The board is hereby authorized to call a special election for the purpose of submitting to the qualified voters of the park district a proposition to levy a tax in excess of the seventy-five cents per thousand dollars of assessed value herein specifically authorized. The manner of submitting any such proposition, of certifying the same, and of giving or publishing notice thereof, shall be as provided by law for the submission of propositions by cities or towns.

The board shall include in its general tax levy for each year a sufficient sum to pay the interest on all outstanding bonds and may include a sufficient amount to create a sinking fund for the redemption of all outstanding bonds. The levy shall be certified to the proper county officials for collection the same as other general taxes and when collected, the general tax shall be placed in a separate fund in the office of the county treasurer to be known as the "metropolitan park district fund" and paid out on warrants. [1990 c 234 § 3; 1973 1st ex.s. c 195 § 25; 1965 c 7 § 35.61.210.

Prior: 1951 c 179 § 1; prior: (i) 1943 c 264 § 10, part; Rem. Supp. 1943 § 6741-10, part; prior: 1909 c 131 § 4; 1907 c 98 § 10; RRS § 6729. (ii) 1947 c 117 § 1; 1943 c 264 § 5; Rem. Supp. 1947 § 6741-5; prior: 1925 ex.s. c 97 § 1; 1907 c 98 § 5; RRS § 6724.]

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

Limitation on levies: *State Constitution Art. 7 § 2 (Amendments 55, 59), RCW 84.52.050.*

35.61.220 Petition for improvements on assessment plan. If at any time any proposed improvement of any parkway, avenue, street, or boulevard is deemed by the board of metropolitan park commissioners to be a special benefit to the lands adjoining, contiguous, approximate to or in the neighborhood of the proposed improvement, which lie within the city, the board may so declare, describing the property to be benefited. Thereupon they may petition the city council to cause the improvement contemplated by the commissioners to be done and made on the local assessment plan, and the portion of the cost of the improvement as fixed by such assessment roll to be assessed against the said property so benefited in the same manner and under the same procedure as of other local improvements, and the remainder of the cost of such improvement to be paid out of the metropolitan park district fund.

The board of park commissioners shall designate the kind, manner and style of the improvement to be made, and may designate the time within which it shall be made. [1965 c 7 § 35.61.220. Prior: 1943 c 264 § 15; Rem. Supp. 1943 § 6741-15; prior: 1909 c 131 § 5; 1907 c 98 § 15; RRS § 6734.]

Local improvements, supplemental authority: Chapter 35.51 RCW.

35.61.230 Objections—Appeal. Any person, firm or corporation feeling aggrieved by the assessment against his or its property may file objections with the city council and may appeal from the order confirming the assessment roll in the same manner as objections and appeals are made in regard to local improvements in cities of the first class. [1965 c 7 § 35.61.230. Prior: 1943 c 264 § 16; Rem. Supp. 1943 § 6741-16; prior: 1907 c 98 § 17; RRS § 6736.]

Appeal of assessments and reassessments: RCW 35.44.200 through 35.44.270.

35.61.240 Assessment lien—Collection. The assessment for local improvements authorized by this chapter shall become a lien in the same manner, and be governed by the same law, as is provided for local assessments in cities of the first class and be collected as such assessments are collected. [1965 c 7 § 35.61.240. Prior: 1943 c 264 § 17; Rem. Supp. 1943 § 6741-17; prior: 1907 c 98 § 18; RRS § 6737.]

Collection and foreclosure of assessments: Chapters 35.49, 35.50 RCW.

35.61.250 Territorial annexation—Authority—Petition. The territory adjoining a metropolitan park district may be annexed to and become a part thereof upon petition and an election held pursuant thereto. The petition shall define the territory proposed to be annexed and must be signed by twenty-five registered voters, resident within the

territory proposed to be annexed, unless the territory is within the limits of another city when it must be signed by twenty percent of the registered voters residing within the territory proposed to be annexed. The petition must be addressed to the board of park commissioners requesting that the question be submitted to the legal voters of the territory proposed to be annexed, whether they will be annexed and become a part of the park district. [1985 c 416 § 4; 1965 c 7 § 35.61.250. Prior: 1943 c 264 § 20, part; Rem. Supp. 1943 § 6741-20, part; prior: 1907 c 98 § 20, part; RRS § 6739, part.]

35.61.260 Territorial annexation—Hearing on petition. Upon the filing of an annexation petition with the board of park commissioners, if the commissioners concur in the petition, they shall provide for a hearing to be held for the discussion of the proposed annexation at the office of the board of park commissioners, and shall give due notice thereof by publication at least once a week for two consecutive weeks before the hearing in a newspaper of general circulation in the park district. [1985 c 469 § 34; 1965 c 7 § 35.61.260. Prior: 1943 c 264 § 20, part; Rem. Supp. 1943 § 6741-20, part; prior: 1907 c 98 § 20, part; RRS § 6739, part.]

35.61.270 Territorial annexation—Election—Method. If the park commissioners concur in the petition, they shall cause the proposal to be submitted to the electors of the territory proposed to be annexed, at an election to be held in the territory, which shall be called, canvassed and conducted in accordance with the general election laws. The board of park commissioners by resolution shall fix a time for the holding of the election to determine the question of annexation, and in addition to the notice required by RCW 29.27.080 shall give notice thereof by causing notice to be published once a week for two consecutive weeks in a newspaper of general circulation in the park district, and by posting notices in five public places within the territory proposed to be annexed in the district.

The ballot to be used at the election shall be in the following form:

- "For annexation to metropolitan park district."
- "Against annexation to metropolitan park district."

[1985 c 469 § 35; 1965 c 7 § 35.61.270. Prior: 1943 c 264 § 20, part; Rem. Supp. 1943 § 6741-20, part; prior: 1907 c 98 § 20, part; RRS § 6739, part.]

Canvassing returns, generally: Chapter 29.62 RCW.

Conduct of elections—Canvass: RCW 29.13.040.

Times for holding elections: Chapter 29.13 RCW.

35.61.275 Territorial annexation—Park district containing city with population over one hundred thousand—Assumption of indebtedness. The board of park commissioners of any metropolitan park district which includes a city with a population greater than one hundred thousand may submit to the electorate of the territory sought to be annexed a proposition that all property within the area annexed shall, upon annexation, be assessed and taxed at the same rate and on the same basis as the property of such annexing metropolitan park district to pay for all or any

portion of the then outstanding indebtedness of the metropolitan park district. [1989 c 319 § 6.]

35.61.280 Territorial annexation—Election—Result. The canvassing authority shall cause a statement of the result of such election to be forwarded to the board of park commissioners for entry on the record of the board. If the majority of the votes cast upon that question at the election shall favor annexation, the territory shall immediately become annexed to the park district, and shall thenceforth be a part of the park district, the same as though originally included in the district. The expense of such election shall be paid out of park district funds. [1965 c 7 § 35.61.280. Prior: (i) 1943 c 264 § 20, part; Rem. Supp. 1943 § 6741-20, part; prior: 1907 c 98 § 20, part; RRS § 6739, part. (ii) 1943 c 264 § 21; Rem. Supp. 1943 § 6741-21; prior: 1907 c 98 § 21; RRS § 6740.]

35.61.290 Transfer of city or county property—Authority—Emergency grant, loan, of funds by city. (1) Any city within or comprising any metropolitan park district may turn over to the park district any lands which it may own, or any street, avenue, or public place within the city for playground, park or parkway purposes, and thereafter its control and management shall vest in the board of park commissioners: PROVIDED, That the police regulations of such city shall apply to all such premises.

At any time that any such metropolitan park district is unable, through lack of sufficient funds, to provide for the continuous operation, maintenance and improvement of the parks and playgrounds and other properties or facilities owned by it or under its control, and the legislative body of any city within or comprising such metropolitan park district shall determine that an emergency exists requiring the financial aid of such city to be extended in order to provide for such continuous operation, maintenance and/or improvement of parks, playgrounds facilities, other properties, and programs of such park district within its limits, such city may grant or loan to such metropolitan park district such of its available funds, or such funds which it may lawfully procure and make available, as it shall find necessary to provide for such continuous operation and maintenance and, pursuant thereto, any such city and the board of park commissioners of such district are authorized and empowered to enter into an agreement embodying such terms and conditions of any such grant or loan as may be mutually agreed upon.

The board of metropolitan park commissioners may accept public streets of the city and grounds for public purposes when donated for park, playground, boulevard and park purposes.

(2) Counties may turn over to the park district any park and recreation lands and equipment that they own, and the board of metropolitan park commissioners may accept such lands and equipment. [1985 c 416 § 5; 1965 c 7 § 35.61.290. Prior: 1953 c 194 § 1. Formerly: (i) 1943 c 264 § 18; Rem. Supp. 1943 § 6741-18; prior: 1907 c 98 § 16; RRS § 6735. (ii) 1943 c 264 § 19; Rem. Supp. 1943 § 6741-19; prior: 1907 c 98 § 19; RRS § 6738.]

35.61.300 Transfer of city or county property—Assumption of indebtedness. When any metropolitan park district shall be formed pursuant to this chapter and shall assume control of the parks, parkways, boulevards, and park property of the city in which said park district is created, or the metropolitan park district accepts county park and recreation lands, such park district shall assume all existing indebtedness, bonded or otherwise, against such park property, and shall arrange by taxation or issuing bonds, as herein provided, for the payment of such indebtedness, and shall relieve such city or county from such payment. Said park district is hereby given authority to issue refunding bonds when necessary in order to enable it to comply with this section. [1985 c 416 § 6; 1965 c 7 § 35.61.300. Prior: 1943 c 264 § 22; Rem. Supp. 1943 § 6741-22; prior: 1907 c 98 § 22; RRS § 6741.]

35.61.310 Dissolution. A board of commissioners of a metropolitan park district may, upon a majority vote of all its members, dissolve any metropolitan park district, prorate the liabilities thereof, and turn over to the city and/or county so much of the district as is respectively located therein, when:

(1) Such city and/or county, through its governing officials, agrees to, and petitions for, such dissolution and the assumption of such assets and liabilities, or;

(2) Ten percent of the voters of such city and/or county who voted at the last general election petition the governing officials for such a vote. [1965 c 7 § 35.61.310. Prior: 1953 c 269 § 1.]

35.61.315 Disincorporation of district located in county with a population of two hundred ten thousand or more and inactive for five years. See chapter 57.90 RCW.

35.61.320 Withdrawal of fourth class municipality—Prior levies and assessments. Any and all taxes or assessments levied or assessed against property located in the municipal corporation of the fourth class automatically withdrawn under RCW 35.61.010 from a metropolitan park district shall remain a lien and be collectible as by law provided when such taxes or assessments are levied or assessed prior to such withdrawal or when such levies or assessments are duly made to provide revenue for the payment of general obligations or general obligation bonds of the metropolitan park district duly incurred or issued prior to such automatic withdrawal. [1965 c 7 § 35.61.320. Prior: 1959 c 45 § 2.]

35.61.330 Withdrawal of fourth class municipality—Contracts with district. Any municipal corporation of the fourth class so withdrawn may, through its legislative authority, authorize contracts with the metropolitan park district from which it was withdrawn with respect to the rights, duties, and obligations of the withdrawn municipal corporation as to the ownership of property, services, assets, liabilities, and debts and any other question arising out of the withdrawal, which contract may also make provisions for services by the district and use of the facilities or real estate within such municipal corporation or park district, and the contract may provide for such distribution of any costs or

expenses as may be agreed to by the municipal corporation and the district. [1965 c 7 § 35.61.330. Prior: 1959 c 45 § 3.]

35.61.340 Withdrawal of fourth class municipality—Disposition of property—Eminent domain. The legislative authority of the municipal corporation of the fourth class so withdrawn may (1) negotiate and agree with the commissioners of the metropolitan park district from which it has been withdrawn as to the disposition of any property, real or personal, or of any right, title, or interest therein including the title, price and conveyance thereof, and (2) such municipal corporation shall also have the right of eminent domain in making a final disposition of any question arising, directly or indirectly, out of the withdrawal, such proceedings to be had in the name of the municipal corporation and in the manner prescribed for cities and towns in chapter 8.12 RCW: PROVIDED, That nothing herein shall be construed to limit in any way existing powers of the municipal corporation as to condemnation generally. [1965 c 7 § 35.61.340. Prior: 1959 c 45 § 4.]

35.61.350 Moorage facilities—Regulations authorized—Port charges, delinquency—Abandoned vessels, public sale. See RCW 53.08.310 and 53.08.320.

35.61.360 Withdrawal or reannexation of areas. (1) As provided in this section, a metropolitan park district may withdraw areas from its boundaries, or reannex areas into the metropolitan park district that previously had been withdrawn from the metropolitan park district under this section.

(2) The withdrawal of an area shall be authorized upon: (a) Adoption of a resolution by the park district commissioners requesting the withdrawal and finding that, in the opinion of the commissioners, inclusion of this area within the metropolitan park district will result in a reduction of the district’s tax levy rate under the provisions of RCW 84.52.010; and (b) adoption of a resolution by the city or town council approving the withdrawal, if the area is located within the city or town, or adoption of a resolution by the county legislative authority of the county within which the area is located approving the withdrawal, if the area is located outside of a city or town. A withdrawal shall be effective at the end of the day on the thirty-first day of December in the year in which the resolutions are adopted, but for purposes of establishing boundaries for property tax purposes, the boundaries shall be established immediately upon the adoption of the second resolution.

The withdrawal of an area from the boundaries of a metropolitan park district shall not exempt any property therein from taxation for the purpose of paying the costs of redeeming any indebtedness of the metropolitan park district existing at the time of the withdrawal.

(3) An area that has been withdrawn from the boundaries of a metropolitan park district under this section may be reannexed into the metropolitan park district upon: (a) Adoption of a resolution by the park district commissioners proposing the reannexation; and (b) adoption of a resolution by the city or town council approving the reannexation, if the area is located within the city or town, or adoption of a resolution by the county legislative authority of the county

within which the area is located approving the reannexation, if the area is located outside of a city or town. The reannexation shall be effective at the end of the day on the thirty-first day of December in the year in which the adoption of the second resolution occurs, but for purposes of establishing boundaries for property tax purposes, the boundaries shall be established immediately upon the adoption of the second resolution. Referendum action on the proposed reannexation may be taken by the voters of the area proposed to be reannexed if a petition calling for a referendum is filed with the city or town council, or county legislative authority, within a thirty-day period after the adoption of the second resolution, which petition has been signed by registered voters of the area proposed to be reannexed equal in number to ten percent of the total number of the registered voters residing in that area.

If a valid petition signed by the requisite number of registered voters has been so filed, the effect of the resolutions shall be held in abeyance and a ballot proposition to authorize the reannexation shall be submitted to the voters of the area at the next special election date specified in *RCW 29.13.020 that occurs forty-five or more days after the petitions have been validated. Approval of the ballot proposition authorizing the reannexation by a simple majority vote shall authorize the reannexation. [1987 c 138 § 2.]

**Reviser’s note:* As enacted by 1987 c 138 § 2, this section contained an apparently erroneous reference to RCW 29.13.030, a section repealed in 1965. Pursuant to RCW 1.08.015, this reference has been changed to RCW 29.13.020, a later enactment of the section repealed.

35.61.370 Park district containing city with population over one hundred thousand—May commission police officers. A metropolitan park district which contains a city with a population greater than one hundred thousand may commission its own police officers with full police powers to enforce the laws and regulations of the city or county on metropolitan park district property. Police officers initially employed after June 30, 1989, pursuant to this section shall be required to successfully complete basic law enforcement training in accordance with chapter 43.101 RCW. [1989 c 319 § 5.]

Chapter 35.62

NAME—CHANGE OF

Sections	
35.62.010	Authority for.
35.62.021	Election—Petition or resolution.
35.62.031	Ballot—One name proposed.
35.62.041	Ballot—More than one name proposed—Votes necessary.
35.62.060	Results—Certification.

35.62.010 Authority for. Any city or town may change its name in accordance with the procedure provided in this chapter. [1965 c 7 § 35.62.010. Prior: 1925 ex.s. c 146 § 1; RRS § 8891-1.]

35.62.021 Election—Petition or resolution. The question of whether the name of a city or town shall be changed shall be presented to the voters of the city or town upon either: (1) The adoption of a resolution by the city or town council proposing a specific name change; or (2) the

submission of a petition proposing a specific name change that has been signed by voters of the city or town equal in number to at least ten percent of the total number of voters of the city or town who voted at the last municipal general election. However, for any newly incorporated city or town that has not had city officials elected at a normal general municipal election, the election that is used as the base for determining the number of required signatures shall be the election at which the initial elected officials were elected.

The election on changing the name of the city or town shall be held at the next general election occurring sixty or more days after the resolution was adopted, or the resolution [petition] was submitted that has been certified by the county auditor as having sufficient valid signatures. [1990 c 193 § 1.]

35.62.031 Ballot—One name proposed. Where only one new name has been proposed by petition or resolution such question shall be in substantially the following form:

"Shall the name of the city (or town) of (insert name) be changed to the city (or town) of (insert the proposed new name) ?

Yes . . .
No . . ."

If a majority of the votes cast favor the name change, the city or town shall have its name changed effective thirty days after the certification of the election results. [1990 c 193 § 2.]

35.62.041 Ballot—More than one name proposed—Votes necessary. Where more than one name is proposed by either petition or resolution, the question shall be separated into two separate parts and shall be in substantially the following form:

"Shall the name of the city (or town) of (insert name) be changed?

Yes . . .
No . . ."

"If a name change is approved, which of the following should be the new name?

(insert name)
(insert name)
Vote for one."

Voters may select a name change whether or not they vote in favor of changing the name of the city or town. If a majority of the votes cast on the first proposition favor changing the name, the name that receives at least a majority of the total number of votes cast for an alternative name shall become the new name of the city or town effective thirty days after the certification of the election results.

If no alternative name receives a simple majority vote, then an election shall be held at the next November special election date, at which voters shall be given the option of choosing which of the two alternative names that received the most votes shall become the new name of the city or town. This ballot proposition shall be worded substantially as follows:

"Which of the following names shall become the new name of the city (or town) of (insert name) ?

(insert name)
(insert name)
Vote for one."

The name that receives the majority vote shall become the new name of the city or town effective thirty days after the certification of the election results. [1990 c 193 § 3.]

35.62.060 Results—Certification. Whenever any city or town has changed its name, the clerk shall certify the new name to the secretary of state prior to the date when the change takes effect. [1965 c 7 § 35.62.060. Prior: 1925 ex.s. c 146 § 6; RRS § 8891-6.]

Chapter 35.63

PLANNING COMMISSIONS

Sections

- 35.63.010 Definitions.
- 35.63.015 "Solar energy system" defined.
- 35.63.020 Commissioners—Manner of appointment.
- 35.63.030 Commissioners—Number—Tenure—Compensation.
- 35.63.040 Commissions—Organization—Meeting—Rules.
- 35.63.050 Expenditures.
- 35.63.060 Powers of commissions.
- 35.63.065 Public notice—Identification of affected property.
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- 35.63.105 Amendments to comprehensive plan to be adopted, certified, and recorded or filed in accordance with RCW 35.63.100.
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- 35.63.140 Residential care facilities—Review of need and demand—Adoption of ordinances.
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- 35.63.200 Moratoria, interim zoning controls—Public hearing—Limitation on length.

Acquisition of interests in land for conservation, protection, preservation, or open space purposes by cities or towns: RCW 64.04.130.

Airport zoning: Chapter 14.12 RCW.

Appearance of fairness doctrine—Application to local land use decisions: RCW 42.36.010.

Approval of proposed plats, subdivisions, and dedications of land: Chapter 58.17 RCW.

Boundaries and plats: Title 58 RCW.

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Housing authorities law: Chapter 35.82 RCW.

Joint operations by municipal corporations or political subdivisions, deposit and control of funds: RCW 43.09.285.

Local governmental organizations, actions affecting boundaries, etc., review by boundary review board: Chapter 36.93 RCW.

Municipal revenue bond act: Chapter 35.41 RCW.

Police and sanitary regulations: State Constitution Art. 11 § 11.

Recording of plats: Chapter 58.08 RCW.

35.63.010 Definitions. As used in this chapter the following terms shall have the meaning herein given them:

"Appointive members" means all members of a commission other than ex officio members;

"Board" means the board of county commissioners;

"City" includes every incorporated city and town;

"Commission" means a city or county planning commission;

"Council" means the chief legislative body of a city;

"Ex officio members" means the members of a commission chosen from among city or county officials;

"Highways" include streets, roads, boulevards, lanes, alleys, viaducts and other traveled ways;

"Mayor" means the chief executive of a city;

"Municipality" includes every county and city. [1965 c 7 § 35.63.010. Prior: 1935 c 44 § 1; RRS § 9322-1.]

35.63.015 "Solar energy system" defined. As used in this chapter, "solar energy system" means any device or combination of devices or elements which rely upon direct sunlight as an energy source, including but not limited to any substance or device which collects sunlight for use in:

- (1) The heating or cooling of a structure or building;
- (2) The heating or pumping of water;
- (3) Industrial, commercial, or agricultural processes; or
- (4) The generation of electricity.

A solar energy system may be used for purposes in addition to the collection of solar energy. These uses include, but are not limited to, serving as a structural member or part of a roof of a building or structure and serving as a window or wall. [1979 ex.s. c 170 § 2.]

Severability—1979 ex.s. c 170: See note following RCW 64.04.140.

Local governments authorized to encourage and protect solar energy systems: RCW 64.04.140.

35.63.020 Commissioners—Manner of appointment. If any council or board desires to avail itself of the powers conferred by this chapter it shall create a city or county planning commission consisting of from three to twelve members to be appointed by the mayor or chairman of the municipality and confirmed by the council or board: PROVIDED, That in cities of the first class having a commission form of government consisting of three or more members, the commissioner of public works shall appoint the planning commission, which appointment shall be confirmed by a majority of the city commissioners. Cities of the first class operating under self-government charters may extend the membership and the duties and powers of its commission beyond those prescribed in this chapter. [1965 c 7 § 35.63.020. Prior: (i) 1935 c 44 § 2, part; RRS § 9322-2, part. (ii) 1935 c 44 § 12; RRS § 9322-12.]

35.63.030 Commissioners—Number—Tenure—Compensation. The ordinance, resolution or act creating the commission shall set forth the number of members to be

appointed, not more than one-third of which number may be ex officio members by virtue of office held in any municipality. The term of office for ex officio members shall correspond to their respective tenures. The term of office for the first appointive members appointed to such commission shall be designated from one to six years in such manner as to provide that the fewest possible terms will expire in any one year. Thereafter the term of office for each appointive member shall be six years.

Vacancies occurring otherwise than through the expiration of terms shall be filled for the unexpired term. Members may be removed, after public hearing, by the appointing official, with the approval of his council or board, for inefficiency, neglect of duty or malfeasance in office.

The members shall be selected without respect to political affiliations and they shall serve without compensation. [1965 c 7 § 35.63.030. Prior: 1935 c 44 § 2, part; RRS § 9322-2, part.]

35.63.040 Commissions—Organization—Meeting—Rules. The commission shall elect its own chairman and create and fill such other offices as it may determine it requires. The commission shall hold at least one regular meeting in each month for not less than nine months in each year. It shall adopt rules for transaction of business and shall keep a written record of its meetings, resolutions, transactions, findings and determinations which record shall be a public record. [1965 c 7 § 35.63.040. Prior: 1935 c 44 § 3; RRS § 9322-3.]

35.63.050 Expenditures. The expenditures of any commission or regional commission authorized and established under this chapter, exclusive of gifts, shall be within the amounts appropriated for the purpose by the council or board. Within such limits, any commission may employ such employees and expert consultants as are deemed necessary for its work. [1965 c 7 § 35.63.050. Prior: 1935 c 44 § 4; RRS § 9322-4.]

35.63.060 Powers of commissions. The commission may act as the research and fact finding agency of the municipality. To that end it may make such surveys, analyses, researches and reports as are generally authorized or requested by its council or board, or by the state with the approval of its council or board. The commission, upon such request or authority may also:

(1) Make inquiries, investigations, and surveys concerning the resources of the county, including but not limited to the potential for solar energy development and alternative means to encourage and protect access to direct sunlight for solar energy systems;

(2) Assemble and analyze the data thus obtained and formulate plans for the conservation of such resources and the systematic utilization and development thereof;

(3) Make recommendations from time to time as to the best methods of such conservation, utilization, and development;

(4) Cooperate with other commissions and with other public agencies of the municipality, state and United States in such planning, conservation, and development; and

(5) In particular cooperate with and aid the state within its territorial limits in the preparation of the state master plan provided for in RCW 43.21A.350 and in advance planning of public works programs. [1988 c 127 § 1; 1979 ex.s. c 170 § 3; 1965 c 7 § 35.63.060. Prior: 1935 c 44 § 10; RRS § 9322-10.]

Severability—1979 ex.s. c 170: See note following RCW 64.04.140.

35.63.065 Public notice—Identification of affected property. Any notice made under chapter 35.63 RCW that identifies affected property may identify this affected property without using a legal description of the property including, but not limited to, identification by an address, written description, vicinity sketch, or other reasonable means. [1988 c 168 § 9.]

35.63.070 Regional commissions—Appointment—Powers. The commissions of two or more adjoining counties, of two or more adjacent cities and towns, of one or more cities and towns and/or one or more counties, together with the boards of such counties and the councils of such cities and towns may cooperate to form, organize and administer a regional planning commission for the making of a regional plan for the region defined as may be agreed upon by the commissions, boards and councils. The regional commission when requested by the commissions of its region, may further perform any of the other duties for its region that are specified in RCW 35.63.060 for city and county commissions. The number of members of a regional commission, their method of appointment and the proportion of the cost of regional planning, surveys and studies to be borne respectively by the various counties and cities in the region, shall be such as may be agreed upon by commissions, boards and councils.

Any regional planning commission, or the councils or boards respectively of any city, town, or county, are authorized to receive grants-in-aid from the government of the United States or of any of its agencies, and are authorized to enter into any reasonable agreement with any department or agency of the government of the United States to arrange for the receipt of federal funds for planning in the interest of furthering the planning program. [1965 c 7 § 35.63.070. Prior: 1957 c 130 § 1; 1935 c 44 § 11; RRS § 9322-11.]

Commission as employer for retirement system purposes: RCW 41.40.010.

35.63.080 Restrictions on buildings—Use of land. The council or board may provide for the preparation by its commission and the adoption and enforcement of coordinated plans for the physical development of the municipality. For this purpose the council or board, in such measure as is deemed reasonably necessary or requisite in the interest of health, safety, morals and the general welfare, upon recommendation by its commission, by general ordinances of the city or general resolution of the board, may regulate and restrict the location and the use of buildings, structures and land for residence, trade, industrial and other purposes; the height, number of stories, size, construction and design of buildings and other structures; the size of yards, courts and other open spaces on the lot or tract; the density of population; the set-back of buildings along highways, parks or public water frontages; and the subdivision and development

of land; and may encourage and protect access to direct sunlight for solar energy systems. A council where such ordinances are in effect, may, on the recommendation of its commission provide for the appointment of a board of adjustment, to make, in appropriate cases and subject to appropriate conditions and safeguards established by ordinance, special exceptions in harmony with the general purposes and intent and in accordance with general or specific rules therein contained. [1979 ex.s. c 170 § 4; 1965 c 7 § 35.63.080. Prior: 1935 c 44 § 5; RRS § 9322-5.]

Severability—1979 ex.s. c 170: See note following RCW 64.04.140.

35.63.090 Restrictions—Purposes of. All regulations shall be worked out as parts of a comprehensive plan which each commission shall prepare for the physical and other generally advantageous development of the municipality and shall be designed, among other things, to encourage the most appropriate use of land throughout the municipality; to lessen traffic congestion and accidents; to secure safety from fire; to provide adequate light and air; to prevent overcrowding of land; to avoid undue concentration of population; to promote a coordinated development of the unbuilt areas; to encourage the formation of neighborhood or community units; to secure an appropriate allotment of land area in new developments for all the requirements of community life; to conserve and restore natural beauty and other natural resources; to encourage and protect access to direct sunlight for solar energy systems; and to facilitate the adequate provision of transportation, water, sewerage and other public uses and requirements, including protection of the quality and quantity of ground water used for public water supplies. Each plan shall include a review of drainage, flooding, and storm water runoff in the area and nearby jurisdictions and provide guidance for corrective actions to mitigate or cleanse those discharges that pollute Puget Sound or waters entering Puget Sound. [1985 c 126 § 1; 1984 c 253 § 1; 1979 ex.s. c 170 § 5; 1965 c 7 § 35.63.090. Prior: 1935 c 44 § 7; RRS § 9322-7.]

Severability—1979 ex.s. c 170: See note following RCW 64.04.140.

35.63.100 Restrictions—Recommendations of commission—Hearings—Adoption of comprehensive plan—Certifying—Filing or recording. The commission may recommend to its council or board the plan prepared by it as a whole, or may recommend parts of the plan by successive recommendations; the parts corresponding with geographic or political sections, division or subdivisions of the municipality, or with functional subdivisions of the subject matter of the plan, or in the case of counties, with suburban settlement or arterial highway area. It may also prepare and recommend any amendment or extension thereof or addition thereto.

Before the recommendation of the initial plan to the municipality the commission shall hold at least one public hearing thereon, giving notice of the time and place by one publication in a newspaper of general circulation in the municipality and in the official gazette, if any, of the municipality.

The council may adopt by resolution or ordinance and the board may adopt by resolution the plan recommended to it by the commission, or any part of the plan, as the comprehensive plan.

A true copy of the resolution of the board adopting or embodying such plan or any part thereof or any amendment thereto shall be certified by the clerk of the board and filed with the county auditor. A like certified copy of any map or plat referred to or adopted by the county resolution shall likewise be filed with the county auditor. The auditor shall record the resolution and keep on file the map or plat.

The original resolution or ordinance of the council adopting or embodying such plan or any part thereof or any amendment thereto shall be certified by the clerk of the city and filed by him. The original of any map or plat referred to or adopted by the resolution or ordinance of the council shall likewise be certified by the clerk of the city and filed by him. The clerk shall keep on file the resolution or ordinance and map or plat. [1967 ex.s. c 144 § 8; 1965 c 7 § 35.63.100. Prior: 1935 c 44 § 8; RRS § 9322-8.]

Effective date—1967 ex.s. c 144: The effective date of 1967 ex.s. c 144 is July 30, 1967.

Severability—1967 ex.s. c 144: See note following RCW 36.900.030.

Validation—1967 ex.s. c 144: "Any city comprehensive plan and all amendments thereto which have been filed or recorded with the county auditor prior to the effective date of this 1967 amendatory act shall be valid and need not be refiled with the clerk of the city to remain valid and in full force and effect." [1967 ex.s. c 144 § 10.]

35.63.105 Amendments to comprehensive plan to be adopted, certified, and recorded or filed in accordance with RCW 35.63.100. All amendments to a comprehensive plan shall be adopted, certified, and recorded or filed in the same manner as authorized in RCW 35.63.100 for an initial comprehensive plan. [1967 ex.s. c 144 § 9.]

Severability—1967 ex.s. c 144: See note following RCW 36.900.030.

Validation—1967 ex.s. c 144: See note following RCW 35.63.100.

35.63.110 Restrictive zones. For any or all of such purposes the council or board, on recommendation of its commission, may divide the municipality or any portion thereof into districts of such size, shape and area, or may establish such official maps, or development plans for the whole or any portion of the municipality as may be deemed best suited to carry out the purposes of this chapter and within such districts it may regulate and restrict the erection, construction, reconstruction, alteration, repair or use of buildings, structures or land. [1965 c 7 § 35.63.110. Prior: 1935 c 44 § 6; RRS § 9322-6.]

35.63.120 Supplemental restrictions—Hearing—Affirmance, disaffirmance, modification of commission's decision. Any ordinance or resolution adopting any such plan or regulations, or any part thereof, may be amended, supplemented or modified by subsequent ordinance or resolution.

Proposed amendments, supplementations, or modifications shall first be heard by the commission and the decision shall be made and reported by the commission within ninety days of the time that the proposed amendments, supplementations, or modifications were made.

The council or board, pursuant to public hearing called by them upon application therefor by any interested party or upon their own order, may affirm, modify or disaffirm any

decision of the commission. [1965 c 7 § 35.63.120. Prior: 1957 c 194 § 1; 1935 c 44 § 9; RRS § 9322-9.]

35.63.125 Development regulations—Consistency with comprehensive plan. Beginning July 1, 1992, the development regulations of each city and county that does not plan under RCW 36.70A.040 shall not be inconsistent with the city's or county's comprehensive plan. For the purposes of this section, "development regulations" has the same meaning as set forth in RCW 36.70A.030. [1990 1st ex.s. c 17 § 22.]

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

35.63.130 Hearing examiner system—Adoption authorized—Alternative—Functions—Procedures. As an alternative to those provisions of this chapter relating to powers or duties of the planning commission to hear and report on any proposal to amend a zoning ordinance, the legislative body of a city or county may adopt a hearing examiner system under which a hearing examiner or hearing examiners may hear and decide applications for amending the zoning ordinance when the amendment which is applied for is not of general applicability. In addition, the legislative body may vest in a hearing examiner the power to hear and decide applications for conditional uses, variances, or any other class of applications for or pertaining to land uses which the legislative body believes should be reviewed and decided by a hearing examiner. The legislative body shall prescribe procedures to be followed by the hearing examiner.

Each city or county legislative body electing to use a hearing examiner pursuant to this section shall by ordinance specify the legal effect of the decisions made by the examiner. The legal effect of such decisions may vary for the different classes of applications decided by the examiner but shall include one of the following:

- (1) The decision may be given the effect of a recommendation to the legislative body;
- (2) The decision may be given the effect of an administrative decision appealable within a specified time limit to the legislative body.

Each final decision of a hearing examiner shall be in writing and shall include findings and conclusions, based on the record, to support the decision. Such findings and conclusions shall also set forth the manner in which the decision would carry out and conform to the city's or county's comprehensive plan and the city's or county's development regulations. Each final decision of a hearing examiner, unless a longer period is mutually agreed to in writing by the applicant and the hearing examiner, shall be rendered within ten working days following conclusion of all testimony and hearings. [1977 ex.s. c 213 § 1.]

Severability—1977 ex.s. 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." [1977 ex.s. c 213 § 5.]

35.63.140 Residential care facilities—Review of need and demand—Adoption of ordinances. Each municipality that does not provide for the siting of residential care facilities in zones or areas that are designated for single family or other residential uses, shall conduct a review

of the need and demand for the facilities, including the cost of any conditional or special use permit that may be required. The review shall be completed by August 31, 1990. A copy of the findings, conclusions, and recommendations resulting from the review shall be sent to the department of community development by September 30, 1990.

On or before June 30, 1991, each municipality that plans and zones under this chapter shall have adopted an ordinance or ordinances that are necessary to implement the findings of this review, if the findings indicate that such changes are necessary, or shall notify the department of community development as to why such implementing ordinances were not adopted. [1989 c 427 § 36.]

Severability—1989 c 427: See RCW 74.39.900.

Report to legislature, model ordinance: RCW 70.128.180.

35.63.150 Conformance with chapter 43.97 RCW required. With respect to the National Scenic Area, as defined in the Columbia River Gorge National Scenic Area Act, P.L. 99-663, the exercise of any power or authority by a county or city pursuant to this chapter shall be subject to and in conformity with the requirements of chapter 43.97 RCW, including the Interstate Compact adopted by RCW 43.97.015, and with the management plan regulations and ordinances adopted by the Columbia River Gorge commission pursuant to the Compact. [1987 c 499 § 6.]

35.63.160 Prohibitions on manufactured homes—Review required—"Designated manufactured home" defined. (1) Each comprehensive plan which does not allow for the siting of manufactured homes on individual lots shall be subject to a review by the city of the need and demand for such homes. The review shall be completed by December 31, 1990.

(2) For the purpose of providing an optional reference for cities which choose to allow manufactured homes on individual lots, a "designated manufactured home" is a manufactured home constructed after June 15, 1976, in accordance with state and federal requirements for manufactured homes, which:

(a) Is comprised of at least two fully enclosed parallel sections each of not less than twelve feet wide by thirty-six feet long;

(b) Was originally constructed with and now has a composition or wood shake or shingle, coated metal, or similar roof of not less than 3:12 pitch; and

(c) Has exterior siding similar in appearance to siding materials commonly used on conventional site-built uniform building code single-family residences.

(3) Nothing in this section precludes cities from allowing any manufactured home from being sited on individual lots through local standards which differ from the designated manufactured home as described in this section, except that the term "designated manufactured home" shall not be used except as defined in subsection (2) of this section. [1988 c 239 § 1.]

35.63.170 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout RCW 35.22.660, 35.63.180, 35A.63.210, 36.32.520, and 36.70.675:

(1) "Family day care home" means a person regularly providing care during part of the twenty-four-hour day to six or fewer children in the family abode of the person or persons under whose direct care the children are placed.

(2) "Mini-day care center" means a person or agency providing care during part of the twenty-four-hour day to twelve or fewer children in a facility other than the family abode of the person or persons under whose direct care the children are placed, or for the care of seven through twelve children in the family abode of such person or persons.

(3) "Day care center" means a person or agency that provides care for thirteen or more children during part of the twenty-four-hour day.

(4) "Child care facility" means a family day care home, mini-day care center, and day care center. [1989 c 335 § 3.]

Findings—1989 c 335: "The legislature finds that:

(1) A majority of women with preschool and school age children in Washington state are working outside of the home and are in need of child care services for their children;

(2) The supply of licensed child care facilities in Washington state is insufficient to meet the growing demand for child care services;

(3) The most convenient location of child care facilities for many working families is near the family's home or workplace." [1989 c 335 § 1.]

Purpose—1989 c 335: "The purpose of this act is to encourage the dispersion of child care facilities throughout cities and counties in Washington state so that child care services are available at convenient locations to working parents." [1989 c 335 § 2.]

Severability—1989 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." [1989 c 335 § 10.]

35.63.180 Child care facilities—Review of need and demand—Adoption of ordinances. Each municipality that does not provide for the siting of family day care homes in zones or areas that are designated for single family or other residential uses, and for the siting of mini-day care centers and day care centers in zones or areas that are designated for any residential or commercial uses, shall conduct a review of the need and demand for child care facilities, including the cost of any conditional or special use permit that may be required. The review shall be completed by August 31, 1990. A copy of the findings, conclusions, and recommendations resulting from the review shall be sent to the department of community development by September 30, 1990.

On or before June 30, 1991, each municipality that plans and zones under this chapter shall have adopted an ordinance or ordinances that are necessary to implement the findings of this review, if the findings indicate that such changes are necessary, or shall notify the department of community development as to why such implementing ordinances were not adopted. [1989 c 335 § 4.]

Findings—Purpose—Severability—1989 c 335: See notes following RCW 35.63.170.

Definitions for RCW 35.63.180: See RCW 35.63.170.

35.63.190 Mobile home parks—Review of need and demand. Any city with a population of ten thousand or more or any county with a population of one hundred fifty thousand or more shall conduct a review of the need and demand for mobile home parks. The review shall be completed by May 31, 1990. A copy of the findings,

conclusions, and recommendations resulting from the review shall be sent to the department of community development by June 30, 1990. [1989 c 274 § 2.]

Findings—Purpose—1989 c 274: "(1) The legislature finds that mobile home parks are an important part of housing in Washington state. Mobile homes allow many citizens to own a home who otherwise would not. Mobile home parks provide a place to locate mobile homes, and therefore, can be a source of affordable housing. Mobile home parks also provide community living opportunities which can enable senior citizens to live independently for as long as possible.

(2) The legislature also finds that local siting and zoning regulations for mobile home parks and land use decisions by some local jurisdictions prohibit or hinder the establishment or expansion of mobile home parks. In areas where mobile home parks are closing, such decisions increase the problem for tenants due to a lack of available spaces on which to move a mobile home.

(3) The purpose of this act is to encourage local jurisdictions to review their land use regulations and permit procedures pertaining to mobile home parks and to encourage the establishment or expansion of mobile home parks." [1989 c 274 § 1.]

Severability—1989 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." [1989 c 274 § 8.]

35.63.200 Moratoria, interim zoning controls—Public hearing—Limitation on length. A council or board that adopts a moratorium or interim zoning control, without holding a public hearing on the proposed moratorium or interim zoning control, shall hold a public hearing on the adopted moratorium or interim zoning control within at least sixty days of its adoption, whether or not the council or board received a recommendation on the matter from the commission. If the council or board does not adopt findings of fact justifying its action before this hearing, then the council or board shall do so immediately after this public hearing. A moratorium or interim zoning control adopted under this section may be effective for not longer than six months, but may be effective for up to one year if a work plan is developed for related studies providing for such a longer period. A moratorium or interim zoning control may be renewed for one or more six-month periods if a subsequent public hearing is held and findings of fact are made prior to each renewal. [1992 c 207 § 1.]

Chapter 35.66 POLICE MATRONS

Sections

35.66.010	Authority to establish.
35.66.020	Appointment.
35.66.030	Assistance by police.
35.66.040	Compensation.
35.66.050	Persons under arrest—Separate quarters.

35.66.010 Authority to establish. There shall be annexed to the police force of each city in this state having a population of not less than ten thousand inhabitants one or more police matrons who, subject to the control of the chief of police or other proper officer, shall have the immediate care of all females under arrest and while detained in the city prison until they are finally discharged therefrom. [1965 c 7 § 35.66.010. Prior: 1893 c 15 § 1; RRS § 9282.]

35.66.020 Appointment. The police matron or matrons employed or appointed in accordance with the provisions of this chapter shall be employed or appointed in the same manner as other regular members of the police departments in the city where the appointment is made. [1965 c 7 § 35.66.020. Prior: 1939 c 115 § 1; 1893 c 15 § 4; RRS § 9285.] [SLC-RO-4]

35.66.030 Assistance by police. Any person on the police force or, in their absence, any other person present, must aid and assist the matron when from necessity she may require it. [1965 c 7 § 35.66.030. Prior: 1893 c 15 § 2; RRS § 9283.]

35.66.040 Compensation. A police matron must be paid such compensation for her services as shall be fixed by the city council and at such time as may be appointed for the payment of policemen. [1965 c 7 § 35.66.040. Prior: 1893 c 15 § 6; RRS § 9287.]

35.66.050 Persons under arrest—Separate quarters. For the purpose of effecting the main object of this chapter, no member of one sex under arrest shall be confined in the same cell or apartment of the city jail or prison, with any member of the other sex whatever. [1973 1st ex.s. c 154 § 53; 1965 c 7 § 35.66.050. Prior: 1893 c 15 § 3; RRS § 9284.]

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

Chapter 35.67

SEWERAGE SYSTEMS—REFUSE COLLECTION AND DISPOSAL

Sections

35.67.010	Definitions—"System of sewerage," "public utility."
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- 35.67.280 Sewerage sale acquired property—Payment of delinquent taxes.
 35.67.290 Sewerage lien—Enforcement—Alternative method.
 35.67.300 Sewer districts and municipalities—Joint agreements.
 35.67.310 Sewers—Outside city connections.
 35.67.331 Water, sewerage, garbage systems—Combined facilities.
 35.67.340 Statutes governing combined facility.
 35.67.350 Penalty for sewer connection without permission.

Municipal water and sewer facilities act: Chapter 35.91 RCW.

Prepayment of taxes and assessments: RCW 35.21.650.

Sewer districts: Title 56 RCW.

Sewer facilities act: Chapter 35.91 RCW.

Sewerage improvement districts: Chapter 85.08 RCW.

35.67.010 Definitions—"System of sewerage," "public utility." A "system of sewerage" means and includes:

- (1) Sanitary sewage disposal sewers;
- (2) Combined sanitary sewage disposal and storm or surface water sewers;
- (3) Storm or surface water sewers;
- (4) Outfalls for storm or sanitary sewage and works, plants, and facilities for sanitary sewage treatment and disposal, or
- (5) Any combination of or part of any or all of such facilities.

The words "public utility" when used in this chapter shall have the same meaning as the words "system of sewerage." [1965 c 110 § 1; 1965 c 7 § 35.67.010. Prior: 1955 c 266 § 2; prior: 1941 c 193 § 1, part; Rem. Supp. 1941 § 9354-4, part.]

35.67.020 Authority to construct system and fix rates and charges—Classification of services. Every city and town may construct, condemn and purchase, acquire, add to, maintain, conduct, and operate systems of sewerage and systems and plants for refuse collection and disposal together with additions, extensions, and betterments thereto, within and without its limits, with full jurisdiction and authority to manage, regulate, and control them and to fix, alter, regulate, and control the rates and charges for the use thereof: PROVIDED, That the rates charged must be uniform for the same class of customers or service.

In classifying customers served or service furnished by such system of sewerage, the city or town legislative body 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 city or town; 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. [1991 c 347 § 17; 1965 c 7 § 35.67.020. Prior: 1959 c 90 § 1; 1955 c 266 § 3; prior: 1941 c 193 § 1, part; Rem. Supp. 1941 § 9354-4, part.]

Purposes—1991 c 347: See note following RCW 90.42.005.

Severability—1991 c 347: See RCW 90.42.900.

35.67.022 Extension outside city subject to review by boundary review board. The extension of sewer facilities outside of the boundaries of a city or town may be subject to potential review by a boundary review board under chapter 36.93 RCW. [1989 c 84 § 32.]

35.67.025 Public property subject to rates and charges for storm water control facilities. Except as otherwise provided in RCW 90.03.525, any public entity and public property, including the state of Washington and state property, shall be subject to rates and charges for storm water control facilities to the same extent private persons and private property are subject to such rates and charges that are imposed by cities and towns pursuant to RCW 35.67.020. In setting these rates and charges, consideration may be made of in-kind services, such as stream improvements or donation of property. [1986 c 278 § 55; 1983 c 315 § 1.]

Severability—1986 c 278: See note following RCW 36.01.010.

Severability—1983 c 315: See note following RCW 90.03.500.

Flood control zone districts—Storm water control improvements: Chapter 86.15 RCW.

Rates and charges for storm water control facilities—Limitations—Definitions: RCW 90.03.500 through 90.03.525. See also RCW 35.92.021, 36.89.085, 36.94.145, and 56.08.012.

35.67.030 Adoption of plan—Ordinance. Whenever the legislative body of any city or town, shall deem it advisable that such city or town shall purchase, acquire or construct any public utility mentioned in RCW 35.67.020, or make any additions, betterments, or alterations thereto, or extensions thereof, such legislative body shall provide therefor by ordinance, which shall specify and adopt the system or plan proposed, and declare the estimated cost thereof as near as may be. [1985 c 445 § 1; 1965 c 7 § 35.67.030. Prior: 1941 c 193 § 2; Rem. Supp. 1941 § 9354-5.]

Elections: Title 29 RCW.

Limitations upon indebtedness, how exceeded: State Constitution Art. 7 § 2 (Amendments 55, 59), Art. 8 § 6 (Amendment 27), chapter 39.36 RCW, RCW 84.52.050.

35.67.065 General obligation bonds—Issuance. General obligation bonds issued by a city or town to pay for all or part of the costs of purchasing, acquiring, or constructing any public utility mentioned in RCW 35.67.020, or the costs of making any additions, betterments, or alterations thereto, or extensions thereof, shall be issued and sold in accordance with chapter 39.46 RCW. [1985 c 445 § 2.]

35.67.110 General obligation bonds—Payment—Revenue from service charges. In addition to taxes pledged to pay the principal of and interest on general obligation bonds issued to pay for costs of purchasing, acquiring, or constructing any public utility mentioned in RCW 35.67.020, or to make any additions, betterments, or alterations thereto, or extensions thereof, the city or town legislative body, may set aside into a special fund and pledge to the payment of such principal and interest any sums or amounts which may accrue from the collection of service rates and charges for the private and public use of said

sewerage system or systems for the collection and disposal of refuse, in excess of the cost of operation and maintenance thereof as constructed or added to, and the same shall be applied solely to the payment of such interest and bonds. Such pledge of revenue shall constitute a binding obligation, according to its terms, to continue the collection of such revenue so long as such bonds or any of them are outstanding. If the rates and charges are sufficient to meet the debt service requirements on such bonds no general tax need be levied. [1985 c 445 § 3; 1965 c 118 § 1; 1965 c 7 § 35.67.110. Prior: 1941 c 193 § 3, part; Rem. Supp. 1941 § 9354-6, part.]

35.67.120 Revenue bond fund—Authority to establish. After the city or town legislative body adopts a proposition for any such public utility, and either (1) no general indebtedness has been authorized, or (2) the city or town legislative body does not desire to incur a general indebtedness, and the legislative body can lawfully proceed without submitting the proposition to a vote of the people, it may create a special fund or funds for the sole purpose of defraying the cost of the proposed system, or additions, betterments or extensions thereto.

The city or town legislative body may obligate the city or town to set aside and pay into this special fund: (1) A fixed proportion of the gross revenues of the system, or (2) a fixed amount out of and not exceeding a fixed proportion of the gross revenues, or (3) a fixed amount without regard to any fixed proportion, and (4) amounts received from any utility local improvement district assessments pledged to secure such bonds. [1967 c 52 § 24; 1965 c 7 § 35.67.120. Prior: 1941 c 193 § 4, part; Rem. Supp. 1941 § 9354-7, part.]

35.67.130 Revenue bond fund—Limitations upon creation. In creating the special fund, the city or town legislative body shall have due regard to the cost of operation and maintenance of the 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 and other indebtedness. It shall not set aside into the special fund a greater amount or proportion of the revenue and proceeds than in its judgment will be available over and above the cost of maintenance and operation and the amount or proportion of the revenue so previously pledged. [1965 c 7 § 35.67.130. Prior: 1941 c 193 § 4, part; Rem. Supp. 1941 § 9354-7, part.]

35.67.140 Revenue bonds—Authority—Denominations—Terms. A city or town may issue revenue bonds against the special fund or funds created solely from revenues. The revenue bonds so issued shall: (1) Be registered bonds as provided in RCW 39.46.030 or coupon bonds, (2) be issued in denominations of not less than one hundred dollars nor more than one thousand dollars, (3) be numbered from one upwards consecutively, (4) bear the date of their issue, (5) be serial in form finally maturing not more than thirty years from their date, (6) bear interest at the rate or rates as authorized by the legislative body of the city or town, payable annually or semiannually, (7) be payable as to principal and interest at such place as may be designated

therein, and (8) shall state upon their face that they are payable from a special fund, naming it and the ordinance creating it: PROVIDED, That such bonds may also be issued and sold in accordance with chapter 39.46 RCW. [1983 c 167 § 59; 1970 ex.s. c 56 § 43; 1969 ex.s. c 232 § 71; 1965 c 7 § 35.67.140. Prior: 1941 c 193 § 4, part; Rem. Supp. 1941 § 9354-7, part.]

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.

35.67.150 Revenue bonds—Signatures—Form. Every revenue bond and any coupon shall be signed by the mayor and attested by the clerk. The seal of the city or town shall be attached to all bonds but not to any coupons. Signatures on any coupons may be printed or may be the lithographic facsimile of the signatures. The bonds shall be printed, engraved or lithographed upon good bond paper. [1983 c 167 § 60; 1965 c 7 § 35.67.150. Prior: 1941 c 193 § 4, part; Rem. Supp. 1941 § 9354-7, part.]

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

35.67.160 Revenue bonds—Obligation against fund, not city. Revenue bonds or warrants and interest shall be payable only out of the special fund. Every bond or warrant and interest thereon issued against the special fund shall be a valid claim of the holder thereof only as against that fund and its fixed proportion of the amount of revenue pledged to the fund, and shall not constitute an indebtedness of the city or town. Every warrant as well as every bond shall state on its face that it is payable from a special fund, naming it and the ordinance creating it. [1965 c 7 § 35.67.160. Prior: 1941 c 193 § 4, part; Rem. Supp. 1941 § 9354-7, part.]

35.67.170 Revenue bonds—Sale of—Other disposition. Revenue bonds and warrants may be sold in any manner the city or town legislative body deems for the best interests of the city or town. The legislative body may provide in any contract for the construction or acquisition of a proposed utility that payment therefor shall be made only in revenue bonds and warrants at their par value. [1965 c 7 § 35.67.170. Prior: 1941 c 193 § 4, part; Rem. Supp. 1941 § 9354-7, part.]

35.67.180 Revenue bonds—Remedy of owners. If a city or town fails to set aside and pay into the special fund created for the payment of revenue bonds and warrants the amount which it has obligated itself in the ordinance creating the fund to set aside and pay therein, the owner of any bond or warrant issued against the fund may bring suit against the city or town to compel it to do so. [1983 c 167 § 61; 1965 c 7 § 35.67.180. Prior: 1941 c 193 § 4, part; Rem. Supp. 1941 c 9354-7, part.]

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

35.67.190 Revenues from system—Classification of services—Minimum rates—Compulsory use. The legisla-

tive body of such city or town may provide by ordinance for revenues by fixing rates and charges for the furnishing of service to those served by its system of sewerage or system for refuse collection and disposal, which rates and charges shall be uniform for the same class of customer or service. In classifying customers served or service furnished by such system of sewerage, the city or town legislative body 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 city or town; 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; 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.

If special indebtedness bonds or warrants are issued against the revenues, the legislative body shall by ordinance fix charges at rates which will be sufficient to take care of the costs of maintenance and operation, bond and warrant principal and interest, sinking fund requirements, and all other expenses necessary for efficient and proper operation of the system.

All property owners within the area served by such sewerage system shall be compelled to connect their private drains and sewers with such city or town system, under such penalty as the legislative body of such city or town may by ordinance direct. Such penalty may in the discretion of such legislative body be an amount equal to the charge that would be made for sewer service if the property was connected to such system. All penalties collected shall be considered revenue of the system. [1965 c 7 § 35.67.190. Prior: 1959 c 90 § 2; 1941 c 193 § 5; Rem. Supp. 1941 § 9354-8.]

35.67.194 Revenue bonds validated. Any and all water, sewer, or water and sewer revenue bonds part or all of which may have been heretofore (prior to June 8, 1955) issued by any city or town for the purpose of providing funds to pay part or all of the cost of acquiring, constructing, or installing a system of storm or surface water sewers or any part thereof necessary for the proper and efficient operation of a system of sanitary sewage disposal sewers or a sanitary sewage treatment plant, the proceedings for the issuance of which were valid in all other respects, are approved, ratified and validated, and are declared to be legal and binding obligations of such city or town, both principal of and interest on which are payable only out of the revenues of the utility or utilities pledged for such payment. [1965 c 7 § 35.67.194. Prior: 1955 c 266 § 5.]

35.67.200 Sewerage lien—Authority. Cities and towns owning their own sewer systems shall have a lien for delinquent and unpaid rates and charges for sewer service, penalties levied pursuant to RCW 35.67.190, and connection charges, including interest thereon, against the premises to which such service has been furnished or is available, which lien shall be superior to all other liens and encumbrances except general taxes and local and special assessments. The city or town by ordinance may provide that delinquent

charges shall bear interest at not exceeding eight percent per annum computed on a monthly basis: PROVIDED, That a city or town using the property tax system for utility billing may, by resolution or ordinance, adopt the alternative lien procedure as set forth in RCW 35.67.215. [1991 c 36 § 2; 1965 c 7 § 35.67.200. Prior: 1959 c 90 § 4; prior: 1941 c 193 § 6, part; Rem. Supp. 1941 § 9354-9, part.]

35.67.210 Sewerage lien—Extent—Notice. The sewerage lien shall be effective for a total of not to exceed six months' delinquent charges without the necessity of any writing or recording. In order to make such lien effective for more than six months' charges the city or town treasurer, clerk, or official charged with the administration of the affairs of the utility shall cause to be filed for record in the office of the county auditor of the county in which such city or town is located, a notice in substantially the following form:

"Sewerage lien notice
City (or town) of
vs.
..... reputed owner.

Notice is hereby given that the city (or town) of has and claims a lien for sewer charges against the following described premises situated in county, Washington, to wit:

(here insert legal description of premises)

Said lien is claimed for not exceeding six months such charges and interest now delinquent, amount to \$....., and is also claimed for future sewerage charges against said premises.

Dated
City (or town) of
By "

The lien notice may be signed by the city or town treasurer or clerk or other official in charge of the administration of the utility. The lien notice shall be recorded as prescribed by law for the recording of mechanics' liens. [1965 c 7 § 35.67.210. Prior: 1959 c 90 § 5; prior: 1941 c 193 § 6, part; Rem. Supp. 1941 § 9354-9, part.]

35.67.215 Sewerage lien—Extension of coverage. Any city or town may, by resolution or ordinance, provide that the sewerage lien shall be effective for a total not to exceed one year's delinquent service charges without the necessity of any writing or recording of the lien with the county auditor, in lieu of the provisions provided for in RCW 35.67.210. [1991 c 36 § 3.]

35.67.220 Sewerage lien foreclosure—Parts—Tracts. The city or town may foreclose its sewerage lien in an action in the superior court. All or any of the tracts subject to the lien may be proceeded against in the same action, and all parties appearing of record as owning or claiming to own, having or claiming to have any interest in or lien upon the tracts involved in the action shall be impleaded in the action as parties defendant. [1965 c 7 § 35.67.220. Prior: 1941 c 193 § 7, part; Rem. Supp. 1941 § 9354-10, part.]

35.67.230 Sewerage lien foreclosure—Limitation on time of commencement. An action to foreclose a sewerage lien pursuant to a lien notice filed as required by law must be commenced within two years from the date of the filing thereof.

An action to foreclose a six months' lien may be commenced at any time after six months subsequent to the furnishing of the sewerage service for which payment has not been made. [1965 c 7 § 35.67.230. Prior: 1941 c 193 § 7, part; Rem. Supp. 1941 § 9354-10, part.]

35.67.240 Sewerage lien foreclosure—Procedure. The service of summons, and all other proceedings except as herein otherwise prescribed including appeal, order of sale, sale, redemption, and issuance of deed, shall be governed by the statutes now or hereafter in force relating to the foreclosure of mortgages on real property. The terms "judgment debtor" or "successor in interest" in the statutes governing redemption when applied herein shall include an owner or a vendee. [1965 c 7 § 35.67.240. Prior: 1941 c 193 § 7, part; Rem. Supp. 1941 § 9354-10, part.]

35.67.250 Sewerage lien foreclosure—Trial. A sewerage lien foreclosure action shall be tried before the court without a jury. The court may allow in addition to interest on the service charges at a rate not exceeding eight percent per year from date of delinquency, costs and disbursements as provided by statute and such attorneys' fees as the court may adjudge reasonable.

If the owners and parties interested in any particular tract default, the court may enter judgment of foreclosure and sale as to such parties and tracts and the action may proceed as to the remaining defendants and tracts. The judgment shall specify separately the amount of the sewerage charges, with interest, penalty and costs chargeable to each tract. The judgment shall have the effect of a separate judgment as to each tract described in the judgment, and any appeal shall not invalidate or delay the judgment except as to the property concerning which the appeal is taken. In the judgment the court shall order the tracts therein described sold at one general sale, and an order of sale shall issue pursuant thereto for the enforcement of the judgment. Judgment may be entered as to any one or more separate tracts involved in the action, and the court shall retain jurisdiction of other properties. [1965 c 7 § 35.67.250. Prior: 1941 c 193 § 7, part; Rem. Supp. 1941 § 9354-10, part.]

35.67.260 Sewerage lien foreclosure—Redemption. All sales shall be subject to the right of redemption within one year from date of sale. [1965 c 7 § 35.67.260. Prior: 1941 c 193 § 7, part; Rem. Supp. 1941 § 9354-10, part.]

35.67.270 Sewerage sale acquired property—Disposition. At any time after deed is issued to it pursuant to lien, a city or town may lease or sell or convey any property at public or private sale for such price and on such terms as may be determined by resolution of the city or town legislative body, any provision of law, charter or ordinance

to the contrary notwithstanding. [1965 c 7 § 35.67.270. Prior: 1941 c 193 § 8; Rem. Supp. 1941 § 9354-11.]

35.67.280 Sewerage sale acquired property—Payment of delinquent taxes. After the entry of judgment of foreclosure against any tract, the city or town may pay delinquent general taxes or purchase certificates of delinquency for general taxes on the tract or purchase the tract at county tax foreclosure or from the county after foreclosure.

After entry of judgment of foreclosure against any premises the city or town may pay local or special assessments which are delinquent or are about to become delinquent and if the tract has been foreclosed upon for local or special assessments and the time for redemption has not expired, it may redeem it.

No moneys shall be expended for the purposes enumerated in this section except upon enactment by the city or town legislative body of a resolution determining the desirability or necessity of making the expenditure. [1965 c 7 § 35.67.280. Prior: 1941 c 193 § 9; Rem. Supp. 1941 § 9354-12.]

35.67.290 Sewerage lien—Enforcement—Alternative method. As an additional and concurrent method of enforcing the lien authorized in this chapter any city or town operating its own municipal water system may provide by ordinance for the enforcement of the lien by cutting off the water service from the premises to which such sewer service was furnished after the charges become delinquent and unpaid, until the charges are paid.

The right to enforce the lien by cutting off and refusing water service shall not be exercised after two years from the date of the recording of sewerage lien notice except to enforce payment of six months' charges for which no lien notice is required to be recorded. [1965 c 7 § 35.67.290. Prior: 1941 c 193 § 10; Rem. Supp. 1941 § 9354-13.]

35.67.300 Sewer districts and municipalities—Joint agreements. Any city, town, or organized and established sewer district owning or operating its own sewer system, whenever topographic conditions shall make it feasible and whenever such existing sewer system shall be adequate therefor in view of the sewerage and drainage requirements of the property in such city, town, or sewer district, served or to be served by such system, may contract with any other city, town, or organized and established sewer district for the discharge into its sewer system of sewage from all or any part or parts of such other city, town, or sewer district upon such terms and conditions and for such periods of time as may be deemed reasonable.

Any city, town, or organized and established sewer district may contract with any other city, town, or organized and established sewer district for the construction and/or operation of any sewer or sewage disposal facilities for the joint use and benefit of the contracting parties upon such terms and conditions and for such period of time as the governing bodies of the contracting parties may determine. Any such contract may provide that the responsibility for the management of the construction and/or maintenance and operation of any sewer disposal facilities or part thereof covered by such contract shall be vested solely in one of the

contracting parties, with the other party or parties thereto paying to the managing party such portion of the expenses thereof as shall be agreed upon. [1965 c 7 § 35.67.300. Prior: 1947 c 212 § 3; 1941 c 193 § 11; Rem. Supp. 1947 § 9354-14.]

35.67.310 Sewers—Outside city connections. Every city or town may permit connections with any of its sewers, either directly or indirectly, from property beyond its limits, upon such terms, conditions and payments as may be prescribed by ordinance, which may be required by the city or town to be evidenced by a written agreement between the city or town and the owner of the property to be served by the connecting sewer.

If any such agreement is made and filed with the county auditor of the county in which said property is located, it shall constitute a covenant running with the land and the agreements and covenants therein shall be binding on the owner and all persons subsequently acquiring any right, title or interest in or to said property.

If the terms and conditions of the ordinance or of the agreement are not kept and performed, or the payments made, as required, the city or town may disconnect the sewer and for that purpose may at any time enter upon any public street or road or upon said property. [1965 c 7 § 35.67.310. Prior: 1941 c 75 § 1; Rem. Supp. 1941 § 9354-19.]

35.67.331 Water, sewerage, garbage systems—Combined facilities. A city or town may by ordinance provide that its water system, sewerage system, and garbage and refuse collection and disposal system may be acquired, constructed, maintained and operated jointly, either by combining any two of such systems or all three. All powers granted to cities and towns to acquire, construct, maintain and operate such systems may be exercised in the joint acquisition, construction, maintenance and operation of such combined systems: PROVIDED, That if a general indebtedness is to be incurred to pay a part or all of the cost of construction, maintenance, or operation of such a combined system, no such indebtedness shall be incurred without such indebtedness first being authorized by a vote of the people at a special or general election conducted in the manner prescribed by law: PROVIDED FURTHER, That nothing in *this amendatory act shall be construed to supersede charter provisions to the contrary. [1969 ex.s. c 51 § 1.]

*Reviser's note: "this amendatory act" [1969 ex.s. c 51] consists of this section, RCW 35.13.255, 35A.14.365, the 1969 amendment to RCW 35.67.340, and the repeal of RCW 35.67.320 and 35.67.330.

35.67.340 Statutes governing combined facility. The operation by a city or town of a combined facility as provided for in RCW 35.67.331 shall be governed by the statutes relating to the establishment and maintenance of a city or town water system if the water system is one of the systems included in the combined acquisition, construction, or operation; otherwise the combined system shall be governed by the statutes relating to the establishment and maintenance of a city or town sewerage system. [1969 ex.s. c 51 § 2; 1965 c 7 § 35.67.340. Prior: 1941 c 193 § 12, part; Rem. Supp. 1941 § 9354-15, part.]

35.67.350 Penalty for sewer connection without permission. It is unlawful and a misdemeanor to make or cause to be made or to maintain any sewer connection with any sewer of any city or town, or with any sewer which is connected directly or indirectly with any sewer of any city or town without having permission from the city or town. [1965 c 7 § 35.67.350. Prior: 1943 c 100 § 1; Rem. Supp. 1943 § 9354-20.]

Chapter 35.68

SIDEWALKS, GUTTERS, CURBS, AND DRIVEWAYS—ALL CITIES AND TOWNS

Sections

35.68.010	Authority conferred.
35.68.020	Resolution—Contents.
35.68.030	Resolution—Publication—Notice—Hearing.
35.68.040	"Sidewalk construction fund".
35.68.050	Assessment roll—Hearing—Notice—Confirmation—Appeal.
35.68.060	Method of payment of assessments.
35.68.070	Collection of assessments.
35.68.075	Curb ramps for physically handicapped—Required—Standards and requirements.
35.68.076	Curb ramps for physically handicapped—Model standards.
35.68.080	Construction of chapter.

35.68.010 Authority conferred. Any city or town, hereinafter referred to as city, is authorized to construct, reconstruct, and repair sidewalks, gutters and curbs along and driveways across sidewalks, which work is hereafter referred to as the improvement, and to pay the costs thereof from any available funds, or to require the abutting property owner to construct the improvement at his own cost or expense, or to assess all or any portion of the costs thereof against the abutting property owner. [1965 c 7 § 35.68.010. Prior: 1949 c 177 § 1; Rem. Supp. 1949 § 9332a.]

35.68.020 Resolution—Contents. No such improvement shall be undertaken or required except pursuant to a resolution of the council or commission of the city or town, hereinafter referred to as the city council. The resolution shall state whether the cost of the improvement shall be borne by the city or whether all or a specified portion shall be borne by the city or whether all or a specified portion shall be borne by the abutting property owner; or whether the abutting owner is required to construct the improvement at his own cost and expense. If the abutting owner is required to construct the improvement the resolution shall specify the time within which the construction shall be commenced and completed; and further that if the improvement or construction is not undertaken and completed within the time specified that the city will perform or complete the improvement and assess the cost against the abutting owner. [1965 c 7 § 35.68.020. Prior: 1949 c 177 § 2; Rem. Supp. 1949 § 9332b.]

35.68.030 Resolution—Publication—Notice—Hearing. If all or any portion of the cost is to be assessed against the abutting property owner, or if the abutting property owner is required to construct the improvement, the resolution shall fix a time from and after its passage, and a place, for hearing on the resolution. The resolution shall be

published for two consecutive weeks before the time of hearing in the official newspaper or regularly published official publication of the city or town and a notice of the date of the hearing shall be given each owner or reputed owner of the abutting property by mailing to the owner or reputed owner of the property as shown on the tax rolls of the county treasurer, at the address shown thereon a notice of the date of hearing, the mailing to be at least ten days before the date fixed for the hearing. If the publication and mailing is made as herein required, proof thereof by affidavit shall be filed with the city clerk, comptroller or auditor of the city before the hearing. The hearing may be postponed from time to time to a definite date until the hearing is held. At the time of hearing the council shall hear persons who appear for or against the improvement, and determine whether it will or will not proceed with the improvement and whether it will make any changes in the original plan, and what the changes shall be. This action may be taken by motion adopted in the usual manner. [1985 c 469 § 37; 1965 c 7 § 35.68.030. Prior: 1949 c 177 § 3; Rem. Supp. 1949 § 9332c.]

35.68.040 "Sidewalk construction fund". When all or any portion of the cost is to be assessed against the abutting property owner, the city council may create a "sidewalk construction fund No. . . ." to be numbered differently for each improvement; and with warrants drawn on this fund the cost of the respective improvements may be paid. The city may advance as a loan to the sidewalk construction fund from any available funds the amounts necessary to pay any costs of the improvement. When any assessments are made for the improvement, payments therefor shall be paid into the particular sidewalk improvement fund; and whenever any funds are available over the amounts necessary to pay outstanding warrants any advances or loans made to the fund shall be repaid. Whenever warrants are drawn on any such fund which are not paid for want of sufficient funds, they shall be so stamped and shall bear interest until called and paid at a rate established by the city council by resolution. [1965 c 7 § 35.68.040. Prior: 1949 c 177 § 4; Rem. Supp. 1949 § 9332d.]

35.68.050 Assessment roll—Hearing—Notice—Confirmation—Appeal. Where all or any portion of the costs are to be assessed against the abutting property, an assessment roll shall be prepared by the proper city official or by the city council which shall to the extent necessary be based on benefits and which shall describe the property assessed, the name of the owner, if known, otherwise stating that the owner is unknown and fixing the amount of the assessment. The assessment roll shall be filed with the city clerk, and when so filed the council shall by resolution fix a date for hearing thereon and direct the clerk to give notice of the hearing and the time and place thereof. The notice of hearing shall be mailed to the person whose name appears on the county treasurer's tax roll as the owner or reputed owner of the property, at the address shown thereon, and shall be published before the date fixed for the hearing for two consecutive weeks in the official newspaper or regular official publication of the city. The notice shall be mailed and first publication made at least ten days before the

hearing date. Proof of mailing and publication shall be made by affidavit and shall be filed with the city clerk before the date fixed for the hearing. Following the hearing the city council shall by ordinance affirm, modify, or reject or order recasting of the assessment roll. An appeal may be taken to the superior court from the ordinance confirming the assessment roll in the same manner as is provided for appeals from the assessment roll by chapters 35.43 to 35.54 RCW, inclusive, as now or hereafter amended. [1985 c 469 § 38; 1965 c 7 § 35.68.050. Prior: 1949 c 177 § 5; Rem. Supp. 1949 § 9332e.]

35.68.060 Method of payment of assessments. The city council shall by resolution provide whether the full amount of the assessment shall be paid in one payment or whether it may be paid in installments and shall prescribe the time and amount of such payments; and if more than one payment is provided for, the city council may by resolution provide for interest on unpaid installments and fix the rate thereof. [1965 c 7 § 35.68.060. Prior: 1949 c 177 § 6; Rem. Supp. 1949 § 9332f.]

35.68.070 Collection of assessments. The assessment roll as affirmed or modified by the city council shall be filed with the city treasurer for collection, and the amount thereof including interest, if any, shall become a lien against the property described therein from the date of such filing. Whenever any payment on any assessment or installment is delinquent and unpaid for a period of thirty days or more the lien may be foreclosed in the same manner and with the same effect as is provided by chapters 35.43 to 35.54 RCW, inclusive; as now or hereafter amended. Whenever the deed is issued after the sale therein provided, the regularity, validity and correctness of the proceedings relating to such improvement and the assessment therefor shall be final and conclusive and no action shall thereafter be brought by or in behalf of any person to set aside said deed. [1965 c 7 § 35.68.070. Prior: 1949 c 177 § 7; Rem. Supp. 1949 § 9332g.]

35.68.075 Curb ramps for physically handicapped—Required—Standards and requirements. (1) The standard for construction on any county road, or city or town street, for which curbs in combination with sidewalks, paths, or other pedestrian access ways are to be constructed, shall be not less than two ramps per lineal block on or near the crosswalks at intersections. Such ramps shall be at least thirty-six inches wide and so constructed as to allow reasonable access to the crosswalk for physically handicapped persons, without uniquely endangering blind persons.

(2) Standards set for curb ramping under subsection (1) of this section shall not apply to any curb existing upon enactment of this section but shall apply to all new curb construction and to all replacement curbs constructed at any point in a block which gives reasonable access to a crosswalk.

(3) Upon September 21, 1977, every ramp thereafter constructed under subsection (1) of this section, which serves one end of a crosswalk, shall be matched by another ramp at the other end of the crosswalk. However, no ramp shall be required at the other end of the crosswalk if there is no

curb nor sidewalk at the other end of the crosswalk. Nor shall any matching ramp constructed pursuant to this subsection require a subsequent matching ramp. [1989 c 173 § 1; 1977 ex.s. c 137 § 1; 1973 c 83 § 1.]

35.68.076 Curb ramps for physically handicapped—Model standards. The department of general administration shall, pursuant to chapter 34.05 RCW, the Administrative Procedure Act, adopt several suggested model design, construction, or location standards to aid counties, cities, and towns in constructing curb ramps to allow reasonable access to the crosswalk for physically handicapped persons without uniquely endangering blind persons. The department of general administration shall consult with handicapped persons, blind persons, counties, cities, and the state building code council in adopting the suggested standards. [1989 c 175 § 84; 1977 ex.s. c 137 § 2.]

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

35.68.080 Construction of chapter. This chapter is supplemental and additional to any and all other laws relating to construction, reconstruction, and repair of sidewalks, gutters, and curbs along driveways across sidewalks in cities and towns. [1965 c 7 § 35.68.080. Prior: 1949 c 177 § 8; Rem. Supp. 1949 § 9332h.]

Chapter 35.69

SIDEWALKS—CONSTRUCTION, RECONSTRUCTION IN FIRST, SECOND AND THIRD CLASS CITIES

Sections

35.69.010	Definitions.
35.69.020	Resolution of necessity—Liability of abutting property.
35.69.030	Notice to owners—Service—Contents—Assessment—Collection.
35.69.040	Abutting property defined.
35.69.050	Construction of chapter.

35.69.010 Definitions. The term "street" as used herein includes boulevard, avenue, street, alley, way, lane, square or place.

The term "city" includes any city of the first, second or third class or any other city of equal population working under a special charter.

The term "sidewalk" includes any and all structures or forms of street improvement included in the space between the street margin and the roadway. [1965 c 7 § 35.69.010. Prior: 1927 c 203 § 1; RRS § 9332-1.]

35.69.020 Resolution of necessity—Liability of abutting property. Whenever a portion, not longer than one block in length, of any street in any city is not improved by the construction of a sidewalk thereon, or the sidewalk thereon has become unfit or unsafe for purposes of public travel, and such street adjacent to both ends of said portion is so improved and in good repair, and the city council of such city by resolution finds that the improvement of such portion of such street by the construction or reconstruction of a sidewalk thereon is necessary for the public safety and convenience, the duty, burden, and expense of constructing

or reconstructing such sidewalk shall devolve upon the property directly abutting upon such portion: PROVIDED, That such abutting property shall not be charged with any costs of construction or reconstruction under this chapter in excess of fifty percent of the valuation of such abutting property, exclusive of improvements thereon, according to the valuation last placed upon it for purposes of general taxation. [1965 c 7 § 35.69.020. Prior: 1927 c 203 § 2; RRS § 9332-2.]

35.69.030 Notice to owners—Service—Contents—Assessment—Collection. Whenever the city council of any such city has adopted such resolution it shall cause a notice to be served on the owner of the property directly abutting on such portion of such street, instructing him to construct or reconstruct a sidewalk on such portion in accordance with the plans and specifications which shall be attached to such notice. The notice shall be deemed sufficiently served if delivered in person to the owner or if left at the home of such owner with a person of suitable age and discretion then resident therein, or with an agent of such owner, authorized to collect rentals on such property, or, if the owner is a nonresident of the state of Washington, by mailing a copy to his last known address, or if he is unknown or if his address is unknown, then by posting a copy in a conspicuous place at such portion of the street where the improvement is to be made. The notice shall specify a reasonable time within which such construction or reconstruction shall be made, and shall state that in case the owner fails to make the same within such time, the city will proceed to make it through the officer or department thereof charged with the inspection of sidewalks and that such officer or department will report to the city council, at a subsequent date, to be definitely stated in the notice, an assessment roll showing the lot or parcel of land directly abutting on such portion of the street so improved, the cost of the improvement, and the name of the owner, if known, and that the city council at the time stated in the notice or at the time or times to which the same may be adjourned, will hear any and all protests against the proposed assessment. Upon the expiration of the time fixed within which the owner is required to construct or reconstruct such sidewalk, if the owner has failed to perform such work, the city may proceed to perform it, and the officer or department of the city performing the work shall, within the time fixed in the notice, report to the city council an assessment roll showing the lot or parcel of land directly abutting on that portion of the street so improved, the cost of the work, and the name of the owner, if known. The city council shall, at the time in such notice designated, or at an adjourned time or times, assess the cost of such improvement against said property and shall fix the time and manner for payment thereof, which said assessment shall become a lien upon said property and shall be collected in the manner as is provided by law for collection of local improvements assessments under this title. [1965 c 7 § 35.69.030. Prior: 1927 c 203 § 3; RRS § 9332-3.]

35.69.040 Abutting property defined. For the purposes of this chapter all property having a frontage upon the sides or margins of any street shall be deemed to be abutting property, and such property shall be chargeable, as

provided herein, for all costs of construction or reconstruction or any form of sidewalk improvement between the margin of said street and the roadway lying in front of and adjacent to said property. [1965 c 7 § 35.69.040. Prior: 1927 c 203 § 4; RRS § 9332-4.]

35.69.050 Construction of chapter. Nothing in this chapter shall be construed to limit or repeal any existing powers of cities with reference to the construction or reconstruction of sidewalks or the improvement or maintenance of streets, but the power and authority herein granted is to be exercised concurrent with or in extension of powers and authority now existing. The legislative authority of any city before exercising the powers and authority herein granted shall, by proper ordinance, provide for the application and enforcement of the same within the limitations herein specified. [1965 c 7 § 35.69.050. Prior: 1927 c 203 § 5; RRS § 9332-5.]

Chapter 35.70

SIDEWALKS—CONSTRUCTION IN THIRD CLASS CITIES AND TOWNS

Sections

35.70.010	Definitions.
35.70.020	Owners' responsibility.
35.70.030	Convenience and necessity reported by superintendent.
35.70.040	Council's resolution and notice—Adoption.
35.70.050	Council's resolution and notice—Contents.
35.70.060	Notice of resolution and order—Service.
35.70.070	Superintendent to construct and prepare assessment roll.
35.70.080	Hearing on assessment roll—Notice.
35.70.090	Lien of assessments and foreclosure.
35.70.100	Provisions of chapter not exclusive.

35.70.010 Definitions. For the purposes of this chapter all property having a frontage on the side or margin of any street or other public place shall be deemed abutting property, and such property shall be chargeable, as provided in this chapter, with all costs of construction of any form of sidewalk improvement, between the margin of said street or other public place and the roadway lying in front of and adjacent to said property, and the term sidewalk as used in this chapter shall be construed to mean and include any and all structures or forms of improvement included in the space between the street margin and the roadway known as the sidewalk area. [1965 c 7 § 35.70.010. Prior: 1915 c 149 § 7; RRS § 9161.]

35.70.020 Owners' responsibility. In all cities of the third class and towns the burden and expense of constructing sidewalks along the side of any street or other public place shall devolve upon and be borne by the property directly abutting thereon. [1965 c 7 § 35.70.020. Prior: 1915 c 149 § 1; RRS § 9155.]

35.70.030 Convenience and necessity reported by superintendent. If in the judgment of the officer or department having superintendence of streets and public places, public convenience or safety requires that a sidewalk be constructed along either side of any street, he shall report the fact to the city or town council immediately. [1965 c 7

§ 35.70.030. Prior: 1915 c 149 § 2, part; RRS § 9156, part.]

35.70.040 Council's resolution and notice—Adoption. If upon receiving a report from the proper officer, the city or town council deems the construction of the proposed sidewalk necessary or convenient for the public it shall by an appropriate resolution order the sidewalk constructed and shall cause a written notice to be served upon the owner of each parcel of land abutting upon that portion and side of the street where the sidewalk is constructed requiring him to construct the sidewalk in accordance with the resolution. [1965 c 7 § 35.70.040. Prior: 1915 c 149 § 2, part; RRS § 9156, part.]

35.70.050 Council's resolution and notice—Contents. The resolution and notice and order to construct a sidewalk shall:

(1) Describe each parcel of land abutting upon that portion and side of the street where the sidewalk is ordered to be constructed,

(2) Specify the kind of sidewalk required, its size and dimensions, the method and material to be used in construction,

(3) Contain an estimate of the cost thereof, and

(4) State that unless the sidewalk is constructed in compliance with the notice, and within a reasonable time therein specified, the city or town will construct the sidewalk and assess the cost and expense thereof against the abutting property described in the notice. [1965 c 7 § 35.70.050. Prior: 1915 c 149 § 3; RRS § 9157.]

35.70.060 Notice of resolution and order—Service. The notice shall be served:

(1) By delivering a copy to the owner or reputed owner of each parcel of land affected, or to the authorized agent of the owners, or

(2) By leaving a copy thereof at the usual place of abode of the owner in the city or town with a person of suitable age and discretion residing therein, or

(3) If the owner is a nonresident of the city or town and his place of residence is known by mailing a copy to the owner addressed to his last known place of residence, or

(4) If the place of residence of the owner is unknown or if the owner of any parcel of land affected is unknown, by publication in the official newspaper of the city or town once a week for two consecutive weeks. The notice shall specify a reasonable time within which the sidewalk shall be constructed which in the case of publication of the notice shall not be less than sixty days from the date of the first publication of such notice. [1985 c 469 § 36; 1965 c 7 § 35.70.060. Prior: 1915 c 149 § 4; RRS § 9158.]

35.70.070 Superintendent to construct and prepare assessment roll. If the notice and order to construct a sidewalk is not complied with within the time therein specified, the officer or department having the superintendence of streets shall proceed to construct said sidewalk forthwith and shall report to the city or town council at its next regular meeting or as soon thereafter as is practicable an assessment roll showing each parcel of land abutting upon

the sidewalk, the name of the owner thereof if known, and apportion the cost of said improvement to be assessed against each parcel of such land. [1965 c 7 § 35.70.070. Prior: 1915 c 149 § 5, part; RRS § 9159, part.]

35.70.080 Hearing on assessment roll—Notice. Thereupon the city or town council shall set a date for hearing any protests against the proposed assessment roll and shall cause a notice of the time and place of the hearing to be published once a week for two successive weeks in the official newspaper of the city or town, the date of the hearing to be not less than thirty days from the date of the first publication of the notice. At the hearing or at any adjournment thereof the council by ordinance shall assess the cost of constructing the sidewalk against the abutting property in accordance with the benefits thereto. [1985 c 469 § 39; 1965 c 7 § 35.70.080. Prior: (i) 1915 c 149 § 5, part; RRS § 9159, part. (ii) 1915 c 149 § 6, part; RRS § 9160, part.]

35.70.090 Lien of assessments and foreclosure. The assessments shall become a lien upon the respective parcels of land and shall be collected in the manner provided by law for the collection of local improvement assessments and shall bear interest at the rate of six percent per annum from the date of the approval of said assessment thereon. [1965 c 7 § 35.70.090. Prior: 1915 c 149 § 6, part; RRS § 9160, part.]

Collection and foreclosure of local improvement assessments: Chapters 35.49, 35.50 RCW.

35.70.100 Provisions of chapter not exclusive. This chapter shall not be construed as repealing or amending any provision relating to the improvement of streets or public places by special assessments commonly known as local improvement laws, but shall be considered as additional legislation and auxiliary thereto and the city or town council, of any city of the third class or town before exercising the authority herein granted may by ordinance provide for the application and enforcement of the provisions of this chapter within the limitations herein specified. [1965 c 7 § 35.70.100. Prior: 1915 c 149 § 8; RRS § 9162.]

Chapter 35.71 PEDESTRIAN MALLS

Sections

35.71.010	Definitions.
35.71.020	Establishment declared public purpose—Authority to establish—General powers.
35.71.030	Resolution of intention—Traffic limitation—Property owner's right of ingress and egress.
35.71.040	Plan—Alternate vehicle routes—Off-street parking—Hearing, notice.
35.71.050	Real estate appraisers—Report.
35.71.060	Financing methods.
35.71.070	Waivers and quitclaim deeds—Rights in right of way.
35.71.080	Vacating, replatting right of way for mall purposes.
35.71.090	"Mall organization"—Powers in general—Directors—Officers.
35.71.100	Special assessment.
35.71.110	Claims for damages.

35.71.120	Contracts with mall organization for administration—Conflicting charter provisions.
35.71.130	Election to discontinue mall—Ordinance—Outstanding obligations—Restoration to former status.
35.71.910	Chapter controls inconsistent laws.

35.71.010 Definitions. As used in this chapter, the following terms shall have the meaning herein given to each of them:

"City" means any city or town.

"Chief executive" means the mayor in a mayor-council or commission city and city manager in a council-manager city.

"Corporate authority" means the legislative body of any city.

"Project" means a pedestrian mall project.

"Right of way" means that area of land dedicated for public use or secured by the public for purposes of ingress and egress to abutting property and other public purposes.

"Mall" means an area of land, part of which may be surfaced, landscaped, and used entirely for pedestrian movements, except with respect to governmental functions, utilities, and loading and unloading of goods.

"Mall organization" means a group of property owners, lessors, or lessees in an area that has been organized to consider the establishment, maintenance, and operation of a mall in a given area and persons owning or having any legal or equitable interest in the real property affected by the establishment of the mall. [1965 c 7 § 35.71.010. Prior: 1961 c 111 § 1.]

35.71.020 Establishment declared public purpose—Authority to establish—General powers. The establishment of pedestrian malls is declared to be for a public purpose. Any corporate authority, by ordinance, may establish and regulate any street right of way as a mall, may prohibit, in whole or in part, vehicular traffic on a mall, and may provide for the acquisition of any interest in the right of way necessary to its establishment, and may provide for the determination of legal damages, if any, to abutting property. [1965 c 7 § 35.71.020. Prior: 1961 c 111 § 2.]

35.71.030 Resolution of intention—Traffic limitation—Property owner's right of ingress and egress. When the corporate authority determines that the public interest, safety, and convenience is best served by the establishment of a mall and that vehicular traffic will not be unduly inconvenienced thereby, it may adopt a resolution declaring its intention to do so, and announcing the intended extent of traffic limitation. Any corporate authority is authorized to limit the utilization of any right of way, except for utilities and governmental functions, provided adequate alternative routes for vehicular movement, and the loading and unloading of goods are established or are available. The abutting property owner's right of ingress and egress shall be considered to have been satisfied whenever the corporate authority has planned and constructed, or there is available, an alternate route, alleyway, and service driveway. [1965 c 7 § 35.71.030. Prior: 1961 c 111 § 3.]

35.71.040 Plan—Alternate vehicle routes—Off-street parking—Hearing, notice. Before a mall is estab-

lished, a plan shall be formulated consistent with the city's comprehensive plan, including at least the area of the right of way between two intersecting streets and showing alternate routes outside the mall area upon which any vehicles excluded from using the mall may be accommodated; it may include a provision for on and off-street parking. After the plans have been prepared, the corporate authority shall hold a public hearing thereon, giving notice of time and place at least two weeks in advance of the hearing in a newspaper of general circulation in the city and as required by chapter 42.32 RCW. [1965 c 7 § 35.71.040. Prior: 1961 c 111 § 4.]

35.71.050 Real estate appraisers—Report. The corporate authority is authorized to engage duly qualified real estate appraisers, for the purpose of determining the value, or legal damages, if any, to any person, owning or having any legal or equitable interest in any real property who contends that he would suffer damage if a projected mall were established; in connection therewith the city shall take into account any increment in value that may result from the establishment of the mall. The appraisers shall submit their findings in writing to the chief executive of the city. [1965 c 7 § 35.71.050. Prior: 1961 c 111 § 5.]

35.71.060 Financing methods. The corporate authority may finance the establishment of a mall, including, but not limited to, right of way improvements, traffic control devices, and off-street parking facilities in the vicinity of the mall, by one or more of the following methods or by a combination of any two or more of them:

(1) By creating local improvement districts under the laws applicable thereto in Title 35 RCW.

(2) By issuing revenue bonds pursuant to chapter 35.41 RCW, RCW 35.24.305, chapter 35.92 RCW, RCW 35.81.100, and by such other statutes that may authorize such bonds.

(3) By issuing general obligation bonds pursuant to chapter 39.52 RCW, RCW 35.81.115, and by such other statutes and applicable provisions of the state Constitution that may authorize such bonds.

(4) By use of gifts and donations.

(5) General fund and other available moneys: PROVIDED, That if any general fund moneys are expended for a mall, provision may be made for repayment thereof to the general fund from money received from the financing of the mall.

The corporate authority may include within the cost of any mall project the expense of moving utilities, or any facility located within a right of way. [1965 c 7 § 35.71.060. Prior: 1961 c 111 § 6.]

35.71.070 Waivers and quitclaim deeds—Rights in right of way. The corporate authority may formulate, solicit, finance and acquire, purchase, or negotiate the acquisition of waivers and the execution of quitclaim deeds by persons owning or having any legal or equitable interest in the real property affected by the establishment of a mall, conveying the necessary rights to the city to prohibit through vehicular traffic and otherwise limit vehicular access to, and from, such right of way: PROVIDED, That the execution of

such waivers and quitclaim deeds shall not operate to extinguish the rights of the abutting owner, lessor, or lessee in the right of way, not included in such waiver or quitclaim deed. [1965 c 7 § 35.71.070. Prior: 1961 c 111 § 7.]

35.71.080 Vacating, replatting right of way for mall purposes. The corporate authority, as an alternate to the preceding methods, may find that the right of way no longer is needed as a right of way. When persons owning or having any legal or equitable interest in the real property affected by a proposed mall, present a petition to the corporate authority for vacating the right of way pursuant to chapter 35.79 RCW, or the corporate authority initiates by resolution such a vacation proceeding, a right of way may be vacated and replatted for mall purposes, and closed to vehicular traffic except as provided in RCW 35.71.030, consistent with the subdivision standards allowed by Title 58 RCW, and chapter 35.63 RCW. [1965 c 7 § 35.71.080. Prior: 1961 c 111 § 8.]

35.71.090 "Mall organization"—Powers in general—Directors—Officers. The corporate authority may cause an organization of persons to be known as a "Mall organization" interested in creating a mall in a given area to be formed to provide for consultative assistance to the city with respect to the establishment and administration of a mall. This organization may elect a board of directors of not less than three nor more than twelve members. The board shall elect a president, a vice president, and a secretary from its membership. [1965 c 7 § 35.71.090. Prior: 1961 c 111 § 9.]

35.71.100 Special assessment. After the establishment of the mall, the corporate authority may levy a special assessment on the real property within the area specially benefited by the improvement. Such special levy, if any, shall be for operation and maintenance of the mall and appurtenances thereto, which may not exceed one percent of the aggregate actual valuation of the real property (including twenty-five percent of the actual valuation of the improvements thereon) according to the valuation last placed upon it for purposes of general taxation: PROVIDED, That if a mall organization board of directors exists as authorized by RCW 35.71.090, the corporate authority may entertain a recommendation from this organization with respect to such a levy by the corporate authority. [1965 c 7 § 35.71.100. Prior: 1961 c 111 § 10.]

35.71.110 Claims for damages. Following the public hearing on the ordinance to establish a mall any person owning or having any legal or equitable interest in property which might be affected by reason of the establishment of the proposed mall or the board of directors of a mall organization shall, within twenty days of such hearing, file with the city clerk a statement describing the real property as to which the claim is made, the nature of the claimant's interest therein, the nature of the alleged damage thereto and the amount of damages claimed. After the receipt thereof, the corporate authority may negotiate with the affected parties concerning them or deny them. [1965 c 7 § 35.71.110. Prior: 1961 c 111 § 11.]

35.71.120 Contracts with mall organization for administration—Conflicting charter provisions. If the corporate authority desires to have the mall administered by a mall organization rather than by one of its departments, the corporate authority may execute a contract with such an organization for the administration of the mall upon mutually satisfactory terms and conditions: PROVIDED, That if any provision of a city charter conflicts with this section, such provision of the city charter shall prevail. [1965 c 7 § 35.71.120. Prior: 1961 c 111 § 12.]

35.71.130 Election to discontinue mall—Ordinance—Outstanding obligations—Restoration to former status. The board of directors of a mall organization may call for an election, after the mall has been in operation for two years, at which the voting shall be by secret ballot, on the question: "Shall the mall be continued in operation?" If sixty percent of the membership of the organization vote to discontinue the mall, the results of the election shall be submitted to the corporate authority. The corporate authority may initiate proceedings by ordinance for the discontinuation of the mall, allocate the proportionate amount of the outstanding obligations of the mall to the abutting property of the mall or property specially benefited if a local improvement district is established, subject to the provisions of any applicable statutes and bond ordinances, resolutions, or agreements, and thereafter, at a time set by the corporate authority, the mall may be restored to its former right of way status. [1965 c 7 § 35.71.130. Prior: 1961 c 111 § 13.]

35.71.910 Chapter controls inconsistent laws. Insofar as the provisions of this chapter are inconsistent with a provision of any other law, the provisions of this chapter shall be controlling. [1965 c 7 § 35.71.910. Prior: 1961 c 111 § 15.]

Chapter 35.72

CONTRACTS FOR STREET PROJECTS

Sections

35.72.010	Contracts authorized for street projects.
35.72.020	Reimbursement by other property owners.
35.72.030	Reimbursement by other property owners—Reimbursement share.
35.72.040	Assessment reimbursement contracts.
35.72.050	Alternative financing method—Participation by county, city, town, or department of transportation—Eligibility for reimbursement.

35.72.010 Contracts authorized for street projects. The legislative authority of any city, town, or county may contract with owners of real estate for the construction or improvement of street projects which the owners elect to install as a result of ordinances that require the projects as a prerequisite to further property development. [1983 c 126 § 1.]

35.72.020 Reimbursement by other property owners. The contract may provide for the partial reimbursement to the owner or the owner's assigns for a period not to

exceed fifteen years of a portion of the costs of the project by other property owners who:

(1) Are determined to be within the assessment reimbursement area pursuant to RCW 35.72.040;

(2) Are determined to have a reimbursement share based upon a benefit to the property owner pursuant to RCW 35.72.030;

(3) Did not contribute to the original cost of the street project; and

(4) Subsequently develop their property within the fifteen-year period and at the time of development were not required to install similar street projects because they were already provided for by the contract.

Street projects subject to reimbursement may include design, grading, paving, installation of curbs, gutters, storm drainage, sidewalks, street lighting, traffic controls, and other similar improvements, as required by the street standards of the city, town, or county. [1983 c 126 § 2.]

35.72.030 Reimbursement by other property owners—Reimbursement share. The reimbursement shall be a pro rata share of construction and reimbursement of contract administration costs of the street project. A city, town, or county shall determine the reimbursement share by using a method of cost apportionment which is based on the benefit to the property owner from such project. [1983 c 126 § 3.]

35.72.040 Assessment reimbursement contracts. The procedures for assessment reimbursement contracts shall be governed by the following:

(1) An assessment reimbursement area shall be formulated by the city, town, or county based upon a determination by the city, town, or county of which parcels adjacent to the improvements would require similar street improvements upon development.

(2) The preliminary determination of area boundaries and assessments, along with a description of the property owners' rights and options, shall be forwarded by certified mail to the property owners of record within the proposed assessment area. If any property owner requests a hearing in writing within twenty days of the mailing of the preliminary determination, a hearing shall be held before the legislative body, notice of which shall be given to all affected property owners. The legislative body's ruling is determinative and final.

(3) The contract must be recorded in the appropriate county auditor's office within thirty days of the final execution of the agreement.

(4) If the contract is so filed, it shall be binding on owners of record within the assessment area who are not party to the contract. [1988 c 179 § 16; 1983 c 126 § 4.]

Severability—Prospective application—Section captions—1988 c 179: See RCW 39.92.900 and 39.92.901.

35.72.050 Alternative financing method—Participation by county, city, town, or department of transportation—Eligibility for reimbursement. (1) As an alternative to financing projects under this chapter solely by owners of real estate, a county, city, or town may join in the financing of improvement projects and may be reimbursed

in the same manner as the owners of real estate who participate in the projects, if the county, city, or town has specified the conditions of its participation in an ordinance. A county, city, or town may be reimbursed only for the costs of improvements that benefit that portion of the public who will use the developments within the assessment reimbursement area established pursuant to RCW 35.72.040(1). No county, city, or town costs for improvements that benefit the general public may be reimbursed.

(2) The department of transportation may, for state highways, participate with the owners of real estate in the financing of improvement projects, in the same manner as provided for counties, cities, and towns, in subsection (1) of this section. The department shall enter into agreements whereby the appropriate county, city, or town shall act as an agent of the department in administering this chapter. [1987 c 261 § 1; 1986 c 252 § 1.]

Chapter 35.73

STREET GRADES—SANITARY FILLS

Sections

35.73.010	Authority—First and second class cities.
35.73.020	Estimates—Intention—Property included—Resolution.
35.73.030	Hearing—Time of—Publication of resolution.
35.73.040	Ordinance—Assessments.
35.73.050	Lien of assessments.
35.73.060	Improvement district bonds—Issuance.
35.73.070	Improvement district bonds—Payment—Remedies.
35.73.080	Provisions not exclusive.

35.73.010 Authority—First and second class cities.

If a city of the first or second class establishes the grade of any street or alley at a higher elevation than any private property abutting thereon, thereby rendering the drainage of such private property or any part thereof impracticable without the raising of the surface of such private property, or if the surface of any private property in any such city is so low as to make sanitary drainage thereof impracticable and it is determined by resolution of the city council of such city that a fill of such private property is necessary as a sanitary measure, the city may provide therefor, and by general or special ordinance or both make provision for the necessary surveys, estimates, bids, contract, bond and supervision of the work and for making and approving the assessment roll of the local improvement district and for the collection of the assessments made thereby, and for the doing of everything which in their discretion may be necessary or be incidental thereto: PROVIDED, That before the approval of the assessment roll, notice shall be given and an opportunity offered for the owners of the property affected by the assessment roll to be heard before such city council in the same manner as in case of assessments for drainage or sewerage in the city. [1965 c 7 § 35.73.010. Prior: (i) 1907 c 243 § 1; RRS § 9426. (ii) 1907 c 243 § 4; RRS § 9429.]

35.73.020 Estimates—Intention—Property included—Resolution. Before establishing a grade for property or providing for the fill of property, the city must adopt a resolution declaring its intention to do so.

The resolution shall:

(1) Describe the property proposed to be improved by the fill,

(2) State the estimated cost of making the improvement,

(3) State that the cost thereof is to be assessed against the property improved thereby, and

(4) Fix a time not less than thirty days after the first publication of the resolution within which protests against the proposed improvement may be filed with the city clerk.

The resolution may include as many separate parcels of property as may seem desirable whether or not they are contiguous so long as they lie in the same general neighborhood and may be included conveniently in one local improvement district. [1965 c 7 § 35.73.020. Prior: 1907 c 243 § 2, part; RRS § 9427, part.]

35.73.030 Hearing—Time of—Publication of resolution. Upon the passage of the resolution the city clerk shall cause it to be published in the official newspaper of the city in at least two successive issues before the time fixed in the resolution for filing protests. Proof of publication by affidavit shall be filed as part of the record of the proceedings. [1965 c 7 § 35.73.030. Prior: 1907 c 243 § 2, part; RRS § 9427, part.]

35.73.040 Ordinance—Assessments. If no protest is filed, or if protests are filed but the city council after full hearing determines that it is necessary to fill any portion of the private property it shall proceed to enact an ordinance for such improvement. By the provisions of the ordinance, a local improvement district shall be established to be called "local improvement district No. . . .," which shall include all the property found by the said council to require the fill as a sanitary measure. The ordinance shall provide that such improvement shall be made and shall fix and establish the grades to which the said property and the different portions thereof shall be brought by such improvement, and that the cost and expense thereof shall be taxed and assessed upon all the property in such local improvement district, which cost shall be assessed in proportion to the number of cubic yards of earth and bulkheading required for the different portions of said property included in said improvement district and in proportion to the benefits derived by such improvement: PROVIDED, That the city council may expend from the general fund for such purposes such sums as in its judgment may seem fair and equitable in consideration of the benefits accruing to the general public by reason of such improvement. [1965 c 7 § 35.73.040. Prior: 1907 c 243 § 3, part; RRS § 9428, part.]

35.73.050 Lien of assessments. Whenever any expense or cost of work has been assessed the amount of such expense and cost shall become a lien upon said lands against which the same are so assessed and shall take precedence of all other liens, except general tax liens and special assessment liens theretofore assessed by the said city thereon and which may be foreclosed in accordance with law in the name of such city as plaintiff. And in any such proceeding if the court trying the same shall be satisfied that the work has been done or material furnished for the fill of such property, a recovery shall be permitted or charge enforced to the extent of the proper proportion of the value

of the work or material which would be chargeable on such lot or land notwithstanding any informality, irregularity or defects in any of the proceedings of such municipal corporation or its officers. [1965 c 7 § 35.73.050. Prior: 1907 c 243 § 3, part; RRS § 9428, part.]

Collection and foreclosure of local improvement district assessments: Chapters 35.49, 35.50 RCW.

35.73.060 Improvement district bonds—Issuance.

(1) The city may, in its discretion, by general or special ordinance, or both, instead of requiring immediate payment for the said work to be made by the owners of property included in the assessment roll, authorize the issuance of interest bearing bonds or warrants of the local improvement district, payable on or before a date not to exceed twelve years from and after their date. The bonds may be issued subject to call, the amount of the said assessment to be payable in installments or otherwise, and the bonds to be of such terms as may be provided in the ordinances and to bear interest at such rate or rates as may be prescribed in the ordinances. Such bonds or warrants may be of any form, including bearer bonds or bearer warrants, or registered bonds or registered warrants as provided in RCW 39.46.030.

(2) Notwithstanding subsection (1) of this section, such bonds or warrants may be issued and sold in accordance with chapter 39.46 RCW. [1983 c 167 § 62; 1981 c 156 § 9; 1979 ex.s. c 30 § 1; 1965 c 7 § 35.73.060. Prior: 1915 c 87 § 1, part; 1907 c 243 § 5, part; RRS § 9430, part.]

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

35.73.070 Improvement district bonds—Payment—Remedies. The bonds or warrants shall be payable only from the fund created by the special assessments upon the property in the local improvement district, and the owner of any bond or warrant shall look only to this fund for the payment of the principal and interest thereof and shall have no claim or lien therefor against the city by which the same was issued except from that fund. [1983 c 167 § 63; 1965 c 7 § 35.73.070. Prior: 1915 c 87 § 1, part; 1907 c 243 § 5, part; RRS § 9430, part.]

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

35.73.080 Provisions not exclusive. The provisions and remedies provided by this chapter for filling lowlands in connection with establishing street grades or for sanitary reasons are cumulative. [1965 c 7 § 35.73.080. Prior: 1907 c 243 § 6; RRS § 9431.]

Chapter 35.74

STREETS—DRAWBRIDGES

Sections

35.74.010	Authority to construct or grant franchise to construct.
35.74.020	Initiation of proceedings—Notice to county commissioners.
35.74.030	Determination of width of draw—Appeal.
35.74.040	Required specifications.
35.74.050	City may operate as toll bridges.
35.74.060	Prerequisites of grant of franchise—Approval of bridge—Tolls.
35.74.070	License fees—Renewal of license.

Bridges across navigable waters: Chapter 79.01 RCW.

Counties may assist as to certain bridges on city streets: RCW 36.75.200.

35.74.010 Authority to construct or grant franchise to construct. Every city and town may erect and maintain drawbridges across navigable streams that flow through or penetrate the boundaries thereof, when the public necessity requires it, or it may grant franchises to persons or corporations to erect them and charge toll thereon. [1965 c 7 § 35.74.010. Prior: 1890 p 54 § 1; RRS § 9323.]

35.74.020 Initiation of proceedings—Notice to county commissioners. If the city or town council desires to erect a drawbridge across any navigable stream on any street, or to grant the privilege so to do to any corporation or individual, it shall notify the board of county commissioners to that effect stating the precise point where such bridge is proposed to be located. [1965 c 7 § 35.74.020. Prior: 1890 p 54 § 2, part; RRS § 9324, part.]

35.74.030 Determination of width of draw—Appeal. The board of county commissioners within ten days from the receipt of the notice, if in session, and if not in session, within five days after the first day of the next regular or special session, shall designate the width of the draw to be made in such bridge, and the length of span necessary to permit the free flow of water: PROVIDED, That if any persons deem themselves aggrieved by the determination of the matter by the board, they may appeal to the superior court which may hear and determine the matter upon such further notice and on such testimony as it shall direct to be produced. [1965 c 7 § 35.74.030. Prior: 1890 p 54 § 2, part; RRS § 9324, part.]

35.74.040 Required specifications. All bridges constructed under the provisions of this chapter must be so constructed as not to obstruct navigation, and must have a draw or swing of sufficient space or span to permit the safe, convenient, and expeditious passage at all times of any steamer or vessel or raft which may navigate the stream or waters bridged. [1965 c 7 § 35.74.040. Prior: 1890 p 55 § 5; RRS § 9327.]

35.74.050 City may operate as toll bridges. A city or town may build and maintain toll bridges and charge and collect tolls thereon, and to that end may provide a system and elect or appoint persons to operate the same, or the said bridges may be made free, as it may elect. [1965 c 7 § 35.74.050. Prior: 1890 p 55 § 6; RRS § 9328.]

35.74.060 Prerequisites of grant of franchise—Approval of bridge—Tolls. Before any franchise to build any bridge across any such navigable stream is granted by any city or town council it shall fix a license tax, not to exceed ten percent of the tolls collected annually. Upon the completion of the bridge the city or town council shall cause it to be inspected and if it is found to comply in all respects with the specifications previously made, and to be safe and convenient for the public, the council shall declare it open as a toll bridge, and shall immediately fix the rates of toll

thereof. [1965 c 7 § 35.74.060. Prior: 1890 p 55 § 3; RRS § 9325.]

35.74.070 License fees—Renewal of license. The owner or keeper of any toll bridges in any city or town shall, before the renewal of any license, report to the city or town council under oath, the actual cost of construction and equipment of the toll bridge, the repairs and cost of maintaining it during the preceding year, the amount of tax collected, and the estimated cash value of the bridge, exclusive of the franchise. All funds arising from the license tax shall be paid into the general fund of the city or town. [1965 c 7 § 35.74.070. Prior: 1890 p 55 § 4; RRS § 9326.]

Chapter 35.75

STREETS—BICYCLES—PATHS

Sections

- 35.75.010 Authority to regulate and license bicycles—Penalties.
- 35.75.020 Use of bicycle paths for other purposes prohibited.
- 35.75.030 License fees authorized.
- 35.75.040 Rules regulating use of bicycle paths.
- 35.75.050 Bicycle road fund—Sources—Use.
- 35.75.060 Use of street and road funds for bicycle paths, lanes, routes and improvements authorized—Standards.

Bicycle awareness program: RCW 43.43.390.

Bicycle transportation management program: RCW 47.04.190.

Pavement marking standards: RCW 47.36.280.

Rules of the road, bicycles: RCW 46.61.750 through 46.61.780.

35.75.010 Authority to regulate and license bicycles—Penalties. Every city and town may by ordinance regulate and license the riding of bicycles and other similar vehicles upon or along the streets, alleys, highways, or other public grounds within its limits and may construct and maintain bicycle paths or roadways within or outside of and beyond its limits leading to or from the city or town. The city or town may provide by ordinance for reasonable fines and penalties for violation of the ordinance. [1965 c 7 § 35.75.010. Prior: (i) 1899 c 31 § 1; RRS § 9204. (ii) 1899 c 31 § 2; RRS § 9205.]

35.75.020 Use of bicycle paths for other purposes prohibited. It shall be unlawful for any person to lead, drive, ride or propel any team, wagon, animal, or vehicle other than a bicycle or similar vehicle upon and along any bicycle path constructed within or without the corporate limits of any city or town excepting at suitable crossings to be provided in the construction of such paths. Any person violating the provisions of this section shall be guilty of a misdemeanor. [1965 c 7 § 35.75.020. Prior: 1899 c 31 § 3; RRS § 9206.]

35.75.030 License fees authorized. Every city and town by ordinance may establish and collect reasonable license fees from all persons riding a bicycle or other similar vehicle within its respective corporate limits, and may enforce the payment thereof by reasonable fines and penalties. [1965 c 7 § 35.75.030. Prior: 1899 c 31 § 4; RRS § 9207.]

35.75.040 Rules regulating use of bicycle paths. The license fee to be paid and the rules regulating the riding of bicycles or other similar vehicles within any city or town shall be fixed by ordinance, and the rules regulating the use of such bicycle paths or roadways constructed or maintained within its limits and the fines and penalties for the violation of such rules shall be fixed by ordinance. [1965 c 7 § 35.75.040. Prior: 1899 c 31 § 5; RRS § 9208.]

35.75.050 Bicycle road fund—Sources—Use. The city or town council shall by ordinance provide that the whole amount or any amount not less than seventy-five percent of all license fees, penalties or other moneys collected under the authority of this chapter shall be paid into and placed to the credit of a special fund to be known as the "bicycle road fund." The moneys in the bicycle road fund shall not be transferred to any other fund and shall be paid out for the sole purpose of building and maintaining bicycle paths and roadways authorized to be constructed and maintained by this chapter or for special policemen, bicycle tags, stationery and other expenses growing out of the regulating and licensing of the riding of bicycles and other vehicles and the construction, maintenance and regulation of the use of bicycle paths and roadways. [1965 c 7 § 35.75.050. Prior: 1899 c 31 § 6; RRS § 9209.]

35.75.060 Use of street and road funds for bicycle paths, lanes, routes and improvements authorized—Standards. Any city or town may use any funds available for street or road construction, maintenance, or improvement for building, improving, and maintaining bicycle paths, lanes, roadways, and routes, and for improvements to make existing streets and roads more suitable and safe for bicycle traffic: PROVIDED, That any such paths, lanes, roadways, routes, or streets for which any such street or road funds are expended shall be suitable for bicycle transportation purposes and not solely for recreation purposes. Bicycle facilities constructed or modified after June 10, 1982, shall meet or exceed the standards of the state department of transportation. [1982 c 55 § 1; 1974 ex.s. c 141 § 10.]

Chapter 35.76

STREETS—BUDGET AND ACCOUNTING

Sections

- 35.76.010 Declaration of purpose—Budget and accounting by functional categories.
- 35.76.020 Cost accounting and reporting—Cities over eight thousand.
- 35.76.030 Cost accounting and reporting—Cities of eight thousand or less.
- 35.76.040 Manual of instructions.
- 35.76.050 Cost-audit examination and report.
- 35.76.060 Budgets.

35.76.010 Declaration of purpose—Budget and accounting by functional categories. Records of city street expenditures are generally inadequate to meet the needs of cities for planning and administration of their street programs and the needs of the legislature in providing for city street financing. It is the intent of the legislature that each city and town shall budget and thereafter maintain records and accounts for all street expenditures by functional categories

in a manner consistent with its size, administrative capabilities, and the amounts of money expended by it for street purposes. [1965 c 7 § 35.76.010. Prior: 1963 c 115 § 1.]

35.76.020 Cost accounting and reporting—Cities over eight thousand. The state auditor, through the division of municipal corporations, shall formulate, prescribe and install a system of cost accounting and reporting for each city having a population of more than eight thousand, according to the last official census, which will correctly show all street expenditures by functional categories. The system shall also provide for reporting all revenues available for street purposes from whatever source including local improvement district assessments and state and federal aid. [1965 c 7 § 35.76.020. Prior: 1963 c 115 § 2.]

Cities over eight thousand, equipment rental fund in street department: RCW 35.21.088.

35.76.030 Cost accounting and reporting—Cities of eight thousand or less. Consistent with the intent of this chapter as stated in RCW 35.76.010, the state auditor, from and after July 1, 1965, through the division of municipal corporations, is authorized and directed to prescribe accounting and reporting procedures for street expenditures for cities and towns having a population of eight thousand or less, according to the last official census. [1965 c 7 § 35.76.030. Prior: 1963 c 115 § 3.]

35.76.040 Manual of instructions. The state auditor, after consultation with the association of Washington cities and the planning division of the state department of transportation shall prepare and distribute to the cities and towns a manual of instructions governing accounting and reporting procedures for all street expenditures. [1984 c 7 § 21; 1965 c 7 § 35.76.040. Prior: 1963 c 115 § 4.]

Severability—1984 c 7: See note following RCW 47.01.141.

35.76.050 Cost-audit examination and report. The division of municipal corporations shall annually make a cost-audit examination of street records for each city and town and make a written report thereon to the legislative body of each city and town. The expense of the examination shall be paid out of that portion of the motor vehicle fund allocated to the cities and towns and withheld for use by the state department of transportation under the terms of RCW 46.68.110(1). [1984 c 7 § 22; 1965 c 7 § 35.76.050. Prior: 1963 c 115 § 5.]

Severability—1984 c 7: See note following RCW 47.01.141.

35.76.060 Budgets. Expenditures for city and town streets shall be budgeted by each city and town according to the same functional categories prescribed by the state auditor for purposes of accounting and reporting as provided in RCW 35.76.020 and 35.76.030.

In the preparation of city and town budgets, including the preparation and filing of budget estimates, adoption of preliminary budgets and adoption of final budgets, all expenditures for street purposes shall be designated by such functional categories only. [1965 c 7 § 35.76.060. Prior: 1963 c 115 § 6.]

Chapter 35.77

STREETS—PLANNING, ESTABLISHMENT, CONSTRUCTION, AND MAINTENANCE

Sections

- 35.77.010 Perpetual advanced plans for coordinated street program—Six-year program for arterial street construction—Expenditures—Bicycle, pedestrian, and equestrian funds, expenditures.
- 35.77.015 Provisions for bicycle paths, lanes, routes, roadways and improvements to be included in annual revision or extension of comprehensive street programs—Exception.
- 35.77.020 Agreements with county for planning, establishment, construction, and maintenance.
- 35.77.030 Agreements with county for planning, establishment, construction, and maintenance—County may use road fund—Payments by city—Contracts, bids.
- 35.77.040 Agreements with county for planning, establishment, construction, and maintenance—Act is additional and concurrent method.

Bicycle awareness program: RCW 43.43.390.

Bicycle transportation management program: RCW 47.04.190.

Local adopt-a-highway programs: RCW 47.40.105.

Pavement marking standards: RCW 47.36.280.

Planning commissions: Chapter 35.63 RCW.

State highways in urban areas, allocation of funds, planning, bond issue, etc.: Chapter 47.26 RCW.

Urban arterials, planning, construction by cities and counties, transportation improvement board, bond issue, etc.: Chapter 47.26 RCW.

35.77.010 Perpetual advanced plans for coordinated street program—Six-year program for arterial street construction—Expenditures—Bicycle, pedestrian, and equestrian funds, expenditures. (1) The legislative body of each city and town, pursuant to one or more public hearings thereon, shall prepare and adopt a comprehensive street program for the ensuing six calendar years. If the city or town has adopted a comprehensive plan pursuant to chapter 35.63 or 35A.63 RCW, the inherent authority of a first class city derived from its charter, or chapter 36.70A RCW, the program shall be consistent with this comprehensive plan.

The program shall be filed with the secretary of transportation not more than thirty days after its adoption. Annually thereafter the legislative body of each city and town shall review the work accomplished under the program and determine current city street needs. Based on these findings each such legislative body shall prepare and after public hearings thereon adopt a revised and extended comprehensive street program before July 1st of each year, and each one-year extension and revision shall be filed with the secretary of transportation not more than thirty days after its adoption. The purpose of this section is to assure that each city and town shall perpetually have available advanced plans looking to the future for not less than six years as a guide in carrying out a coordinated street construction program. The program may at any time be revised by a majority of the legislative body of a city or town, but only after a public hearing.

The six-year program of each city lying within an urban area shall contain a separate section setting forth the six-year program for arterial street construction based upon its long range construction plan and formulated in accordance with rules of the transportation improvement board. The six-year

program for arterial street construction shall be submitted to the transportation improvement board forthwith after its annual revision and adoption by the legislative body of the city. The six-year program for arterial street construction shall be based upon estimated revenues available for such construction together with such additional sums as the legislative authority may request for urban arterials from the urban arterial trust account or the transportation improvement account for the six-year period. The arterial street construction program shall provide for a more rapid rate of completion of the long-range construction needs of principal arterial streets than for minor and collector arterial streets, pursuant to rules of the transportation improvement board: PROVIDED, That urban arterial trust funds made available to the group of incorporated cities lying outside the boundaries of federally approved urban areas within each region need not be divided between functional classes of arterials but shall be available for any designated arterial street.

(2) Each six-year program forwarded to the secretary in compliance with subsection (1) of this section shall contain information as to how a city or town will expend its moneys, including funds made available pursuant to chapter 47.30 RCW, for bicycle, pedestrian, and equestrian purposes. [1990 1st ex.s. c 17 § 59; 1988 c 167 § 6; 1984 c 7 § 23; 1977 ex.s. c 317 § 7; 1975 1st ex.s. c 215 § 1; 1967 ex.s. c 83 § 27; 1965 c 7 § 35.77.010. Prior: 1961 c 195 § 2.]

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

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

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.

Severability—Effective dates—1967 ex.s. c 83: See RCW 47.26.900 and 47.26.910.

Highways, roads, streets in urban areas, urban arterials, development: Chapter 47.26 RCW.

Joint planning of urban arterial development: RCW 47.26.230.

Long-range arterial construction plans, counties and cities to prepare: RCW 47.26.170.

Perpetual advanced plans for coordinated county road program: RCW 36.81.121.

Priority projects to be selected in preparation of six-year program: RCW 47.26.220.

Transportation improvement board: Chapter 47.26 RCW.

35.77.015 Provisions for bicycle paths, lanes, routes, roadways and improvements to be included in annual revision or extension of comprehensive street programs—Exception. The annual revision and extension of comprehensive street programs pursuant to RCW 35.77.010 shall include consideration of and, wherever reasonably practicable, provisions for bicycle routes: PROVIDED, That no provision need be made for any such route where the cost of establishing it would be excessively disproportionate to the need or probable use. [1974 ex.s. c 141 § 11.]

35.77.020 Agreements with county for planning, establishment, construction, and maintenance. Any city or town may enter into an agreement with the county in which it is located authorizing the county to perform all or any part of the construction, repair, and maintenance of

streets in such city or town at such cost as shall be mutually agreed upon. The agreement shall be approved by ordinance of the governing body of the city or town and by resolution of the board of county commissioners.

Any such agreement may include, but shall not be limited to the following:

(1) A provision that the county shall perform all or a specified part of the construction, repair, or maintenance of the city or town streets and bridges to the same standards provided by the county in unincorporated areas, or to increased standards as shall be specified which may include construction, repair, or maintenance of drainage facilities including storm sewers, sidewalks and curbsings, street lighting, and traffic control devices.

(2) A provision that the county may provide engineering and administrative services necessary for the planning, establishment, construction, and maintenance of the streets of the city or town, including engineering and clerical services necessary for the establishment of local improvement districts. In providing such services the county engineer may exercise all the powers and perform all the duties vested by law or by ordinance in the city or town engineer or other officer or department charged with street administration.

(3) A provision that the city or town shall enact ordinances for the administration, establishment, construction, repair, maintenance, regulation, and protection of its streets as may be necessary to authorize the county to lawfully carry out the terms of the agreement. [1965 c 7 § 35.77.020. Prior: 1961 c 245 § 1.]

35.77.030 Agreements with county for planning, establishment, construction, and maintenance—County may use road fund—Payments by city—Contracts, bids. Pursuant to an agreement authorized by RCW 35.77.020, the board of county commissioners may expend funds from the county road fund for the construction, repair, and maintenance of the streets of such city or town and for engineering and administrative services. Payments by a city or town under such an agreement shall be made to the county treasurer and by him deposited in the county road fund. Such construction, repair, maintenance, and engineering service shall be ordered by resolution and proceedings conducted in respect thereto in the same manner as provided for the construction, repair, and maintenance of county roads by counties, and for the preparation of maps, plans and specifications, advertising and award of contracts therefor: PROVIDED, That except in case of emergency all construction work performed by a county on city streets pursuant to RCW 35.77.020 through 35.77.040, which exceeds ten thousand dollars, shall be done by contract, unless after advertisement and solicitation of competitive bids it appears that bids are unobtainable or that the lowest bid exceeds the amount for which such construction can be done by means other than contract. No street construction project shall be divided into lesser component parts for the purpose of avoiding the requirements for competitive bidding. [1965 c 7 § 35.77.030. Prior: 1961 c 245 § 2.]

35.77.040 Agreements with county for planning, establishment, construction, and maintenance—Act is

additional and concurrent method. RCW 35.77.020 through 35.77.040 shall not repeal, amend, or modify any law providing for joint or cooperative agreements between cities and counties with respect to city streets, but shall be held to be an additional and concurrent method providing for such purpose. [1965 c 7 § 35.77.040. Prior: 1961 c 245 § 3.]

Chapter 35.78 STREETS—CLASSIFICATION AND DESIGN STANDARDS

Sections

- 35.78.010 Classification of streets.
- 35.78.020 State design standards—Committee—Membership.
- 35.78.030 Committee to adopt uniform design standards.
- 35.78.040 Design standards must be followed by municipalities—Approval of deviations.

City and town streets as part of state highways: Chapter 47.24 RCW.

Design standards committee for county roads: Chapter 43.32 RCW, RCW 36.86.070, 36.86.080.

35.78.010 Classification of streets. The governing body of each municipal corporation shall classify and designate city streets as follows:

Major arterials, which are defined as transportation arteries which connect the focal points of traffic interest within a city; arteries which provide communications with other communities and the outlying areas; or arteries which have relatively high traffic volume compared with other streets within the city;

Secondary arterials, which are defined as routes which serve lesser points of traffic interest within a city; provide communication with outlying districts in the same degree or serve to collect and distribute traffic from the major arterials to the local streets;

Access streets, which are defined as land service streets and are generally limited to providing access to abutting property. They are tributary to the major and secondary thoroughfares and generally discourage through traffic. [1965 c 7 § 35.78.010. Prior: 1949 c 164 § 1; Rem. Supp. 1949 § 9300-1.]

35.78.020 State design standards—Committee—Membership. There is created a state design standards committee of seven members, six of whom shall be appointed by the executive committee of the Association of Washington Cities to hold office at its pleasure and the seventh to be the state aid engineer. The members to be appointed by the executive committee of the Association of Washington Cities shall be restricted to the membership of the association or to those holding office and/or performing the function of chief engineer in any of the several municipalities in the state. [1984 c 7 § 24; 1965 c 7 § 35.78.020. Prior: 1949 c 164 § 2; Rem. Supp. 1949 § 9300-2.]

Severability—1984 c 7: See note following RCW 47.01.141.

35.78.030 Committee to adopt uniform design standards. The design standards committee shall from time to time adopt uniform design standards for major arterial and

secondary arterial streets. [1965 c 7 § 35.78.030. Prior: 1949 c 164 § 3; Rem. Supp. 1949 § 9300-3.]

35.78.040 Design standards must be followed by municipalities—Approval of deviations. The governing body of the several municipalities shall apply the uniform design standards adopted under RCW 35.78.030 to all new construction on major arterial and secondary arterial streets and to reconstruction of old such streets as far as practicable. No deviation from the design standards as to such streets may be made without approval of the state aid engineer. [1984 c 7 § 25; 1965 c 7 § 35.78.040. Prior: 1949 c 164 § 4; Rem. Supp. 1949 § 9300-4.]

Severability—1984 c 7: See note following RCW 47.01.141.

Chapter 35.79 STREETS—VACATION

Sections

- 35.79.010 Petition by owners—Fixing time for hearing.
- 35.79.020 Notice of hearing—Objections prior to hearing.
- 35.79.030 Hearing—Ordinance of vacation.
- 35.79.035 Limitations on vacations of streets abutting bodies of water—Procedure.
- 35.79.040 Title to vacated street or alley.
- 35.79.050 Vested rights not affected.

35.79.010 Petition by owners—Fixing time for hearing. The owners of an interest in any real estate abutting upon any street or alley who may desire to vacate the street or alley, or any part thereof, may petition the legislative authority to make vacation, giving a description of the property to be vacated, or the legislative authority may itself initiate by resolution such vacation procedure. The petition or resolution shall be filed with the city or town clerk, and, if the petition is signed by the owners of more than two-thirds of the property abutting upon the part of such street or alley sought to be vacated, legislative authority by resolution shall fix a time when the petition will be heard and determined by such authority or a committee thereof, which time shall not be more than sixty days nor less than twenty days after the date of the passage of such resolution. [1965 c 7 § 35.79.010. Prior: 1957 c 156 § 2; 1901 c 84 § 1, part; RRS § 9297, part.]

35.79.020 Notice of bearing—Objections prior to bearing. Upon the passage of the resolution the city or town clerk shall give twenty days' notice of the pendency of the petition by a written notice posted in three of the most public places in the city or town and a like notice in a conspicuous place on the street or alley sought to be vacated. The said notice shall contain a statement that a petition has been filed to vacate the street or alley described in the notice, together with a statement of the time and place fixed for the hearing of the petition. In all cases where the proceeding is initiated by resolution of the city or town council or similar legislative authority without a petition having been signed by the owners of more than two-thirds of the property abutting upon the part of the street or alley sought to be vacated, in addition to the notice hereinabove required, there shall be given by mail at least fifteen days

before the date fixed for the hearing, a similar notice to the owners or reputed owners of all lots, tracts or parcels of land or other property abutting upon any street or alley or any part thereof sought to be vacated, as shown on the rolls of the county treasurer, directed to the address thereon shown: PROVIDED, That if fifty percent of the abutting property owners file written objection to the proposed vacation with the clerk, prior to the time of hearing, the city shall be prohibited from proceeding with the resolution. [1965 c 7 § 35.79.020. Prior: 1957 c 156 § 3; 1901 c 84 § 1, part; RRS § 9297, part.]

35.79.030 Hearing—Ordinance of vacation. The hearing on such petition may be held before the legislative authority, or before a committee thereof upon the date fixed by resolution or at the time said hearing may be adjourned to. If the hearing is before such a committee the same shall, following the hearing, report its recommendation on the petition to the legislative authority which may adopt or reject the recommendation. If such hearing be held before such a committee it shall not be necessary to hold a hearing on the petition before such legislative authority. If the legislative authority determines to grant said petition or any part thereof, such city or town shall be authorized and have authority by ordinance to vacate such street, or alley, or any part thereof, and the ordinance may provide that it shall not become effective until the owners of property abutting upon the street or alley, or part thereof so vacated, shall compensate such city or town in an amount which does not exceed one-half the appraised value of the area so vacated, except in the event the subject property or portions thereof were acquired at public expense, compensation may be required in an amount equal to the full appraised value of the vacation: PROVIDED, That such ordinance may provide that the city retain an easement or the right to exercise and grant easements in respect to the vacated land for the construction, repair, and maintenance of public utilities and services. A certified copy of such ordinance shall be recorded by the clerk of the legislative authority and in the office of the auditor of the county in which the vacated land is located. [1987 c 228 § 1; 1985 c 254 § 1; 1969 c 28 § 4. Prior: 1967 ex.s. c 129 § 1; 1967 c 123 § 1; 1965 c 7 § 35.79.030; prior: 1957 c 156 § 4; 1949 c 14 § 1; 1901 c 84 § 2; Rem. Supp. 1949 § 9298.]

35.79.035 Limitations on vacations of streets abutting bodies of water—Procedure. (1) A city or town shall not vacate a street or alley if any portion of the street or alley abuts a body of fresh or salt water unless:

(a) The vacation is sought to enable the city or town to acquire the property for port purposes, beach or water access purposes, boat moorage or launching sites, park, public view, recreation, or educational purposes, or other public uses;

(b) The city or town, by resolution of its legislative authority, declares that the street or alley is not presently being used as a street or alley and that the street or alley is not suitable for any of the following purposes: Port, beach or water access, boat moorage, launching sites, park, public view, recreation, or education; or

(c) The vacation is sought to enable a city or town to implement a plan, adopted by resolution or ordinance, that

provides comparable or improved public access to the same shoreline area to which the streets or alleys sought to be vacated abut, had the properties included in the plan not been vacated.

(2) Before adopting a resolution vacating a street or alley under subsection (1)(b) of this section, the city or town shall:

(a) Compile an inventory of all rights of way within the city or town that abut the same body of water that is abutted by the street or alley sought to be vacated;

(b) Conduct a study to determine if the street or alley to be vacated is suitable for use by the city or town for any of the following purposes: Port, boat moorage, launching sites, beach or water access, park, public view, recreation, or education;

(c) Hold a public hearing on the proposed vacation in the manner required by this chapter, where in addition to the normal requirements for publishing notice, notice of the public hearing is posted conspicuously on the street or alley sought to be vacated, which posted notice indicates that the area is public access, it is proposed to be vacated, and that anyone objecting to the proposed vacation should attend the public hearing or send a letter to a particular official indicating his or her objection; and

(d) Make a finding that the street or alley sought to be vacated is not suitable for any of the purposes listed under (b) of this subsection, and that the vacation is in the public interest.

(3) No vacation shall be effective until the fair market value has been paid for the street or alley that is vacated. Moneys received from the vacation may be used by the city or town only for acquiring additional beach or water access, acquiring additional public view sites to a body of water, or acquiring additional moorage or launching sites. [1987 c 228 § 2.]

35.79.040 Title to vacated street or alley. If any street or alley in any city or town is vacated by the city or town council, the property within the limits so vacated shall belong to the abutting property owners, one-half to each. [1965 c 7 § 35.79.040. Prior: 1901 c 84 § 3; RRS § 9299.]

35.79.050 Vested rights not affected. No vested rights shall be affected by the provisions of this chapter. [1965 c 7 § 35.79.050. Prior: 1901 c 84 § 4; RRS § 9300.]

Chapter 35.80

UNFIT DWELLINGS, BUILDINGS AND STRUCTURES

Sections

35.80.010	Declaration of purpose.
35.80.020	Definitions.
35.80.030	Permissible ordinances—Appeal.
35.80.040	Discrimination prohibited.

35.80.010 Declaration of purpose. It is hereby found that there exist, in the various municipalities and counties of the state, dwellings which are unfit for human habitation, and buildings, structures, and premises or portions thereof which are unfit for other uses due to dilapidation, disrepair,

structural defects, defects increasing the hazards of fire, accidents, or other calamities, inadequate ventilation and uncleanliness, inadequate light or sanitary facilities, inadequate drainage, overcrowding, or due to other conditions which are inimical to the health and welfare of the residents of such municipalities and counties.

It is further found and declared that the powers conferred by this chapter are for public uses and purposes for which public money may be expended, and that the necessity of the public interest for the enactment of this law is hereby declared to be a matter of local legislative determination. [1989 c 133 § 1; 1969 ex.s. c 127 § 1; 1967 c 111 § 1; 1965 c 7 § 35.80.010. Prior: 1959 c 82 § 1.]

35.80.020 Definitions. The following terms, however used or referred to in this chapter, shall have the following meanings, unless a different meaning is clearly indicated by the context:

(1) "Board" shall mean the improvement board as provided for in RCW 35.80.030(1)(a);

(2) "Local governing body" shall mean the council, board, commission, or other legislative body charged with governing the municipality or county;

(3) "Municipality" shall mean any city, town or county in the state;

(4) "Public officer" shall mean any officer who is in charge of any department or branch of the government of the municipality or county relating to health, fire, building regulation, or other activities concerning dwellings, buildings, structures, or premises in the municipality or county. [1989 c 133 § 2; 1969 ex.s. c 127 § 2; 1967 c 111 § 2; 1965 c 7 § 35.80.020. Prior: 1959 c 82 § 2.]

35.80.030 Permissible ordinances—Appeal. (1) Whenever the local governing body of a municipality finds that one or more conditions of the character described in RCW 35.80.010 exist within its territorial limits, said governing body may adopt ordinances relating to such dwellings, buildings, structures, or premises. Such ordinances may provide for the following:

(a) That an "improvement board" or officer be designated or appointed to exercise the powers assigned to such board or officer by the ordinance as specified herein. Said board or officer may be an existing municipal board or officer in the municipality, or may be a separate board or officer appointed solely for the purpose of exercising the powers assigned by said ordinance.

If a board is created, the ordinance shall specify the terms, method of appointment, and type of membership of said board, which may be limited, if the local governing body chooses, to public officers as herein defined.

(b) If a board is created, a public officer, other than a member of the improvement board, may be designated to work with the board and carry out the duties and exercise the powers assigned to said public officer by the ordinance.

(c) That if, after a preliminary investigation of any dwelling, building, structure, or premises, the board or officer finds that it is unfit for human habitation or other use, he shall cause to be served either personally or by certified mail, with return receipt requested, upon all 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 such property, a complaint stating in what respects such dwelling, building, structure, or premises is unfit for human habitation or other use. If the whereabouts of any of such persons is unknown and the same cannot be ascertained by the board or officer in the exercise of reasonable diligence, and the board or officer makes an affidavit to that effect, then the serving of such complaint or order upon such persons may be made either by personal service or by mailing a copy of the complaint and order by certified mail, postage prepaid, return receipt requested, to each such person at the address of the building involved in the proceedings, and mailing a copy of the complaint and order by first class mail to any address of each such person in the records of the county assessor or the county auditor for the county where the property is located. Such complaint shall contain a notice that a hearing will be held before the board or officer, at a place therein fixed, not less than ten days nor more than thirty days after the serving of said complaint; and that all parties in interest shall be given the right to file an answer to the complaint, to appear in person, or otherwise, and to give testimony at the time and place in the complaint. The rules of evidence prevailing in courts of law or equity shall not be controlling in hearings before the board or officer. A copy of such complaint shall also be filed with the auditor of the county in which the dwelling, building, structure, or premise [premises] 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.

(d) That the board or officer may determine that a dwelling, building, structure, or premises is unfit for human habitation or other use if it finds that conditions exist in such dwelling, building, structure, or premises which are dangerous or injurious to the health or safety of the occupants of such dwelling, building, structure, or premises, the occupants of neighboring dwellings, or other residents of such municipality. Such conditions may include the following, without limitations: Defects therein increasing the hazards of fire or accident; inadequate ventilation, light, or sanitary facilities, dilapidation, disrepair, structural defects, uncleanliness, overcrowding, or inadequate drainage. The ordinance shall state reasonable and minimum standards covering such conditions, including those contained in ordinances adopted in accordance with subdivision (7)(a) herein, to guide the board or the public officer and the agents and employees of either, in determining the fitness of a dwelling for human habitation, or building, structure, or premises for other use.

(e) That the determination of whether a dwelling, building, structure, or premises should be repaired or demolished, shall be based on specific stated standards on (i) the degree of structural deterioration of the dwelling, building, structure, or premises, or (ii) the relationship that the estimated cost of repair bears to the value of the dwelling, building, structure, or premises, with the method of determining this value to be specified in the ordinance.

(f) That if, after the required hearing, the board or officer determines that the dwelling is unfit for human habitation, or building or structure or premises is unfit for other use, it shall state in writing its findings of fact in support of such determination, and shall issue and cause to be served upon the owner or party in interest thereof, as is

provided in subdivision (1)(c), and shall post in a conspicuous place on said property, an order which (i) requires the owner or party in interest, within the time specified in the order, to repair, alter, or improve such dwelling, building, structure, or premises to render it fit for human habitation, or for other use, or to vacate and close the dwelling, building, structure, or premises, if such course of action is deemed proper on the basis of the standards set forth as required in subdivision (1)(e); or (ii) requires the owner or party in interest, within the time specified in the order, to remove or demolish such dwelling, building, structure, or premises, if this course of action is deemed proper on the basis of said standards. If no appeal is filed, a copy of such order shall be filed with the auditor of the county in which the dwelling, building, structure, or premises is located.

(g) The owner or any party in interest, within thirty days from the date of service upon the owner and posting of an order issued by the board under the provisions of subdivision (c) of this subsection, may file an appeal with the appeals commission.

The local governing body of the municipality shall designate or establish a municipal agency to serve as the appeals commission. The local governing body shall also establish rules of procedure adequate to assure a prompt and thorough review of matters submitted to the appeals commission, and such rules of procedure shall include the following, without being limited thereto: (i) All matters submitted to the appeals commission must be resolved by the commission within sixty days from the date of filing therewith and (ii) a transcript of the findings of fact of the appeals commission shall be made available to the owner or other party in interest upon demand.

The findings and orders of the appeals commission shall be reported in the same manner and shall bear the same legal consequences as if issued by the board, and shall be subject to review only in the manner and to the extent provided in subdivision (2) of this section.

If the owner or party in interest, following exhaustion of his rights to appeal, fails to comply with the final order to repair, alter, improve, vacate, close, remove, or demolish the dwelling, building, structure, or premises, the board or officer may direct or cause such dwelling, building, structure, or premises to be repaired, altered, improved, vacated, and closed, removed, or demolished.

(h) That the amount of the cost of such repairs, alterations or improvements; or vacating and closing; or removal or demolition by the board or officer, shall be assessed against the real property upon which such cost was incurred unless such amount is previously paid. Upon certification to him by the treasurer of the municipality in cases arising out of the city or town or by the county improvement board or officer, in cases arising out of the county, of the assessment amount being due and owing, the county treasurer shall enter the amount of such assessment upon the tax rolls against the property for the current year and the same shall become a part of the general taxes for that year to be collected at the same time and with interest at such rates and in such manner as provided for in RCW 84.56.020, as now or hereafter amended, for delinquent taxes, and when collected to be deposited to the credit of the general fund of the municipality. If the dwelling, building, structure, or premises is removed or demolished by the board or officer, the board or

officer shall, if possible, sell the materials of such dwelling, building, structure, [or] premises in accordance with procedures set forth in said ordinance, and shall credit the proceeds of such sale against the cost of the removal or demolition and if there be any balance remaining, it shall be paid to the parties entitled thereto, as determined by the board or officer, after deducting the costs incident thereto.

The assessment shall constitute a lien against the property which shall be of equal rank with state, county and municipal taxes.

(2) Any person affected by an order issued by the appeals commission pursuant to subdivision (1)(f) hereof may, within thirty days after the posting and service of the order, petition to the superior court for an injunction restraining the public officer or members of the board from carrying out the provisions of the order. In all such proceedings the court is authorized to affirm, reverse, or modify the order and such trial shall be heard de novo.

(3) An ordinance adopted by the local governing body of the municipality may authorize the board or officer to exercise such powers as may be necessary or convenient to carry out and effectuate the purposes and provisions of this section. These powers shall include the following in addition to others herein granted: (a)(i) To determine which dwellings within the municipality are unfit for human habitation; (ii) to determine which buildings, structures, or premises are unfit for other use; (b) to administer oaths and affirmations, examine witnesses and receive evidence; and (c) to investigate the dwelling and other property conditions in the municipality or county and to enter upon premises for the purpose of making examinations when the board or officer has reasonable ground for believing they are unfit for human habitation, or for other use: PROVIDED, That such entries shall be made in such manner as to cause the least possible inconvenience to the persons in possession, and to obtain an order for this purpose after submitting evidence in support of an application which is adequate to justify such an order from a court of competent jurisdiction in the event entry is denied or resisted.

(4) The local governing body of any municipality adopting an ordinance pursuant to this chapter may appropriate the necessary funds to administer such ordinance.

(5) Nothing in this section shall be construed to abrogate or impair the powers of the courts or of any department of any municipality to enforce any provisions of its charter or its ordinances or regulations, nor to prevent or punish violations thereof; and the powers conferred by this section shall be in addition and supplemental to the powers conferred by any other law.

(6) Nothing in this section shall be construed to impair or limit in any way the power of the municipality to define and declare nuisances and to cause their removal or abatement, by summary proceedings or otherwise.

(7) Any municipality may (by ordinance adopted by its governing body) (a) prescribe minimum standards for the use and occupancy of dwellings throughout the municipality, or county, (b) prescribe minimum standards for the use or occupancy of any building, structure, or premises used for any other purpose, (c) prevent the use or occupancy of any dwelling, building, structure, or premises, which is injurious to the public health, safety, morals, or welfare, and (d) prescribe punishment for the violation of any provision of

such ordinance. [1989 c 133 § 3; 1984 c 213 § 1; 1973 1st ex.s. c 144 § 1; 1969 ex.s. c 127 § 3; 1967 c 111 § 3; 1965 c 7 § 35.80.030. Prior: 1959 c 82 § 3.]

35.80.040 Discrimination prohibited. For all the purposes of this chapter and the ordinances adopted as provided herein, no person shall, because of race, creed, color, or national origin, be subjected to any discrimination. [1965 c 7 § 35.80.040. Prior: 1959 c 82 § 4.]

Discrimination—Human rights commission: Chapter 49.60 RCW.

Chapter 35.80A

CONDEMNATION OF BLIGHTED PROPERTY

Sections

- 35.80A.010 Condemnation of blighted property.
- 35.80A.020 Transfer of blighted property acquired by condemnation.
- 35.80A.030 Disposition of blighted property—Procedures.
- 35.80A.040 Authority to enter blighted buildings or property—Acceptance of financial assistance.
- 35.80A.900 Severability—1989 c 271.

35.80A.010 Condemnation of blighted property. Every county, city, and town may acquire by condemnation, in accordance with the notice requirements and other procedures for condemnation provided in Title 8 RCW, any property, dwelling, building, or structure which constitutes a blight on the surrounding neighborhood. A "blight on the surrounding neighborhood" is any property, dwelling, building, or structure that has not been lawfully occupied for a period of one year or more, constitutes a threat to the public health, safety, or welfare as determined by the county health department in the applicable county and that is or has been associated with illegal drug activity during the previous twelve months. Prior to such condemnation, the local governing body shall adopt a resolution declaring that the acquisition of the real property described therein is necessary to eliminate neighborhood blight. Condemnation of property, dwellings, buildings, and structures for the purposes described in this chapter is declared to be for a public use. [1989 c 271 § 239.]

35.80A.020 Transfer of blighted property acquired by condemnation. Counties, cities, and towns may sell, lease, or otherwise transfer real property acquired pursuant to this chapter for residential, recreational, commercial, industrial, or other uses or for public use, subject to such covenants, conditions, and restrictions, including covenants running with the land, as the county, city, or town deems to be necessary or desirable to rehabilitate and preserve the dwelling, building, or structure in a habitable condition. The purchasers or lessees and their successors and assigns shall be obligated to comply with such other requirements as the county, city, or town may determine to be in the public interest, including the obligation to begin, within a reasonable time, any improvements on such property required to make the dwelling, building, or structure habitable. Such real property or interest shall be sold, leased, or otherwise transferred, at not less than its fair market value. In determining the fair market value of real property for uses in accordance with this section, a municipality shall take into

account and give consideration to, the restrictions upon and the covenants, conditions, and obligations assumed by the purchaser or lessee. [1989 c 271 § 240.]

35.80A.030 Disposition of blighted property—Procedures. A county, city, or town may dispose of real property acquired pursuant to this section to private persons only under such reasonable, competitive procedures as it shall prescribe. The county, city, or town may accept such proposals as it deems to be in the public interest and in furtherance of the purposes of this chapter. Thereafter, the county, city, or town may execute and deliver contracts, deeds, leases, and other instruments of transfer. [1989 c 271 § 241.]

35.80A.040 Authority to enter blighted buildings or property—Acceptance of financial assistance. Every county, city, or town may, in addition to any other authority granted by this chapter: (1) Enter upon any building or property found to constitute a blight on the surrounding neighborhood in order to make surveys and appraisals, and to obtain an order for this purpose from a court of competent jurisdiction in the event entry is denied or resisted; and (2) borrow money, apply for, and accept, advances, loans, grants, contributions, and any other form of financial assistance from the federal government, the state, a county, or other public body, or from any sources, public or private, for the purposes of this chapter, and enter into and carry out contracts in connection herewith. [1989 c 271 § 242.]

35.80A.900 Severability—1989 c 271. See note following RCW 9.94A.310.

Chapter 35.81

URBAN RENEWAL LAW

Sections

- 35.81.010 Definitions.
- 35.81.020 Declaration of purpose and necessity.
- 35.81.030 Encouragement of private enterprise.
- 35.81.040 Formulation of workable program.
- 35.81.050 Findings by local governing body required.
- 35.81.060 Comprehensive plan—Preparation—Hearing—Approval—Modification—Effect.
- 35.81.070 Powers of municipality.
- 35.81.080 Eminent domain.
- 35.81.090 Disposal of real property in urban renewal area.
- 35.81.100 Bonds—Issuance—Form, terms, payment, etc.
- 35.81.110 Bonds as legal investment, security.
- 35.81.115 General obligation bonds authorized.
- 35.81.120 Property of municipality exempt from process and taxes.
- 35.81.130 Aid to public bodies.
- 35.81.140 Conveyance to purchaser, etc., presumed to be in compliance with chapter.
- 35.81.150 Exercise of urban renewal project powers.
- 35.81.160 Exercise of urban renewal project powers—Assignment of powers—Urban renewal agency.
- 35.81.170 Discrimination prohibited.
- 35.81.180 Restrictions against public officials or employees acquiring or owning an interest in project, contract, etc.
- 35.81.910 Short title.

35.81.010 Definitions. The following terms wherever used or referred to in this chapter, shall have the following

meanings, unless a different meaning is clearly indicated by the context:

(1) "Agency" or "urban renewal agency" shall mean a public agency created by RCW 35.81.160.

(2) "Blighted area" shall mean an area which, by reason of the substantial physical dilapidation, deterioration, defective construction, material, and arrangement and/or age or obsolescence of buildings or improvements, whether residential or nonresidential, inadequate provision for ventilation, light, proper sanitary facilities, or open spaces as determined by competent appraisers on the basis of an examination of the building standards of the municipality; inappropriate or mixed uses of land or buildings; high density of population and overcrowding; defective or inadequate street layout; faulty lot layout in relation to size, adequacy, accessibility or usefulness; excessive land coverage; insanitary or unsafe conditions; deterioration of site; diversity of ownership; tax or special assessment delinquency exceeding the fair value of the land; defective or unusual conditions of title; improper subdivision or obsolete platting; or the existence of conditions which endanger life or property by fire or other causes, or any combination of such factors, is conducive to ill health, transmission of disease, infant mortality, juvenile delinquency and crime; substantially impairs or arrests the sound growth of the city or its environs, retards the provision of housing accommodations or constitutes an economic or social liability, and/or is detrimental, or constitutes a menace, to the public health, safety, welfare, and morals in its present condition and use.

(3) "Bonds" shall mean any bonds, notes, or debentures (including refunding obligations) herein authorized to be issued.

(4) "Clerk" shall mean the clerk or other official of the municipality who is the custodian of the official records of such municipality.

(5) "Federal government" shall include the United States of America or any agency or instrumentality, corporate or otherwise, of the United States of America.

(6) "Local governing body" shall mean the council or other legislative body charged with governing the municipality.

(7) "Mayor" shall mean the chief executive of a city or town, or the elected executive, if any, of any county operating under a charter, or the county legislative authority of any other county.

(8) "Municipality" shall mean any incorporated city or town, or any county, in the state.

(9) "Obligee" shall include any bondholder, agent or trustees for any bondholders, or lessor demising to the municipality property used in connection with an urban renewal project, or any assignee or assignees of such lessor's interest or any part thereof, and the federal government when it is a party to any contract with the municipality.

(10) "Person" shall mean any individual, firm, partnership, corporation, company, association, joint stock association, or school district; and shall include any trustee, receiver, assignee, or other person acting in a similar representative capacity.

(11) "Public body" shall mean the state or any municipality, township, board, commission, district, or any other subdivision or public body of the state.

(12) "Public officer" shall mean any officer who is in charge of any department or branch of the government of the municipality relating to health, fire, building regulations, or to other activities concerning dwellings in the municipality.

(13) "Real property" shall include all lands, including improvements and fixtures thereon, and property of any nature appurtenant thereto, or used in connection therewith, and every estate, interest, right and use, legal or equitable, therein, including terms for years and liens by way of judgment, mortgage or otherwise.

(14) "Redevelopment" may include (a) acquisition of a blighted area or portion thereof; (b) demolition and removal of buildings and improvements; (c) installation, construction or reconstruction of streets, utilities, parks, playgrounds, and other improvements necessary for carrying out in the area the urban renewal provisions of this chapter in accordance with the urban renewal plan, and (d) making the land available for development or redevelopment by private enterprise or public agencies (including sale, initial leasing, or retention by the municipality itself) at its fair value for uses in accordance with the urban renewal plan.

(15) "Rehabilitation" may include the restoration and renewal of a blighted area or portion thereof, in accordance with an urban renewal plan, by (a) carrying out plans for a program of voluntary or compulsory repair and rehabilitation of buildings or other improvements; (b) acquisition of real property and demolition or removal of buildings and improvements thereon where necessary to eliminate unhealthful, insanitary or unsafe conditions, lessen density, reduce traffic hazards, eliminate obsolete or other uses detrimental to the public welfare, or otherwise to remove or prevent the spread of blight or deterioration, or to provide land for needed public facilities; (c) installation, construction or reconstruction of streets, utilities, parks, playgrounds, and other improvements necessary for carrying out in the area the urban renewal provisions of this chapter; and (d) the disposition of any property acquired in such urban renewal area (including sale, initial leasing, or retention by the municipality itself) at its fair value for uses in accordance with such urban renewal plan.

(16) "Urban renewal area" means a blighted area which the local governing body designates as appropriate for an urban renewal project or projects.

(17) "Urban renewal plan" means a plan, as it exists from time to time, for an urban renewal project, which plan (a) shall conform to the comprehensive plan or parts thereof for the municipality as a whole; and (b) shall be sufficiently complete to indicate such land acquisition, demolition, and removal of structures, redevelopment, improvements, and rehabilitation as may be proposed to be carried out in the urban renewal area, zoning and planning changes, if any, land uses, maximum densities, building requirements, and the plan's relationship to definite local objectives respecting appropriate land uses, improved traffic, public transportation, public utilities, recreational and community facilities, and other public improvements.

(18) "Urban renewal project" may include undertakings or activities of a municipality in an urban renewal area for the elimination and for the prevention of the development or spread of blight, and may involve redevelopment in an urban renewal area, or rehabilitation in an urban renewal area, or any combination or part thereof in accordance with an urban

renewal plan. [1991 c 363 § 41; 1975 c 3 § 1; 1971 ex.s. c 177 § 6; 1965 c 7 § 35.81.010. Prior: 1957 c 42 § 1.]

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

35.81.020 Declaration of purpose and necessity. It is hereby found and declared that blighted areas which constitute a serious and growing menace, injurious to the public health, safety, morals and welfare of the residents of the state exist in municipalities of the state; that the existence of such areas contributes substantially and increasingly to the spread of disease and crime and depreciation of property values, constitutes an economic and social liability, substantially impairs or arrests the sound growth of municipalities, retards the provision of housing accommodations, aggravates traffic problems and substantially impairs or arrests the elimination of traffic hazards and the improvement of traffic facilities; and that the prevention and elimination of such areas is a matter of state policy and state concern in order that the state and its municipalities shall not continue to be endangered by areas which are focal centers of disease, promote juvenile delinquency, are conducive to fires, are difficult to police and to provide police protection for, and, while contributing little to the tax income of the state and its municipalities, consume an excessive proportion of its revenues because of the extra services required for police, fire, accident, hospitalization and other forms of public protection, services, and facilities.

It is further found and declared that certain of such areas, or portions thereof, may require acquisition, clearance, and disposition subject to use restrictions, as provided in this chapter, since the prevailing condition of decay may make impracticable the reclamation of the area by rehabilitation; that other areas or portions thereof may, through the means provided in this chapter, be susceptible of rehabilitation in such a manner that the conditions and evils hereinbefore enumerated may be eliminated, remedied or prevented; and that to the extent feasible salvable blighted areas should be rehabilitated through voluntary action and the regulatory process.

It is further found and declared that the powers conferred by this chapter are for public uses and purposes for which public money may be expended and the power of eminent domain exercised; and that the necessity in the public interest for the provisions herein enacted is hereby declared as a matter of legislative determination. [1965 c 7 § 35.81.020. Prior: 1957 c 42 § 2.]

35.81.030 Encouragement of private enterprise. A municipality, to the greatest extent it determines to be feasible in carrying out the provisions of this chapter, shall afford maximum opportunity, consistent with the sound needs of the municipality as a whole, to the rehabilitation or redevelopment of the urban renewal area by private enterprise. A municipality shall give consideration to this objective in exercising its powers under this chapter, including the formulation of a workable program, the approval of urban renewal plans (consistent with the comprehensive plan or parts thereof for the municipality), the exercise of its zoning powers, the enforcement of other laws, codes and regulations relating to the use of land and the use and

occupancy of buildings and improvements, the disposition of any property acquired, and the provision of necessary public improvements. [1965 c 7 § 35.81.030. Prior: 1957 c 42 § 3.]

35.81.040 Formulation of workable program. A municipality for the purposes of this chapter may formulate a workable program for utilizing appropriate private and public resources to eliminate, and prevent the development or spread of, blighted areas, to encourage needed urban rehabilitation, to provide for the redevelopment of such areas, or to undertake such of the aforesaid activities, or other feasible municipal activities as may be suitably employed to achieve the objectives of such workable program. Such workable program may include, without limitation, provision for: The prevention of the spread of blight into areas of the municipality which are free from blight through diligent enforcement of housing, zoning, and occupancy controls and standards; the rehabilitation of blighted areas or portions thereof by replanning, removing congestion, providing parks, playgrounds and other public improvements, by encouraging voluntary rehabilitation and by compelling the repair and rehabilitation of deteriorated or deteriorating structures; and the clearance and redevelopment of blighted areas or portions thereof. [1965 c 7 § 35.81.040. Prior: 1957 c 42 § 4.]

35.81.050 Findings by local governing body required. No municipality shall exercise any of the powers hereafter conferred upon municipalities by this chapter until after its local governing body shall have adopted a resolution finding that: (1) One or more blighted areas exist in such municipality; and (2) the rehabilitation, redevelopment, or a combination thereof, of such area or areas is necessary in the interest of the public health, safety, morals, or welfare of the residents of such municipality. [1965 c 7 § 35.81.050. Prior: 1957 c 42 § 5.]

35.81.060 Comprehensive plan—Preparation—Hearing—Approval—Modification—Effect. (1) A municipality shall not approve an urban renewal project for an urban renewal area unless the local governing body has, by resolution, determined such area to be a blighted area and designated such area as appropriate for an urban renewal project. The local governing body shall not approve an urban renewal plan until a comprehensive plan or parts of such plan for an area which would include an urban renewal area for the municipality have been prepared as provided in chapter 35.63 RCW. For this purpose and other municipal purposes, authority is hereby vested in every municipality to prepare, to adopt, and to revise from time to time, a comprehensive plan or parts thereof for the physical development of the municipality as a whole (giving due regard to the environs and metropolitan surroundings), to establish and maintain a planning commission for such purpose and related municipal planning activities, and to make available and to appropriate necessary funds therefor. A municipality shall not acquire real property for an urban renewal project unless the local governing body has approved the urban renewal project plan in accordance with subsection (4) hereof.

(2) The municipality may itself prepare or cause to be prepared an urban renewal plan, or any person or agency, public or private, may submit such a plan to the municipality. Prior to its approval of an urban renewal project, the local governing body shall submit such plan to the planning commission of the municipality for review and recommendations as to its conformity with the comprehensive plan or parts thereof for the development of the municipality as a whole. The planning commission shall submit its written recommendations with respect to the proposed urban renewal plan to the local governing body within sixty days after receipt of it. Upon receipt of the recommendations of the planning commission, or if no recommendations are received within sixty days, then without such recommendations, the local governing body may proceed with the hearing on the proposed urban renewal project plan prescribed by subsection (3) hereof.

(3) The local governing body shall hold a public hearing on an urban renewal plan after public notice thereof. Such notice shall be given by publication once each week for two consecutive weeks not less than ten nor more than thirty days prior to the date of the hearing in a newspaper having a general circulation in the urban renewal area of the municipality and by mailing a notice of such hearing not less than ten days prior to the date of the hearing to the persons whose names appear on the county treasurer's tax roll as the owner or reputed owner of the property, at the address shown on the tax roll. The notice shall describe the time, date, place, and purpose of the hearing, shall generally identify the urban renewal area affected, and shall outline the general scope of the urban renewal plan under consideration.

(4) Following such hearing, the local governing body may approve an urban renewal project if it finds that (a) a workable and feasible plan exists for making available adequate housing for the persons who may be displaced by the project; (b) the urban renewal plan conforms to the comprehensive plan or parts thereof for the municipality as a whole; (c) the urban renewal plan will afford maximum opportunity, consistent with the sound needs of the municipality as a whole, for the rehabilitation or redevelopment of the urban renewal area by private enterprise; and (d) a sound and adequate financial program exists for the financing of said project; (e) the urban renewal project area is a blighted area as defined in RCW 35.81.010(2).

(5) An urban renewal project plan may be modified at any time by the local governing body: PROVIDED, That if modified after the lease or sale by the municipality of real property in the urban renewal project area, such modification shall be subject to such rights at law or in equity as a lessee or purchaser, or his successor or successors in interest may be entitled to assert.

(6) Upon the approval of an urban renewal project by a municipality, the provisions of the urban renewal plan with respect to the future use and building requirements applicable to the property covered by said plan shall be controlling with respect thereto. [1965 c 7 § 35.81.060. Prior: 1957 c 42 § 6.]

35.81.070 Powers of municipality. Every municipality shall have all the powers necessary or convenient to carry out and effectuate the purposes and provisions of this

chapter, including the following powers in addition to others herein granted:

(1) To undertake and carry out urban renewal projects within the municipality, to make and execute contracts and other instruments necessary or convenient to the exercise of its powers under this chapter, and to disseminate blight clearance and urban renewal information.

(2) To provide or to arrange or contract for the furnishing or repair by any person or agency, public or private, of services, privileges, works, streets, roads, public utilities or other facilities for, or in connection with, an urban renewal project; to install, construct, and reconstruct streets, utilities, parks, playgrounds, and other public improvements; and to agree to any conditions that it may deem reasonable and appropriate attached to federal financial assistance and imposed pursuant to federal law relating to the determination of prevailing salaries or wages or compliance with labor standards, in the undertaking or carrying out of an urban renewal project, and to include in any contract let in connection with such a project, provisions to fulfill such of said conditions as it may deem reasonable and appropriate.

(3) Within the municipality, to enter upon any building or property in any urban renewal area, in order to make surveys and appraisals, provided that such entries shall be made in such a manner as to cause the least possible inconvenience to the persons in possession, and to obtain an order for this purpose from a court of competent jurisdiction in the event entry is denied or resisted; to acquire by purchase, lease, option, gift, grant, bequest, devise, eminent domain, or otherwise, any real property and such personal property as may be necessary for the administration of the provisions herein contained, together with any improvements thereon; to hold, improve, clear, or prepare for redevelopment any such property; to dispose of any real property; to insure or provide for the insurance of any real or personal property or operations of the municipality against any risks or hazards, including the power to pay premiums on any such insurance: PROVIDED, That no statutory provision with respect to the acquisition, clearance, or disposition of property by public bodies shall restrict a municipality in the exercise of such functions with respect to an urban renewal project.

(4) To invest any urban renewal project funds held in reserves or sinking funds or any such funds which are not required for immediate disbursement, in property or securities in which mutual savings banks may legally invest funds subject to their control; to redeem such bonds as have been issued pursuant to RCW 35.81.100 at the redemption price established therein or to purchase such bonds at less than redemption price, all such bonds so redeemed or purchased to be canceled.

(5) To borrow money and to apply for, and accept, advances, loans, grants, contributions and any other form of financial assistance from the federal government, the state, county, or other public body, or from any sources, public or private, for the purposes of this chapter, and to enter into and carry out contracts in connection therewith. A municipality may include in any application or contract for financial assistance with the federal government for an urban renewal project such conditions imposed pursuant to federal laws as the municipality may deem reasonable and appropri-

ate and which are not inconsistent with the purposes of this chapter.

(6) Within the municipality, to make or have made all plans necessary to the carrying out of the purposes of this chapter and to contract with any person, public or private, in making and carrying out such plans and to adopt or approve, modify, and amend such plans. Such plans may include, without limitation: (a) A comprehensive plan or parts thereof for the locality as a whole, (b) urban renewal plans, (c) plans for carrying out a program of voluntary or compulsory repair and rehabilitation of buildings and improvements, (d) plans for the enforcement of state and local laws, codes, and regulations relating to the use of land and the use and occupancy of buildings and improvements and to the compulsory repair, rehabilitation, demolition, or removal of buildings and improvements, and (e) appraisals, title searches, surveys, studies, and other preliminary plans and work necessary to prepare for the undertaking of urban renewal projects. The municipality is authorized to develop, test, and report methods and techniques, and carry out demonstrations and other activities, for the prevention and the elimination of urban blight and to apply for, accept, and utilize grants of, funds from the federal government for such purposes.

(7) To prepare plans for the relocation of families displaced from an urban renewal area, and to coordinate public and private agencies in such relocation, including requesting such assistance for this purpose as is available from other private and governmental agencies, both for the municipality and other parties.

(8) To appropriate such funds and make such expenditures as may be necessary to carry out the purposes of this chapter, and in accordance with state law: (a) Levy taxes and assessments for such purposes; (b) acquire land by negotiation and/or eminent domain; (c) close, vacate, plan, or replan streets, roads, sidewalks, ways, or other places; (d) plan or replan, zone or rezone any part of the municipality; (e) adopt annual budgets for the operation of an urban renewal agency, department, or offices vested with urban renewal project powers under RCW 35.81.150; (f) enter into agreements with such agencies or departments (which agreements may extend over any period) respecting action to be taken by such municipality pursuant to any of the powers granted by this chapter.

(9) Within the municipality, to organize, coordinate, and direct the administration of the provisions of this chapter as they apply to such municipality in order that the objective of remedying blighted areas and preventing the causes thereof within such municipality may be most effectively promoted and achieved, and to establish such new office or offices of the municipality or to reorganize existing offices in order to carry out such purpose most effectively.

(10) To exercise all or any part or combination of powers herein granted. [1965 c 7 § 35.81.070. Prior: 1957 c 42 § 7.]

35.81.080 Eminent domain. A municipality shall have the right to acquire by condemnation, in accordance with the procedure provided for condemnation by such municipality for other purposes, any interest in real property, which it may deem necessary for an urban renewal project under this chapter after the adoption by the local governing

body of a resolution declaring that the acquisition of the real property described therein is necessary for such purpose. Condemnation for urban renewal of blighted areas is declared to be a public use, and property already devoted to any other public use or acquired by the owner or his predecessor in interest by eminent domain may be condemned for the purposes of this chapter.

The award of compensation for real property taken for such a project shall not be increased by reason of any increase in the value of the real property caused by the assembly, clearance, or reconstruction, or proposed assembly, clearance, or reconstruction in the project area. No allowance shall be made for the improvements begun on real property after notice to the owner of such property of the institution of proceedings to condemn such property. Evidence shall be admissible bearing upon the insanitary, unsafe, or substandard condition of the premises, or the unlawful use thereof. [1965 c 7 § 35.81.080. Prior: 1957 c 42 § 8.]

Eminent domain by cities: Chapter 8.12 RCW.

35.81.090 Disposal of real property in urban renewal area. (1) A municipality may sell, lease, or otherwise transfer real property or any interest therein acquired by it for an urban renewal project, in an urban renewal area for residential, recreational, commercial, industrial, or other uses or for public use, and may enter into contracts with respect thereto, or may retain such property or interest only for parks and recreation, education, public utilities, public transportation, public safety, health, highways, streets, and alleys, administrative buildings, or civic centers, in accordance with the urban renewal project plan, subject to such covenants, conditions, and restrictions, including covenants running with the land, as it may deem to be necessary or desirable to assist in preventing the development or spread of blighted areas or otherwise to carry out the purposes of this chapter. PROVIDED, That such sale, lease, other transfer, or retention, and any agreement relating thereto, may be made only after the approval of the urban renewal plan by the local governing body. The purchasers or lessees and their successors and assigns shall be obligated to devote such real property only to the uses specified in the urban renewal plan, and may be obligated to comply with such other requirements as the municipality may determine to be in the public interest, including the obligation to begin, within a reasonable time, any improvements on such real property required by the urban renewal plan. Such real property or interest shall be sold, leased, otherwise transferred, or retained at not less than its fair value for uses in accordance with the urban renewal plan. In determining the fair value of real property for uses in accordance with the urban renewal plan, a municipality shall take into account, and give consideration to, the uses provided in such plan; the restrictions upon, and the covenants, conditions, and obligations assumed by, the purchaser or lessee or by the municipality retaining the property; and the objectives of such plan for the prevention of the recurrence of blighted areas. The municipality in any instrument of conveyance to a private purchaser or lessee may provide that such purchaser or lessee shall be without power to sell, lease, or otherwise transfer the real property without the

prior written consent of the municipality until he has completed the construction of any and all improvements which he has obligated himself to construct thereon. Real property acquired by a municipality which, in accordance with the provisions of the urban renewal plan, is to be transferred, shall be transferred as rapidly as feasible, in the public interest, consistent with the carrying out of the provisions of the urban renewal plan. The inclusion in any such contract or conveyance to a purchaser or lessee of any such covenants, restrictions, or conditions (including the incorporation by reference therein of the provisions of an urban renewal plan or any part thereof) shall not prevent the recording of such contract or conveyance in the land records of the auditor or the county in which such city or town is located, in such manner as to afford actual or constructive notice thereof.

(2) A municipality may dispose of real property in an urban renewal area to private persons only under such reasonable competitive bidding procedures as it shall prescribe or as hereinafter provided in this subsection. A municipality may, by public notice by publication once each week for three consecutive weeks in a newspaper having a general circulation in the community, prior to the execution of any contract or deed to sell, lease, or otherwise transfer real property and prior to the delivery of any instrument of conveyance with respect thereto under the provisions of this section, invite bids from, and make available all pertinent information to, private redevelopers or any persons interested in undertaking to redevelop or rehabilitate an urban renewal area, or any part thereof. Such notice shall identify the area, or portion thereof, and shall state that such further information as is available may be obtained at such office as shall be designated in said notice. The municipality shall consider all redevelopment or rehabilitation bids and the financial and legal ability of the persons making such bids to carry them out. The municipality may accept such bids as it deems to be in the public interest and in furtherance of the purposes of this chapter. Thereafter, the municipality may execute, in accordance with the provisions of subsection (1), and deliver contracts, deeds, leases, and other instruments of transfer.

(3) A municipality may operate and maintain real property acquired in an urban renewal area for a period of three years pending the disposition of the property for redevelopment, without regard to the provisions of subsection (1) above, for such uses and purposes as may be deemed desirable even though not in conformity with the urban renewal plan: PROVIDED, That the municipality may, after a public hearing, extend the time for a period not to exceed three years. [1965 c 7 § 35.81.090. Prior: 1957 c 42 § 9.]

35.81.100 Bonds—Issuance—Form, terms, payment, etc. (1) A municipality shall have the power to issue bonds from time to time in its discretion to finance the undertaking of any urban renewal project under this chapter, including, without limiting the generality thereof, the payment of principal and interest upon any advances for surveys and plans for urban renewal projects, and shall also have power to issue refunding bonds for the payment or retirement of such bonds previously issued by it. Such bonds shall not pledge the general credit of the municipality and shall be

made payable, as to both principal and interest, solely from the income, proceeds, revenues, and funds of the municipality derived from, or held in connection with, its undertaking and carrying out of urban renewal projects under this chapter: PROVIDED, That payment of such bonds, both as to principal and interest, may be further secured by a pledge of any loan, grant, or contribution from the federal government or other source, in aid of any urban renewal projects of the municipality under this chapter.

(2) Bonds issued under this section shall not constitute an indebtedness within the meaning of any constitutional or statutory debt limitation or restriction, and shall not be subject to the provisions of any other law or charter relating to the authorization, issuance, or sale of bonds. Bonds issued under the provisions of this chapter are declared to be issued for an essential public and governmental purpose, and together with interest thereon and income therefrom, shall be exempted from all taxes.

(3) Bonds issued under this section shall be authorized by resolution or ordinance of the local governing body and may be issued in one or more series and shall bear such date or dates, be payable upon demand or mature at such time or times, bear interest at such rate or rates, be in such denomination or denominations, be in such form either coupon or registered as provided in RCW 39.46.030, carry such conversion or registration privileges, have such rank or priority, be executed in such manner, be payable in such medium of payment, at such place or places, and be subject to such terms of redemption (with or without premium), be secured in such manner, and have such other characteristics, as may be provided by such resolution or trust indenture or mortgage issued pursuant thereto.

(4) Such bonds may be sold at not less than ninety-eight percent of par at public or private sale, or may be exchanged for other bonds on the basis of par: PROVIDED, That such bonds may be sold to the federal government at private sale at not less than par and, in the event less than all of the authorized principal amount of such bonds is sold to the federal government, the balance may be sold at public or private sale at not less than ninety-eight percent of par at an interest cost to the municipality of not to exceed the interest cost to the municipality of the portion of the bonds sold to the federal government.

(5) The municipality may annually pay into a fund to be established for the benefit of such bonds any and all excess of the taxes received by it from the same property over and above the average of the annual taxes authorized without vote for a five-year period immediately preceding the acquisition of the property by the municipality for renewal purposes, such payment to continue until such time as all bonds payable from the fund are paid in full. Any other taxing unit in a municipality is authorized to allocate a like amount of such excess taxes to the municipality or municipalities in which it is situated.

(6) In case any of the public officials of the municipality whose signatures appear on any bonds or any coupons issued under this chapter shall cease to be such officials before the delivery of such bonds, such signatures shall, nevertheless, be valid and sufficient for all purposes, the same as if such officials had remained in office until such delivery. Any provision of any law to the contrary notwithstanding.

standing, any bonds, issued pursuant to this chapter shall be fully negotiable.

(7) In any suit, action, or proceeding involving the validity or enforceability of any bond issued under this chapter or the security therefor, any such bond reciting in substance that it has been issued by the municipality in connection with an urban renewal project, as herein defined, shall be conclusively deemed to have been issued for such purpose and such project shall be conclusively deemed to have been planned, located, and carried out in accordance with the provisions of this chapter.

(8) Notwithstanding subsections (1) through (7) of this section, such bonds may be issued and sold in accordance with chapter 39.46 RCW. [1983 c 167 § 64; 1970 ex.s. c 56 § 44; 1969 ex.s. c 232 § 21; 1965 c 7 § 35.81.100. Prior: 1957 c 42 § 10.]

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.

35.81.110 Bonds as legal investment, security. All banks, trust companies, bankers, savings banks and institutions, building and loan associations, savings and loan associations, investment companies, and other persons carrying on a banking or investment business, all insurance companies, insurance associations, and other persons carrying on an insurance business and all executors, administrators, curators, trustees, and other fiduciaries, may legally invest any sinking funds, moneys, or other funds belonging to them or within their control in any bonds or other obligations issued by a municipality pursuant to this chapter: PROVIDED, That such bonds and other obligations shall be secured by an agreement between the issuer and the federal government in which the issuer agrees to borrow from the federal government and the federal government agrees to lend to the issuer, prior to the maturity of such bonds or other obligations, moneys in an amount which (together with any other moneys irrevocably committed to the payment of interest on such bonds or other obligations) will suffice to pay the principal of such bonds or other obligations with interest to maturity thereon, which moneys under the terms of said agreement are required to be used for the purpose of paying the principal of, and the interest on, such bonds or other obligations at their maturity. Such bonds and other obligations shall be authorized security for all public deposits. It is the purpose of this section to authorize any persons, political subdivisions, and officers, public or private, to use any funds owned or controlled by them for the purchase of any such bonds or other obligations. Nothing contained in this section with regard to legal investments shall be construed as relieving any person of any duty of exercising reasonable care in selecting securities. [1965 c 7 § 35.81.110. Prior: 1957 c 42 § 11.]

35.81.115 General obligation bonds authorized. For the purposes of this chapter a municipality may (in addition to any authority to issue bonds pursuant to RCW 35.81.100) issue and sell its general obligation bonds. Any bonds issued by a municipality pursuant to this section shall be

issued in the manner and within the limitations prescribed by the laws of this state for the issuance and authorization of bonds by such municipality for public purposes generally. [1965 c 7 § 35.81.115. Prior: 1959 c 79 § 1.]

35.81.120 Property of municipality exempt from process and taxes. (1) All property of a municipality, including funds, owned or held by it for the purposes of this chapter, shall be exempt from levy and sale by virtue of an execution, and no execution or other judicial process shall issue against the same nor shall judgment against a municipality be a charge or lien upon such property: PROVIDED, That the provisions of this section shall not apply to, or limit the right of, obligees to pursue any remedies for the enforcement of any pledge or lien given pursuant to this chapter by a municipality on its rents, fees, grants, or revenues from urban renewal projects.

(2) The property of a municipality, acquired or held for the purposes of this chapter, is declared to be public property used for essential public and governmental purposes and such property shall be exempt from all taxes of the municipality, the county, the state, or any political subdivision thereof: PROVIDED, That such tax exemption shall terminate when the municipality sells, leases, or otherwise disposes of such property in an urban renewal area to a purchaser or lessee which is not a public body or other organization normally entitled to tax exemption with respect to such property. [1965 c 7 § 35.81.120. Prior: 1957 c 42 § 12.]

35.81.130 Aid to public bodies. (1) For the purpose of aiding in the planning, undertaking, or carrying out of an urban renewal project located within the area in which it is authorized to act, any public body authorized by law or by this chapter, may, upon such terms, with or without consideration, as it may determine: (a) Dedicate, sell, convey, or lease any of its interest in any property, or grant easements, licenses, or other rights or privileges therein to a municipality; (b) incur the entire expense of any public improvements made by such public body, in exercising the powers granted in this section; (c) do any and all things necessary to aid or cooperate in the planning or carrying out of an urban renewal plan; (d) lend, grant, or contribute funds to a municipality; (e) enter into agreements (which may extend over any period, notwithstanding any provision or rule of law to the contrary) with a municipality or other public body respecting action to be taken pursuant to any of the powers granted by this chapter, including the furnishing of funds or other assistance in connection with an urban renewal project, and (f) cause public building and public facilities, including parks, playgrounds, recreational, community, educational, water, sewer, or drainage facilities, or any other works which it is otherwise empowered to undertake to be furnished; furnish, dedicate, close, vacate, pave, install, grade, regrade, plan, or replan streets, roads, sidewalks, ways, or other places; plan or replan, zone or rezone any part of the urban renewal area; and provide such administrative and other services as may be deemed requisite to the efficient exercise of the powers herein granted.

(2) Any sale, conveyance, lease, or agreement provided for in this section shall be made by a public body with

appraisal, public notice, advertisement, or public bidding in accordance with the provisions of RCW 35.81.090(2). [1965 c 7 § 35.81.130. Prior: 1957 c 42 § 13.]

Demonstration Cities and Metropolitan Development Act—Authority to contract with federal government: RCW 35.21.660.

35.81.140 Conveyance to purchaser, etc., presumed to be in compliance with chapter. Any instrument executed by a municipality and purporting to convey any right, title, or interest in any property under this chapter shall be conclusively presumed to have been executed in compliance with the provisions of this chapter insofar as title or other interest of any bona fide purchasers, lessees, or transferees of such property is concerned. [1965 c 7 § 35.81.140. Prior: 1957 c 42 § 14.]

35.81.150 Exercise of urban renewal project powers. (1) A municipality may itself exercise its urban renewal project powers (as herein defined) or may, if the local governing body by resolution determines such action to be in the public interest, elect to have such powers exercised by the urban renewal agency (created by RCW 35.81.160) or a department or other officers of the municipality or by any existing public body corporate, as they are authorized to exercise under this chapter.

(2) In the event the local governing body makes such determination, such body may authorize the urban renewal agency or department or other officers of the municipality to exercise any of the following urban renewal project powers:

(a) To formulate and coordinate a workable program as specified in RCW 35.81.040.

(b) To prepare urban renewal plans.

(c) To prepare recommended modifications to an urban renewal project plan.

(d) To undertake and carry out urban renewal projects as required by the local governing body.

(e) To make and execute contracts as specified in RCW 35.81.070, with the exception of contracts for the purchase or sale of real or personal property.

(f) To disseminate blight clearance and urban renewal information.

(g) To exercise the powers prescribed by RCW 35.81.070(2), except the power to agree to conditions for federal financial assistance and imposed pursuant to federal law relating to salaries and wages, shall be reserved to the local governing body.

(h) To enter any building or property, in any urban renewal area, in order to make surveys and appraisals in the manner specified in RCW 35.81.070(3).

(i) To improve, clear, or prepare for redevelopment any real or personal property in an urban renewal area.

(j) To insure real or personal property as provided in RCW 35.81.070(3).

(k) To effectuate the plans provided for in RCW 35.81.070(6).

(l) To prepare plans for the relocation of families displaced from an urban renewal area and to coordinate public and private agencies in such relocation.

(m) To prepare plans for carrying out a program of voluntary or compulsory repair and rehabilitation of buildings and improvements.

(n) To conduct appraisals, title searches, surveys, studies, and other preliminary plans and work necessary to prepare for the undertaking of urban renewal projects.

(o) To negotiate for the acquisition of land.

(p) To study the closing, vacating, planning, or replanning of streets, roads, sidewalks, ways, or other places and to make recommendations with respect thereto.

(q) To organize, coordinate, and direct the administration of the provisions of this chapter.

(r) To perform such duties as the local governing body may direct so as to make the necessary arrangements for the exercise of the powers and the performance of the duties and responsibilities entrusted to the local governing body.

Any powers granted in this chapter that are not included in RCW 35.81.150(2) as powers of the urban renewal agency or a department or other officers of a municipality in lieu thereof, may only be exercised by the local governing body or other officers, boards, and commissions as provided under existing law. [1965 c 7 § 35.81.150. Prior: 1957 c 42 § 15.]

35.81.160 Exercise of urban renewal project powers—Assignment of powers—Urban renewal agency.

(1) When a municipality has made the finding prescribed in RCW 35.81.050 and has elected to have the urban renewal project powers, as specified in RCW 35.81.150, exercised, such urban renewal project powers may be assigned to a department or other officers of the municipality or to any existing public body corporate, or the legislative body of a city may create an urban renewal agency in such municipality to be known as a public body corporate to which such powers may be assigned.

(2) If the urban renewal agency is authorized to transact business and exercise powers hereunder, the mayor, by and with the advice and consent of the local governing body, shall appoint a board of commissioners of the urban renewal agency which shall consist of five commissioners. The initial membership shall consist of one commissioner appointed for one year, one for two years, one for three years, and two for four years; and each appointment thereafter shall be for four years.

(3) A commissioner shall receive no compensation for his services but shall be entitled to the necessary expenses, including traveling expenses, incurred in the discharge of his duties. Each commissioner shall hold office until his successor has been appointed and has qualified. A certificate of the appointment or reappointment of any commissioner shall be filed with the clerk of the municipality and such certificate shall be conclusive evidence of the due and proper appointment of such commissioner.

The powers and responsibilities of an urban renewal agency shall be exercised by the commissioners thereof. A majority of the commissioners shall constitute a quorum for the purpose of conducting business and exercising the powers and responsibilities of the agency and for all other purposes. Action may be taken by the agency upon a vote of a majority of the commissioners present, unless in any case the bylaws shall require a larger number. Any persons may be appointed as commissioners if they reside within the municipality.

The urban renewal agency or department or officers exercising urban renewal project powers shall be staffed with the necessary technical experts and such other agents and employees, permanent and temporary, as it may require. An agency authorized to transact business and exercise powers under this chapter shall file, with the local governing body, on or before March 31st of each year, a report of its activities for the preceding calendar year, which report shall include a complete financial statement setting forth its assets, liabilities, income, and operating expense as of the end of such calendar year. At the time of filing the report, the agency shall publish in a newspaper of general circulation in the community a notice to the effect that such report has been filed with the municipality and that the report is available for inspection during business hours in the office of the city clerk and in the office of the agency.

(4) For inefficiency, neglect of duty, or misconduct in office, a commissioner may be removed. [1965 c 7 § 35.81.160. Prior: 1957 c 42 § 16.]

35.81.170 Discrimination prohibited. For all of the purposes of this chapter, no person shall, because of race, creed, color, or national origin, be subjected to any discrimination. [1965 c 7 § 35.81.170. Prior: 1957 c 42 § 17.]

Discrimination—Human rights commission: Chapter 49.60 RCW.

35.81.180 Restrictions against public officials or employees acquiring or owning an interest in project, contract, etc. No public official, department or division head of a municipality or urban renewal agency or department or officers which have been vested by a municipality with urban renewal project powers and responsibilities under RCW 35.81.150, shall voluntarily acquire any interest, direct or indirect, in any urban renewal project, or in any property included or planned to be included in any urban renewal project of such municipality, or in any contract or proposed contract in connection with such urban renewal project. Where such acquisition is not voluntary, the interest acquired shall be immediately disclosed in writing to the local governing body and such disclosure shall be entered upon the minutes of the governing body. If any such official, department or division head owns or controls, or owned or controlled within two years prior to the date of hearing on the urban renewal project, any interest, direct or indirect, in any property which he knows is included in an urban renewal project, he shall immediately disclose this fact in writing to the local governing body, and such disclosure shall be entered upon the minutes of the governing body, and any such official, department or division head shall not participate in any action on that particular project by the municipality or urban renewal agency, department, or officers which have been vested with urban renewal project powers by the municipality pursuant to the provisions of RCW 35.81.150. A majority of the commissioners of an urban renewal agency exercising powers pursuant to this chapter shall not hold any other public office under the municipality other than their commissionership or office with respect to such urban renewal agency, department, or officers. Any violation of the provisions of this section shall constitute misconduct in office. [1965 c 7 § 35.81.180. Prior: 1957 c 42 § 18.]

35.81.910 Short title. This chapter shall be known and may be cited as the "Urban Renewal Law." [1965 c 7 § 35.81.910. Prior: 1957 c 42 § 20.]

Chapter 35.82

HOUSING AUTHORITIES LAW

Sections

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- 35.82.900 Short title.
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Eminent domain: Title 8 RCW.

Loans and grants for low-income housing: RCW 35.21.685 and 36.32.415.

Planning commissions: Chapter 35.63 RCW.

35.82.010 Finding and declaration of necessity. It is hereby declared: (1) That there exist in the state insanitary or unsafe dwelling accommodations and that persons of low income are forced to reside in such insanitary or unsafe accommodations; that within the state there is a shortage of safe or sanitary dwelling accommodations available at rents which persons of low income can afford and that such persons are forced to occupy overcrowded and congested dwelling accommodations; that the aforesaid conditions cause an increase in and spread of disease and crime and constitute a menace to the health, safety, morals and welfare of the residents of the state and impair economic values; that these conditions necessitate excessive and disproportionate expenditures of public funds for crime prevention and punishment, public health and safety, fire and accident protection, and other public services and facilities; (2) that these areas in the state cannot be cleared, nor can the shortage of safe and sanitary dwellings for persons of low

income be relieved, through the operation of private enterprise, and that the construction of housing projects for persons of low income (as herein defined) would therefore not be competitive with private enterprise; (3) that the clearance, replanning and reconstruction of the areas in which insanitary or unsafe housing conditions exist and the providing of safe and sanitary dwelling accommodations for persons of low income are public uses and purposes for which public money may be spent and private property acquired and are governmental functions of state concern; (4) that it is in the public interest that work on projects for such purposes be commenced as soon as possible in order to relieve unemployment which now (1939) constitutes an emergency; and the necessity in the public interest for the provisions hereinafter enacted, is hereby declared as a matter of legislative determination. [1965 c 7 § 35.82.010. Prior: 1939 c 23 § 2; RRS § 6889-2. Formerly RCW 74.24.010.]

35.82.020 Definitions. The following terms, wherever used or referred to in this chapter, shall have the following respective meanings, unless a different meaning clearly appears from the context:

(1) "Authority" or "housing authority" shall mean any of the public corporations created by RCW 35.82.030.

(2) "City" shall mean any city, town, or code city. "County" shall mean any county in the state. "The city" shall mean the particular city for which a particular housing authority is created. "The county" shall mean the particular county for which a particular housing authority is created.

(3) "Governing body" shall mean, in the case of a city, the city council or the commission and in the case of a county, the county legislative authority.

(4) "Mayor" shall mean the mayor of the city or the officer thereof charged with the duties customarily imposed on the mayor or executive head of the city.

(5) "Clerk" shall mean the clerk of the city or the clerk of the county legislative authority, as the case may be, or the officer charged with the duties customarily imposed on such clerk.

(6) "Area of operation": (a) In the case of a housing authority of a city, shall include such city and the area within five miles from the territorial boundaries thereof: PROVIDED, That the area of operation of a housing authority of any city shall not include any area which lies within the territorial boundaries of some other city, as herein defined; (b) in the case of a housing authority of a county, shall include all of the county except that portion which lies within the territorial boundaries of any city as herein defined.

(7) "Federal government" shall include the United States of America, the United States housing authority or any other agency or instrumentality, corporate or otherwise, of the United States of America.

(8) "Slum" shall mean any area where dwellings predominate which, by reason of dilapidation, overcrowding, lack of ventilation, light or sanitary facilities, or any combination of these factors, are detrimental to safety, health and morals.

(9) "Housing project" shall mean any work or undertaking: (a) To demolish, clear or remove buildings from any slum area; such work or undertaking may embrace the adaptation of such area to public purposes, including parks

or other recreational or community purposes; or (b) to provide decent, safe and sanitary urban or rural dwellings, apartments, mobile home parks, or other living accommodations for persons of low income; such work or undertaking may include the rehabilitation of dwellings owned by persons of low income, and also may include buildings, land, equipment, facilities and other real or personal property for necessary, convenient or desirable appurtenances, streets, sewers, water service, parks, site preparation, gardening, administrative, community, health, recreational, welfare or other purposes; or (c) without limitation by implication, to provide decent, safe, and sanitary urban and rural dwellings, apartments, mobile home parks, or other living accommodations for senior citizens; such work or undertaking may include buildings, land, equipment, facilities, and other real or personal property for necessary, convenient, or desirable appurtenances, streets, sewers, water service, parks, site preparation, gardening, administrative, community, health, recreational, welfare, or other purposes; or (d) to accomplish a combination of the foregoing. The term "housing project" also may be applied to the planning of the buildings and improvements, the acquisition of property, the demolition of existing structures, the construction, reconstruction, alteration and repair of the improvements and all other work in connection therewith.

(10) "Persons of low income" shall mean persons or families who lack the amount of income which is necessary (as determined by the authority undertaking the housing project) to enable them, without financial assistance, to live in decent, safe and sanitary dwellings, without overcrowding.

(11) "Bonds" shall mean any bonds, notes, interim certificates, debentures, or other obligations issued by the authority pursuant to this chapter.

(12) "Real property" shall include all lands, including improvements and fixtures thereon, and property of any nature appurtenant thereto, or used in connection therewith, and every estate, interest and right, legal or equitable, therein, including terms for years and liens by way of judgment, mortgage or otherwise and the indebtedness secured by such liens.

(13) "Obligee of the authority" or "obligee" shall include any bondholder, trustee or trustees for any bondholders, or lessor demising to the authority property used in connection with a housing project, or any assignee or assignees of such lessor's interest or any part thereof, and the federal government when it is a party to any contract with the authority.

(14) "Mortgage loan" shall mean an interest bearing obligation secured by a mortgage.

(15) "Mortgage" shall mean a mortgage deed, deed of trust or other instrument securing a mortgage loan and constituting a lien on real property 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 for repayment of the mortgage loan secured by the mortgage, improved or to be improved by a housing project.

(16) "Senior citizen" means a person age sixty-two or older who is determined by the authority to be poor or infirm but who is otherwise in some manner able to provide the authority with revenue which (together with all other available moneys, revenues, income, and receipts of the authority, from whatever sources derived) will be sufficient: (a) To pay, as the same become due, the principal and

interest on bonds of the authority; (b) to meet the cost of, and to provide for, maintaining and operating projects (including the cost of insurance) and administrative expenses of the authority; and (c) to create (by not less than the six years immediately succeeding the issuance of any bonds) a reserve sufficient to meet the principal and interest payments which will be due on the bonds in any one year thereafter and to maintain such reserve.

(17) "Commercial space" shall mean space which, because of its proximity to public streets, sidewalks, or other thoroughfares, is well suited for commercial or office use. Commercial space includes but is not limited to office as well as retail space. [1989 c 363 § 1; 1983 c 225 § 1; 1979 ex.s. c 187 § 1; 1977 ex.s. c 274 § 1; 1965 c 7 § 35.82.020. Prior: 1939 c 23 § 3; RRS § 6889-3. Formerly RCW 74.24.020.]

Severability—1983 c 225: "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 225 § 4.]

Severability—1979 ex.s. 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." [1979 ex.s. c 187 § 4.]

35.82.030 Creation of housing authorities. In each city (as herein defined) and in each county of the state there is hereby created a public body corporate and politic to be known as the "Housing Authority" of the city or county: PROVIDED, HOWEVER, That such authority shall not transact any business or exercise its powers hereunder until or unless the governing body of the city or the county, as the case may be, by proper resolution shall declare at any time hereafter that there is need for an authority to function in such city or county. The determination as to whether or not there is such need for an authority to function (1) may be made by the governing body on its own motion or (2) shall be made by the governing body upon the filing of a petition signed by twenty-five residents of the city or county, as the case may be, asserting that there is need for an authority to function in such city or county and requesting that the governing body so declare.

The governing body shall adopt a resolution declaring that there is need for a housing authority in the city or county, as the case may be, if it shall find (1) that insanitary or unsafe inhabited dwelling accommodations exist in such city or county; (2) that there is a shortage of safe or sanitary dwelling accommodations in such city or county available to persons of low income at rentals they can afford; or (3) that there is a shortage of safe or sanitary dwellings, apartments, mobile home parks, or other living accommodations available for senior citizens. In determining whether dwelling accommodations are unsafe or insanitary said governing body may take into consideration the degree of overcrowding, the percentage of land coverage, the light, air, space and access available to the inhabitants of such dwelling accommodations, the size and arrangement of the rooms, the sanitary facilities, and the extent to which conditions exist in such buildings which endanger life or property by fire or other causes.

In any suit, action or proceeding involving the validity or enforcement of or relating to any contract of the authority,

the authority shall be conclusively deemed to have become established and authorized to transact business and exercise its powers hereunder upon proof of the adoption of a resolution by the governing body declaring the need for the authority. Such resolution or resolutions shall be deemed sufficient if it declares that there is such need for an authority and finds in substantially the foregoing terms (no further detail being necessary) that either or both of the above enumerated conditions exist in the city or county, as the case may be. A copy of such resolution duly certified by the clerk shall be admissible in evidence in any suit, action or proceeding. [1979 ex.s. c 187 § 2; 1965 c 7 § 35.82.030. Prior: 1939 c 23 § 4; RRS § 6889-4. Formerly RCW 74.24.030.]

Severability—1979 ex.s. c 187: See note following RCW 35.82.020.

35.82.040 Appointment, qualifications and tenure of commissioners. When the governing body of a city adopts a resolution as aforesaid, it shall promptly notify the mayor of such adoption. Upon receiving such notice, the mayor shall appoint five persons as commissioners of the authority created for said city. When the governing body of a county adopts a resolution as aforesaid, said body shall appoint five persons as commissioners of the authority created for said county. The commissioners who are first appointed shall be designated to serve for terms of one, two, three, four and five years, respectively, from the date of their appointment, but thereafter commissioners shall be appointed as aforesaid for a term of office of five years except that all vacancies shall be filled for the unexpired term. No commissioner of an authority may be an officer or employee of the city or county for which the authority is created. A commissioner shall hold office until his successor has been appointed and has qualified, unless sooner removed according to this chapter. A certificate of the appointment or reappointment of any commissioner shall be filed with the clerk and such certificate shall be conclusive evidence of the due and proper appointment of such commissioner. A commissioner shall receive no compensation for his services for the authority, in any capacity, but he shall be entitled to the necessary expenses, including traveling expenses, incurred in the discharge of his duties.

The powers of each authority shall be vested in the commissioners thereof in office from time to time. Three commissioners shall constitute a quorum of the authority for the purpose of conducting its business and exercising its powers and for all other purposes. Action may be taken by the authority upon a vote of a majority of the commissioners present, unless in any case the bylaws of the authority shall require a larger number. The mayor (or in the case of an authority for a county, the governing body of the county) shall designate which of the commissioners appointed shall be the first chairman and he shall serve in the capacity of chairman until the expiration of his term of office as commissioner. When the office of the chairman of the authority thereafter becomes vacant, the authority shall select a chairman from among its commissioners. An authority shall select from among its commissioners a vice chairman, and it may employ a secretary (who shall be executive director), technical experts and such other officers, agents and employees, permanent and temporary, as it may require,

and shall determine their qualifications, duties and compensation. For such legal services as it may require, an authority may call upon the chief law officer of the city or the county or may employ its own counsel and legal staff. An authority may delegate to one or more of its agents or employees such powers or duties as it may deem proper. [1965 c 7 § 35.82.040. Prior: 1939 c 23 § 5; RRS § 6889-5. Formerly RCW 74.24.040.]

35.82.050 Interested commissioners or employees.

No commissioner or employee of an authority shall acquire any interest direct or indirect in any housing project or in any property included or planned to be included in any project, nor shall he have any interest direct or indirect in any contract or proposed contract for materials or services to be furnished or used in connection with any housing project. If any commissioner or employee of an authority owns or controls an interest direct or indirect in any property included or planned to be included in any housing project, he immediately shall disclose the same in writing to the authority and such disclosure shall be entered upon the minutes of the authority. Failure so to disclose such interest shall constitute misconduct in office. Upon such disclosure such commissioner or employee shall not participate in any action by the authority affecting such property. [1965 c 7 § 35.82.050. Prior: 1939 c 23 § 6; RRS § 6889-6. Formerly RCW 74.24.050.]

35.82.060 Removal of commissioners. For inefficiency or neglect of duty or misconduct in office, a commissioner of an authority may be removed by the mayor (or in the case of an authority for a county, by the governing body of said county), but a commissioner shall be removed only after he shall have been given a copy of the charges at least ten days prior to the hearing thereon and had an opportunity to be heard in person or by counsel. In the event of the removal of any commissioner, a record of the proceedings, together with the charges and findings thereon, shall be filed in the office of the clerk. [1965 c 7 § 35.82.060. Prior: 1939 c 23 § 7; RRS § 6889-7. Formerly RCW 74.24.060.]

35.82.070 Powers of authority. An authority shall constitute a public body corporate and politic, exercising public and essential governmental functions, and having all the powers necessary or convenient to carry out and effectuate the purposes and provisions of this chapter, including the following powers in addition to others herein granted:

(1) To sue and be sued; to have a seal and to alter the same at pleasure; to have perpetual succession; to make and execute contracts and other instruments, including but not limited to partnership agreements and joint venture agreements, necessary or convenient to the exercise of the powers of the authority; to participate in the organization or the operation of a nonprofit corporation which has as one of its purposes to provide or assist in the provision of housing for persons of low income; and to make and from time to time amend and repeal bylaws, rules and regulations, not inconsistent with this chapter, to carry into effect the powers and purposes of the authority.

(2) Within its area of operation: To prepare, carry out, acquire, lease and operate housing projects; to provide for

the construction, reconstruction, improvement, alteration or repair of any housing project or any part thereof; to agree to rent or sell dwellings forming part of the projects to or for persons of low income. Where an agreement or option is made to sell a dwelling to a person of low income, the authority may convey the dwelling to the person upon fulfillment of the agreement irrespective of whether the person is at the time of the conveyance a person of low income. Leases, options, agreements, or conveyances may include such covenants as the authority deems appropriate to assure the achievement of the objectives of this chapter.

(3) To acquire, lease, rent, sell, or otherwise dispose of any commercial space located in buildings or structures containing a housing project or projects.

(4) To arrange or contract for the furnishing by any person or agency, public or private, of services, privileges, works, or facilities for, or in connection with, a housing project or the occupants thereof; and (notwithstanding anything to the contrary contained in this chapter or in any other provision of law) to include in any contract let in connection with a project, stipulations requiring that the contractor and any subcontractors comply with requirements as to minimum wages and maximum hours of labor, and comply with any conditions which the federal government may have attached to its financial aid of the project.

(5) To lease or rent any dwellings, houses, accommodations, lands, buildings, structures or facilities embraced in any housing project and (subject to the limitations contained in this chapter) to establish and revise the rents or charges therefor; to own or manage buildings containing a housing project or projects as well as commercial space or other dwelling units that do not constitute a housing project as that term is defined in this chapter: PROVIDED, That notwithstanding the provisions under subsection (1) of this section, dwelling units made available to persons of low income, together with functionally related and subordinate facilities, shall occupy at least thirty percent of the interior space of any individual building other than a detached single-family or duplex residential building or mobile or manufactured home and at least fifty percent of the interior space in the total development owned by the authority or at least fifty percent of the total number of units in the development owned by the authority, whichever produces the greater number of units for persons of low income, and for mobile home parks, the mobile home lots made available to persons of low income shall be at least fifty percent of the total number of mobile home lots in the park owned by the authority; to own, hold, and improve real or personal property; to purchase, lease, obtain options upon, acquire by gift, grant, bequest, devise, or otherwise including financial assistance and other aid from the state or any public body, person or corporation, any real or personal property or any interest therein; to acquire by the exercise of the power of eminent domain any real property; to sell, lease, exchange, transfer, assign, pledge, or dispose of any real or personal property or any interest therein; to sell, lease, exchange, transfer, or dispose of any real or personal property or interest therein at less than fair market value to a governmental entity for any purpose when such action assists the housing authority in carrying out its powers and purposes under this chapter, to a low-income person or family for the purpose of providing housing for that person or family, or to

a nonprofit corporation provided the nonprofit corporation agrees to sell the property to a low-income person or family or to use the property for the provision of housing for persons of low income for at least twenty years; to insure or provide for the insurance of any real or personal property or operations of the authority against any risks or hazards; to procure or agree to the procurement of insurance or guarantees from the federal government of the payment of any bonds or parts thereof issued by an authority, including the power to pay premiums on any such insurance.

(6) To invest any funds held in reserves or sinking funds, or any funds not required for immediate disbursement, in property or securities in which savings banks may legally invest funds subject to their control; to purchase its bonds at a price not more than the principal amount thereof and accrued interest, all bonds so purchased to be canceled.

(7) Within its area of operation: To investigate into living, dwelling and housing conditions and into the means and methods of improving such conditions; to determine where slum areas exist or where there is a shortage of decent, safe and sanitary dwelling accommodations for persons of low income; to make studies and recommendations relating to the problem of clearing, replanning and reconstructing of slum areas, and the problem of providing dwelling accommodations for persons of low income, and to cooperate with the city, the county, the state or any political subdivision thereof in action taken in connection with such problems; and to engage in research, studies and experimentation on the subject of housing.

(8) Acting through one or more commissioners or other person or persons designated by the authority: To conduct examinations and investigations and to hear testimony and take proof under oath at public or private hearings on any matter material for its information; to administer oaths, issue subpoenas requiring the attendance of witnesses or the production of books and papers and to issue commissions for the examination of witnesses who are outside of the state or unable to attend before the authority, or excused from attendance; to make available to appropriate agencies (including those charged with the duty of abating or requiring the correction of nuisances or like conditions, or of demolishing unsafe or insanitary structures within its area of operation) its findings and recommendations with regard to any building or property where conditions exist which are dangerous to the public health, morals, safety or welfare.

(9) To initiate eviction proceedings against any tenant as provided by law. Activity occurring in any housing authority unit that constitutes a violation of chapter 69.41, 69.50 or 69.52 RCW shall constitute a nuisance for the purpose of RCW 59.12.030(5).

(10) To exercise all or any part or combination of powers herein granted.

No provisions of law with respect to the acquisition, operation or disposition of property by other public bodies shall be applicable to an authority unless the legislature shall specifically so state.

(11) To agree (notwithstanding the limitation contained in RCW 35.82.210) to make such payments in lieu of taxes as the authority finds consistent with the achievement of the purposes of this chapter.

(12) To exercise the powers granted in this chapter within the boundaries of any city, town, or county not

included in the area in which such housing authority is originally authorized to function: PROVIDED, HOWEVER, The governing or legislative body of such city, town, or county, as the case may be, adopts a resolution declaring that there is a need for the authority to function in such territory.

(13) To administer contracts for assistance payments to persons of low income in accordance with section 8 of the United States Housing Act of 1937, as amended by Title II, section 201 of the Housing and Community Development Act of 1974, P.L. 93-383.

(14) To sell at public or private sale, with or without public bidding, for fair market value, any mortgage or other obligation held by the authority.

(15) To the extent permitted under its contract with the holders of bonds, notes, and other obligations of the authority, to consent to any modification with respect to rate of interest, time and payment of any installment of principal or interest security, or any other term of any contract, mortgage, mortgage loan, mortgage loan commitment, contract or agreement of any kind to which the authority is a party.

(16) To make, purchase, participate in, invest in, take assignments of, or otherwise acquire loans to persons of low income to enable them to acquire, construct, reconstruct, rehabilitate, improve, lease, or refinance their dwellings, and to take such security therefor as is deemed necessary and prudent by the authority.

(17) To make, purchase, participate in, invest in, take assignments of, or otherwise acquire loans for the acquisition, construction, reconstruction, rehabilitation, improvement, leasing, or refinancing of land, buildings, or developments for housing for persons of low income. For purposes of this subsection, development shall include either land or buildings or both.

(a) Any development financed under this subsection shall be subject to an agreement that for at least twenty years the dwelling units made available to persons of low income together with functionally related and subordinate facilities shall occupy at least thirty percent of the interior space of any individual building other than a detached single-family or duplex residential building or mobile or manufactured home and shall occupy at least fifty percent of the interior space in the total development or at least fifty percent of the total number of units in the development, whichever produces the greater number of units for persons of low income. For mobile home parks, the mobile home lots made available to persons of low income shall be at least fifty percent of the total number of mobile home lots in the park. During the term of the agreement, the owner shall use its best efforts in good faith to maintain the dwelling units or mobile home lots required to be made available to persons of low income at rents affordable to persons of low income.

(b) In addition, if the development is owned by a for-profit entity, the dwelling units or mobile home lots required to be made available to persons of low income shall be rented to persons whose incomes do not exceed fifty percent of the area median income, adjusted for household size, and shall have unit or lot rents that do not exceed fifteen percent of area median income, adjusted for household size, unless rent subsidies are provided to make them affordable to persons of low income.

For purposes of this subsection (17)(b), if the development is owned directly or through a partnership by a

governmental entity or a nonprofit organization, which nonprofit organization is itself not controlled by a for-profit entity or affiliated with any for-profit entity that a nonprofit organization itself does not control, it shall not be treated as being owned by a for-profit entity when the governmental entity or nonprofit organization exercises legal control of the ownership entity and in addition, (i) the dwelling units or mobile home lots required to be made available to persons of low income are rented to persons whose incomes do not exceed sixty percent of the area median income, adjusted for household size, and (ii) the development is subject to an agreement that transfers ownership to the governmental entity or nonprofit organization or extends an irrevocable right of first refusal to purchase the development under a formula for setting the acquisition price that is specified in the agreement.

(c) Commercial space in any building financed under this subsection that exceeds four stories in height shall not constitute more than twenty percent of the interior area of the building. Before financing any development under this subsection the authority shall make a written finding that financing is important for project feasibility or necessary to enable the authority to carry out its powers and purposes under this chapter.

(18) To contract with a public authority or corporation, created by a county, city, or town under RCW 35.21.730 through 35.21.755, to act as the developer for new housing projects or improvement of existing housing projects. [1991 c 167 § 1; 1989 c 363 § 2; 1985 c 386 § 1; 1983 c 225 § 2; 1977 ex.s. c 274 § 2; 1965 c 7 § 35.82.070. Prior: 1945 c 43 § 1; 1939 c 23 § 8; Rem. Supp. 1945 § 6889-8. Formerly RCW 74.24.070.]

Severability—1983 c 225: See note following RCW 35.82.020.

35.82.075 Small works roster. (1) In addition to any other powers authorized in RCW 35.82.070, an authority may establish a small works roster consisting of all qualified contractors who have requested to be included on the roster and are, where required by law, properly licensed or registered to perform such work in the state of Washington.

(2) The small works roster may make distinctions between contractors based on the nature of the work the contractor is qualified to perform. At least once every year, the authority shall advertise in a newspaper of general circulation, in the authority's area of operation, the existence of the small works roster and shall add to the roster those contractors who request to be included on the roster.

(3) The commissioners of the authority shall establish uniform procedures to prequalify contractors for inclusion on the small works roster and a procedure for securing telephone or written quotations from contractors on the small works roster to assure establishment of a competitive price and for awarding contracts to the lowest responsible bidder.

(4) Construction, repair, or alteration projects estimated to cost less than forty thousand dollars are exempt from the requirement that contracts be awarded after advertisement and competitive bid as defined in RCW 39.04.010. In lieu of advertisement and competitive bid, the authority shall solicit at least five quotations, confirmed in writing, from contractors in a manner that will equitably distribute opportunities among contractors on the small works roster for the

category of job type involved. Whenever possible, the authority shall invite at least one proposal from a minority or woman contractor, or from a contractor that employs, or commits to employ, residents of housing owned or managed by the authority, who shall otherwise qualify under this section. Such solicitations shall include an estimate of the scope and nature of the work to be performed, and materials and equipment to be furnished.

(5) Immediately after an award is made, the bid quotations obtained shall be recorded, open to public inspection, and available by telephone request.

(6) The breaking-down of any public work or improvement into units, or accomplishing any public work or improvement by phases, for the purpose of avoiding the minimum dollar amount for bidding, is contrary to public policy and is prohibited.

(7) No authority under chapter 42.17 RCW shall be required to make financial information required to be provided by the prequalification procedure for inclusion on the small works roster available for public inspection or copying. [1989 c 363 § 6.]

35.82.080 Operation not for profit. It is hereby declared to be the policy of this state that each housing authority shall manage and operate its housing projects in an efficient manner so as to enable it to fix the rentals for low-income dwelling accommodations at the lowest possible rates consistent with its providing decent, safe and sanitary dwelling accommodations, and that no housing authority shall construct or operate any such project for profit, or as a source of revenue to the city or the county. To this end, an authority shall fix the rentals for rental units for persons of low income in projects owned or leased by the authority at no higher rates than it shall find to be necessary in order to produce revenues which (together with all other available moneys, revenues, income and receipts of the authority from whatever sources derived) will be sufficient (1) to pay, as the same become due, the principal and interest on the bonds or other obligations of the authority issued or incurred to finance the projects; (2) to meet the cost of, and to provide for, maintaining and operating the projects (including the cost of any insurance) and the administrative expenses of the authority; and (3) to create (during not less than the six years immediately succeeding its issuance of any such bonds) a reserve sufficient to meet the largest principal and interest payments which will be due on such bonds in any one year thereafter and to maintain such reserve. Nothing contained in this section shall be construed to limit an authority's power to rent commercial space located in buildings containing housing projects or non low-income units owned, acquired, financed, or constructed under *RCW 35.82.070(5), (16), or (17) at profitable rates and to use any profit realized from such rentals in carrying into effect the powers and purposes provided to housing authorities under this chapter. [1989 c 363 § 3; 1983 c 225 § 3; 1977 ex.s. c 274 § 3; 1965 c 7 § 35.82.080. Prior: 1939 c 23 § 9; RRS § 6889-9. Formerly RCW 74.24.080.]

***Reviser's note:** RCW 35.82.070 was amended by 1991 c 167 § 1, changing subsections (16) and (17) to subsections (17) and (18).

Severability—1983 c 225: See note following RCW 35.82.020.

35.82.090 Rentals and tenant selection. In the operation and management of rental units which are rented to persons of low income in any housing project an authority shall at all times observe the following duties with respect to rentals and tenant selection: (1) It may rent or lease the dwelling accommodations therein to persons of low income and at rentals within the financial reach of such persons of low income; (2) it may rent or lease to a low-income tenant dwelling accommodations consisting of the number of rooms (but no greater number) which it deems necessary to provide safe and sanitary accommodations to the proposed occupants thereof, without overcrowding; and (3) it shall not accept any person as a low income tenant in any housing project designated for persons of low income if the person or persons who would occupy the dwelling accommodations have an annual net income in excess of five times the annual rental of the quarters to be furnished such person or persons, except that in the case of families with three or more minor dependents, such ratio shall not exceed six to one; in computing the rental for this purpose of selecting tenants, there shall be included in the rental the average annual cost (as determined by the authority) to occupants of heat, water, electricity, gas, cooking range and other necessary services or facilities, whether or not the charge for such services and facilities is in fact included in the rental. This income limitation does not apply to housing projects designated for senior citizens.

Nothing contained in this section or RCW 35.82.080 shall be construed as limiting the power of an authority to vest in an obligee the right, in the event of a default by the authority, to take possession of a housing project or cause the appointment of a receiver thereof, free from all the restrictions imposed by this section or RCW 35.82.080. [1989 c 363 § 4; 1979 ex.s. c 187 § 3; 1977 ex.s. c 274 § 4; 1965 c 7 § 35.82.090. Prior: 1939 c 23 § 10; RRS § 6889-10. Formerly RCW 74.24.090.]

Severability—1979 ex.s. c 187: See note following RCW 35.82.020.

35.82.100 Cooperation between authorities. Any two or more authorities may join or cooperate with one another in the exercise of any or all of the powers conferred hereby for the purpose of financing, planning, undertaking, constructing or operating a housing project or projects located within the area of operation of any one or more of said authorities. [1965 c 7 § 35.82.100. Prior: 1939 c 23 § 11; RRS § 6889-11. Formerly RCW 74.24.100.]

35.82.110 Eminent domain. An authority shall have the right to acquire by the exercise of the power of eminent domain any real property which it may deem necessary for its purposes under this chapter after the adoption by it of a resolution declaring that the acquisition of the real property described therein is necessary for such purposes. An authority may exercise the power of eminent domain in the same manner and under the same procedure as now is or may be hereafter provided by law in the case of other corporations authorized by the laws of the state to exercise the right of eminent domain; or it may exercise the power of eminent domain in the manner now or which may be hereafter provided by any other applicable statutory provisions for the exercise of the power of eminent domain.

Property already devoted to a public use may be acquired in like manner: PROVIDED, That no real property belonging to the city, the county, the state or any political subdivision thereof may be acquired without its consent. [1965 c 7 § 35.82.110. Prior: 1939 c 23 § 12; RRS § 6889-12. Formerly RCW 74.24.110.]

Eminent domain: Title 8 RCW.

35.82.120 Planning, zoning and building laws. All housing projects of an authority shall be subject to the planning, zoning, sanitary and building laws, ordinances and regulations applicable to the locality in which the housing project is situated. In the planning and location of any housing project, an authority shall take into consideration the relationship of the project to any larger plan or long-range program for the development of the area in which the housing authority functions. [1965 c 7 § 35.82.120. Prior: 1939 c 23 § 13; RRS § 6889-13. Formerly RCW 74.24.120.]

Ordinances—Adoption of codes by reference: RCW 35.21.180.

Planning commissions: Chapter 35.63 RCW.

35.82.130 Bonds. An authority shall have power to issue bonds from time to time in its discretion, for any of its corporate purposes. An authority shall also have power to issue refunding bonds for the purpose of paying or retiring bonds previously issued by it. An authority may issue such types of bonds as it may determine, including (without limiting the generality of the foregoing) bonds on which the principal and interest are payable: (1) Exclusively from the income and revenues of the housing project financed with the proceeds of such bonds; (2) exclusively from the income and revenues of certain designated housing projects whether or not they are financed in whole or in part with the proceeds of such bonds; or (3) from all or part of its revenues or assets generally. Any such bonds may be additionally secured by a pledge of any grant or contributions from the federal government or other source, or a pledge of any income or revenues of the authority, or a mortgage of any housing project, projects or other property of the authority. Any pledge made by the authority shall be valid and binding from the time when the pledge is made and recorded; the revenues, moneys, or property so pledged and thereafter received by the authority shall immediately be subject to the lien of the pledge without any physical delivery thereof or further act, and the lien of any such pledge shall be valid and binding as against all parties having claims of any kind in tort, contract, or otherwise against the authority, irrespective or whether the parties have notice thereof. The resolution and any other instrument by which a pledge is created shall be filed or recorded.

Neither the commissioners of an authority nor any person executing the bonds shall be liable personally on the bonds by reason of the issuance thereof. The bonds and other obligations of an authority (and such bonds and obligations shall so state on their face) shall not be a debt of the city, the county, the state or any political subdivision thereof and neither the city or the county, nor the state or any political subdivision thereof shall be liable thereon, nor in any event shall such bonds or obligations be payable out of any funds or properties other than those of said authority.

The bonds shall not constitute an indebtedness within the meaning of any constitutional or statutory debt limitation or restriction. Bonds of an authority are declared to be issued for an essential public and governmental purpose and to be public instrumentalities and, together with interest thereon and income therefrom, shall be exempt from taxes. Nothing in this section shall prevent an authority from issuing bonds the interest on which is included in gross income of the owners thereof for income tax purposes. [1991 c 167 § 2; 1977 ex.s. c 274 § 5; 1965 c 7 § 35.82.130. Prior: 1939 c 23 § 14; RRS § 6889-14. Formerly RCW 74.24.130.]

35.82.140 Form and sale of bonds. (1) Bonds of an authority shall be authorized by its resolution and may be issued in one or more series and shall bear such date or dates, mature at such time or times, bear interest at such rate or rates, be in such denomination or denominations, be in such form, either coupon or registered as provided in RCW 39.46.030, carry such conversion or registration privileges, have such rank or priority, be executed in such manner, be payable in such medium of payment, at such place or places, and be subject to such terms of redemption (with or without premium) as such resolution, its trust indenture or mortgage may provide.

The bonds may be sold at public or private sale.

In case any of the commissioners or officers of the authority whose signatures appear on any bond or any coupons shall cease to be such commissioners or officers before the delivery of such bonds, such signatures shall, nevertheless, be valid and sufficient for all purposes, the same as if they had remained in office until such delivery. Any provision of any law to the contrary notwithstanding, any bonds issued pursuant to this chapter shall be fully negotiable.

In any suit, action or proceedings involving the validity or enforceability of any bond of an authority or the security therefor, any such bond reciting in substance that it has been issued by the authority to aid in financing a housing project to provide dwelling accommodations for persons of low income shall be conclusively deemed to have been issued for a housing project of such character and said project shall be conclusively deemed to have been planned, located and constructed in accordance with the purposes and provisions of this chapter.

(2) Notwithstanding subsection (1) of this section, such bonds may be issued and sold in accordance with chapter 39.46 RCW. [1983 c 167 § 65; 1977 ex.s. c 274 § 6; 1970 ex.s. c 56 § 45; 1969 ex.s. c 232 § 22; 1965 c 7 § 35.82.140. Prior: 1939 c 23 § 15; RRS § 6889-15. Formerly RCW 74.24.140.]

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.

35.82.150 Provisions of bonds, trust indentures, and mortgages. In connection with the issuance of bonds or the incurring of obligations under leases and in order to secure the payment of such bonds or obligations, an authority, in addition to its other powers, shall have power:

(1) To pledge all or any part of its gross or net rents, fees, revenues, or assets, including mortgage loans and obligations securing the same, to which its right then exists or may thereafter come into existence.

(2) To mortgage all or any part of its real or personal property, then owned or thereafter acquired.

(3) To covenant against pledging all or any part of its rents, fees and revenues, or against mortgaging all or any part of its real or personal property, to which its right or title then exists or may thereafter come into existence or against permitting or suffering any lien on such revenues or property; to covenant with respect to limitations on its right to sell, lease or otherwise dispose of any housing project or any part thereof; and to covenant as to what other, or additional debts or obligations may be incurred by it.

(4) To covenant as to the bonds to be issued and as to the issuance of such bonds in escrow or otherwise, and as to the use and disposition of the proceeds thereof; to provide for the replacement of lost, destroyed or mutilated bonds; to covenant against extending the time for the payment of its bonds or interest thereon; and to redeem the bonds, and to covenant for their redemption and to provide the terms and conditions thereof.

(5) To covenant (subject to the limitations contained in this chapter) as to the rents and fees to be charged in the operation of a housing project or projects, the amount to be raised each year or other period of time by rents, fees and other revenues, and as to the use and disposition to be made thereof; to create or to authorize the creation of special funds for moneys held for construction or operating costs, debt service, reserves, or other purposes, and to covenant as to the use and disposition of the moneys held in such funds.

(6) To prescribe the procedure, if any, by which the terms of any contract with bondholders may be amended or abrogated, the amount of bonds the holders of which must consent thereto and the manner in which such consent may be given.

(7) To covenant as to use of any or all of its real or personal property; and to covenant as to the maintenance of its real and personal property, the replacement thereof, the insurance to be carried thereon and the use and disposition of insurance moneys.

(8) To covenant as to the rights, liabilities, powers and duties arising upon the breach by it of any covenant, condition, or obligation; and to covenant and prescribe as to events of default and terms and conditions upon which any or all of its bonds or obligations shall become or may be declared due before maturity, and as to the terms and conditions upon which such declaration and its consequences may be waived.

(9) To vest in a trustee or trustees or the holders of bonds or any proportion of them the right to enforce the payment of the bonds or any covenants securing or relating to the bonds; to vest in a trustee or trustees the right, in the event of a default by said authority, to take possession and use, operate and manage any housing project or part thereof, and to collect the rents and revenues arising therefrom and to dispose of such moneys in accordance with the agreement of the authority with said trustee; to provide for the powers and duties of a trustee or trustees and to limit the liabilities thereof; and to provide the terms and conditions upon which the trustee or trustees or the holders of bonds or any propor-

tion of them may enforce any covenant or rights securing or relating to the bonds.

(10) To covenant as to the use and disposition of the gross income from mortgages owned by the authority and payment of principal of the mortgages.

(11) To exercise all or any part or combination of the powers herein granted; to make covenants other than and in addition to the covenants herein expressly authorized, of like or different character; to make such covenants and to do any and all such acts and things as may be necessary or convenient or desirable in order to secure its bonds, or, in the absolute discretion of said authority, as will tend to make the bonds more marketable notwithstanding that such covenants, acts or things may not be enumerated herein. [1977 ex.s. c 274 § 7; 1965 c 7 § 35.82.150. Prior: 1939 c 23 § 16; RRS § 6889-16. Formerly RCW 74.24.150.]

35.82.160 Certification by attorney general. Any authority may submit to the attorney general of the state any bonds to be issued hereunder after all proceedings for the issuance of such bonds have been taken. Upon the submission of such proceedings to the attorney general, it shall be the duty of the attorney general to examine into and pass upon the validity of such bonds and the regularity of all proceedings in connection therewith. If such proceedings conform to the provisions of this chapter and are otherwise regular in form and if such bonds when delivered and paid for will constitute binding and legal obligations of the authority enforceable according to the terms thereof, the attorney general shall certify in substance upon the back of each of said bonds that it is issued in accordance with the Constitution and laws of the state of Washington. [1965 c 7 § 35.82.160. Prior: 1939 c 23 § 17; RRS § 6889-17. Formerly RCW 74.24.160.]

35.82.170 Remedies of an obligee of authority. An obligee of an authority shall have the right in addition to all other rights which may be conferred on such obligee, subject only to any contractual restrictions binding upon such obligee:

(1) By mandamus, suit, action or proceeding at law or in equity to compel said authority and the commissioners, officers, agents or employees thereof to perform each and every term, provision and covenant contained in any contract of said authority with or for the benefit of such obligee, and to require the carrying out of any or all such covenants and agreements of said authority and the fulfillment of all duties imposed upon said authority by this chapter.

(2) By suit, action or proceeding in equity, to enjoin any acts or things which may be unlawful, or the violation of any of the rights of such obligee of said authority. [1965 c 7 § 35.82.170. Prior: 1939 c 23 § 18; RRS § 6889-18. Formerly RCW 74.24.170.]

35.82.180 Additional remedies conferable by authority. An authority shall have power by its resolution, trust indenture, mortgage, lease or other contract to confer upon any obligee holding or representing a specified amount in bonds, or holding a lease, the right (in addition to all rights that may otherwise be conferred), upon the happening of an event of default as defined in such resolution or

instrument, by suit, action or proceeding in any court of competent jurisdiction:

(1) To cause possession of any housing project or any part thereof to be surrendered to any such obligee.

(2) To obtain the appointment of a receiver of any housing project of said authority or any part thereof and of the rents and profits therefrom. If such receiver be appointed, he may enter and take possession of such housing project or any part thereof and operate and maintain same, and collect and receive all fees, rents, revenues, or other charges thereafter arising therefrom, and shall keep such moneys in a separate account or accounts and apply the same in accordance with the obligations of said authority as the court shall direct.

(3) To require said authority and the commissioners thereof to account as if it and they were the trustees of an express trust. [1965 c 7 § 35.82.180. Prior: 1939 c 23 § 19; RRS § 6889-19. Formerly RCW 74.24.180.]

35.82.190 Exemption of property from execution sale. All real property of an authority shall be exempt from levy and sale by virtue of an execution, and no execution or other judicial process shall issue against the same nor shall any judgment against an authority be a charge or lien upon its real property: PROVIDED, HOWEVER, That the provisions of this section shall not apply to or limit the right of obligees to foreclose or otherwise enforce any mortgage of an authority or the right of obligees to pursue any remedies for the enforcement of any pledge or lien given by an authority on its rents, fees or revenues. [1965 c 7 § 35.82.190. Prior: 1939 c 23 § 20; RRS § 6889-20. Formerly RCW 74.24.190.]

35.82.200 Aid from federal government. In addition to the powers conferred upon an authority by other provisions of this chapter, an authority is empowered to borrow money or accept contributions, grants or other financial assistance from the federal government for or in aid of any housing project within its area of operation, to take over or lease or manage any housing project or undertaking constructed or owned by the federal government, and to these ends, to comply with such conditions and enter into such mortgages, trust indentures, leases or agreements as may be necessary, convenient or desirable. It is the purpose and intent of this chapter to authorize every authority to do any and all things necessary or desirable to secure the financial aid or cooperation of the federal government in the undertaking, construction, maintenance or operation of any housing project by such authority. [1965 c 7 § 35.82.200. Prior: 1939 c 23 § 21; RRS § 6889-21. Formerly RCW 74.24.200.]

35.82.210 Tax exemption and payments in lieu of taxes. The property of an authority is declared to be public property used for essential public and governmental purposes and such property and an authority shall be exempt from all taxes and special assessments of the city, the county, the state or any political subdivision thereof: PROVIDED, HOWEVER, That in lieu of such taxes an authority may agree to make payments to the city or the county or any such political subdivision for improvements, services and

facilities furnished by such city, county or political subdivision for the benefit of a housing project, but in no event shall such payments exceed the amount last levied as the annual tax of such city, county or political subdivision upon the property included in said project prior to the time of its acquisition by the authority. [1965 c 7 § 35.82.210. Prior: 1939 c 23 § 22; RRS § 6889-22. Formerly RCW 74.24.210.]

35.82.220 Housing bonds legal investments and security. Notwithstanding any restrictions on investments contained in any laws of this state, the state and all public officers, municipal corporations, political subdivisions, and public bodies, all banks, bankers, trust companies, savings banks and institutions, building and loan associations, savings and loan associations, investment companies and other persons carrying on a banking business, all insurance companies, insurance associations and other persons carrying on an insurance business, and all executors, administrators, guardians, trustees and other fiduciaries may legally invest any sinking funds, moneys or other funds belonging to them or within their control in any bonds or other obligations issued by a housing authority pursuant to the housing authorities law of this state or issued by any public housing authority or agency in the United States, and such bonds and other obligations shall be authorized security for all public deposits; it being the purpose of this chapter to authorize any persons, firms, corporations, associations, political subdivisions, bodies and officers, public or private, to use any funds owned or controlled by them, including (but not limited to) sinking, insurance, investment, retirement, compensation, pension and trust funds, and funds held on deposit, for the purchase of any such bonds or other obligations: PROVIDED, HOWEVER, That nothing contained in this chapter shall be construed as relieving any person, firm or corporation from any duty of exercising reasonable care in selecting securities. [1977 ex.s. c 274 § 8; 1965 c 7 § 35.82.220. Prior: 1939 c 23 § 23; RRS § 6889-23. Formerly RCW 74.24.220.]

35.82.230 Reports. At least once a year, an authority shall file with the clerk a report of its activities for the preceding year, and shall make recommendations with reference to such additional legislation or other action as it deems necessary in order to carry out the purposes of this chapter. [1965 c 7 § 35.82.230. Prior: 1939 c 23 § 24; RRS § 6889-24. Formerly RCW 74.24.230.]

35.82.240 Rural housing projects. Housing authorities created for counties are specifically empowered and authorized to borrow money, accept grants and exercise their other powers to provide housing for farmers of low income as herein defined. In providing such housing, such housing authorities shall not be subject to the tenant selection limitations provided in RCW 35.82.090(3). In connection with such projects, such housing authorities may enter into such leases or purchase agreements, accept such conveyances and rent or sell dwellings forming part of such projects to or for farmers of low income, as such housing authority deems necessary in order to assure the achievement of the objectives of this chapter. Such leases, agreements or conveyanc-

es may include such covenants as the housing authority deems appropriate regarding such dwellings and the tracts of land described in any such instrument, which covenants shall be deemed to run with the land where the housing authority deems it necessary and the parties to such instrument so stipulate. Nothing contained in this section shall be construed as limiting any other powers of any housing authority. [1965 c 7 § 35.82.240. Prior: 1941 c 69 § 1; Rem. Supp. 1941 § 6889-23a. Formerly RCW 74.24.240.]

35.82.250 Housing applications by farmers. The owner of any farm operated, or worked upon, by farmers of low income in need of safe and sanitary housing may file an application with a housing authority of a county requesting that it provide for a safe and sanitary dwelling or dwellings for occupancy by such farmers of low income. Such applications shall be received and examined by housing authorities in connection with the formulation of projects or programs to provide housing for farmers of low income. [1965 c 7 § 35.82.250. Prior: 1941 c 69 § 2; Rem. Supp. 1941 § 6889-23b. Formerly RCW 74.24.250.]

35.82.260 Farmers of low income. "Farmers of low income" shall mean persons or families who at the time of their admission to occupancy in a dwelling of a housing authority: (1) live under unsafe or insanitary housing conditions; (2) derive their principal income from operating or working upon a farm; and (3) had an aggregate average annual net income for the three years preceding their admission that was less than the amount determined by the housing authority to be necessary, within its area of operation, to enable them, without financial assistance, to obtain decent, safe and sanitary housing without overcrowding. [1965 c 7 § 35.82.260. Prior: 1941 c 69 § 3; Rem. Supp. 1941 § 6889-23c. Formerly RCW 74.24.260.]

35.82.270 Powers are additional. The powers conferred by RCW 35.82.240 through 35.82.270 shall be in addition and supplemental to the powers conferred by any other law, and nothing contained herein shall be construed as limiting any other powers of any housing authority. [1965 c 7 § 35.82.270. Prior: 1941 c 69 § 4; Rem. Supp. 1941 § 6889-23d. Formerly RCW 74.24.270.]

35.82.280 Supplemental projects. Except as limited by this section, an authority shall have the same powers with respect to supplemental projects as hereinafter in this section defined as are now or hereafter granted to it under this chapter with respect to housing projects.

No funds shall be expended by an authority for a supplemental project except by resolution adopted on notice at a public hearing as provided by chapter 42.32 RCW, supported by formal findings of fact incorporated therein, establishing that:

(1) Low-income housing needs within the area of operation of the authority are being or will be adequately met by existing programs; and

(2) A surplus of funds will exist after meeting such low-income housing needs.

Expenditures for supplemental projects shall be limited to those funds determined to be surplus.

"Supplemental project" for the purposes of this chapter shall mean any work or undertaking to provide buildings, land, equipment, facilities, and other real or personal property for recreational, group home, halfway house or other community purposes which by resolution of the housing authority is determined to be necessary for the welfare of the community within its area of operation and to fully accomplish the purposes of this chapter. Such project need not be in conjunction with the clearing of a slum area under subsection (9)(a) of RCW 35.82.020 or with the providing of low-income housing under subsection (9)(b) of RCW 35.82.020. [1971 ex.s. c 300 § 2.]

35.82.285 Group homes or halfway houses for released juveniles or developmentally disabled. Housing authorities created under this chapter may establish and operate group homes or halfway houses to serve juveniles released from state juvenile or correctional institutions, or to serve the developmentally disabled as defined in RCW 71A.10.020(2). Authorities may contract for the operation of facilities so established, with qualified nonprofit organizations as agent of the authority. Authorities may provide support or supportive services in facilities serving juveniles, the developmentally disabled or other persons under a disability, and the frail elderly, whether or not they are operated by the authority.

Action under this section shall be taken by the authority only after a public hearing as provided by chapter 42.30 RCW. In exercising this power the authority shall not be empowered to acquire property by eminent domain, and the facilities established shall comply with all zoning, building, fire, and health regulations and procedures applicable in the locality. [1991 c 167 § 3; 1973 1st ex.s. c 198 § 2.]

Effective date—1973 1st ex.s. c 198: See note following RCW 13.06.050.

35.82.300 Joint city-county housing authorities—Creation authorized—Contents of ordinances creating—Powers. This section applies to all counties.

(1) Joint city-county housing authorities are hereby authorized when the legislative authority of the county and the legislative authority of any city or cities within the county have authorized such joint city-county housing authorities by ordinance.

(2) The ordinance enacted by the legislative authorities creating the joint housing authority shall prescribe the number of commissioners, the method for their appointment and length of their terms, the election of officers, and the method for removal of commissioners.

(3) The ordinances enacted by the legislative authorities creating the joint housing authority shall prescribe the allocation of all costs of the joint housing authority and any other matters necessary for the operation of the joint housing authority.

(4) A joint city-county housing authority shall have all the powers as prescribed by this chapter for any housing authority. The area of operation of a joint city-county authority shall be the combined areas of each as they are defined by RCW 35.82.020(6).

(5) The provisions of RCW 35.82.040 and 35.82.060 as now or hereafter amended shall not apply to a joint city-

county housing authority created pursuant to this section. [1980 c 25 § 1.]

35.82.320 Deactivation of housing authority—Procedure. A housing authority created under this chapter and activated by a resolution by the governing body of a city, town, or county may be deactivated by a resolution by the city, town, or county. The findings listed in RCW 35.82.030 to activate the housing authority shall be considered prior to deactivating the housing authority. For the sole purposes of winding up the affairs of a deactivated housing authority, the governing body of the city, town, or county may exercise any power granted to a housing authority under this chapter. [1987 c 275 § 1.]

35.82.325 Deactivation of housing authority—Distribution of assets. The assets of an authority in the process of deactivation shall be applied and distributed as follows:

(1) All liabilities and obligations of the authority shall be paid, satisfied, and discharged, or adequate provision shall be made therefor;

(2) Assets held by the authority upon condition requiring return, transfer, or conveyance, which condition occurs by reason of the deactivation shall be returned, transferred, or conveyed in accordance with such requirements;

(3) Assets received and held by the authority subject to limitations permitting their use only for activities purposes contained in RCW 35.82.070, but not held upon a condition requiring return, transfer, or conveyance by reason of the deactivation, shall be transferred or conveyed to the governing body of the city, town, or county and used to engage in activities contained in RCW 35.82.070;

(4) Other assets, if any, shall be returned to the governing body of the city, town, or county for uses allowed under state law. [1987 c 275 § 2.]

35.82.900 Short title. This chapter shall be known and may be cited as the "Housing Authorities Law." [1965 c 7 § 35.82.900. Prior: 1939 c 23 § 1.]

35.82.910 Chapter controlling. Insofar as the provisions of this chapter are inconsistent with the provisions of any other law, the provisions of this chapter shall be controlling. [1965 c 7 § 35.82.910. Prior: 1939 c 23 § 26.]

Chapter 35.83

HOUSING COOPERATION LAW

Sections

35.83.005	Short title.
35.83.010	Finding and declaration of necessity.
35.83.020	Definitions.
35.83.030	Cooperation in undertaking housing projects.
35.83.040	Agreements as to payments by housing authority.
35.83.050	Advances to housing authority.
35.83.060	Procedure for exercising powers.
35.83.070	Supplemental nature of chapter.

Housing authorities law: Chapter 35.82 RCW.

35.83.005 Short title. This act may be referred to as the "Housing Cooperation Law." [1965 c 7 § 35.83.005. Prior: 1939 c 24 § 1; RRS § 6889-31.]

35.83.010 Finding and declaration of necessity. It has been found and declared in the housing authorities law that there exist in the state unsafe and insanitary housing conditions and a shortage of safe and sanitary dwelling accommodations for persons of low income; that these conditions necessitate excessive and disproportionate expenditures of public funds for crime prevention and punishment, public health and safety, fire and accident protection, and other public services and facilities; and that the public interest requires the remedying of these conditions. It is hereby found and declared that the assistance herein provided for the remedying of the conditions set forth in the housing authorities law constitutes a public use and purpose and an essential governmental function for which public moneys may be spent, and other aid given; that it is a proper public purpose for any state public body to aid any housing authority operating within its boundaries or jurisdiction or any housing project located therein, as the state public body derives immediate benefits and advantages from such an authority or project; and that the provisions hereinafter enacted are necessary in the public interest. [1965 c 7 § 35.83.010. Prior: 1939 c 24 § 2; RRS § 6889-32. Formerly RCW 74.28.010.]

35.83.020 Definitions. The following terms, whenever used or referred to in this chapter shall have the following respective meanings, unless a different meaning clearly appears from the context:

(1) "Housing authority" shall mean any housing authority created pursuant to the housing authorities law of this state.

(2) "Housing project" shall mean any work or undertaking of a housing authority pursuant to the housing authorities law or any similar work or undertaking of the federal government.

(3) "State public body" shall mean the state of Washington and any city, town, county, municipal corporation, commission, district, authority, other subdivision or public body of the state.

(4) "Governing body" shall mean the council, the commission, board of county commissioners or other body having charge of the fiscal affairs of the state public body.

(5) "Federal government" shall include the United States of America, the United States housing authority, or any other agency or instrumentality, corporate or otherwise, of the United States of America. [1991 c 167 § 4; 1965 c 7 § 35.83.020. Prior: 1939 c 24 § 3; RRS § 6889-33. Formerly RCW 74.28.020.]

35.83.030 Cooperation in undertaking housing projects. For the purpose of aiding and cooperating in the planning, undertaking, construction or operation of housing projects located within the area in which it is authorized to act, any state public body may upon such terms, with or without consideration, as it may determine:

(1) Dedicate, sell, grant, convey, or lease any of its interest in any property, or grant easements, licenses or any

other rights or privileges therein to a housing authority or the federal government;

(2) Cause parks, playgrounds, recreational, community, educational, water, sewer or drainage facilities, or any other works which it is otherwise empowered to undertake, to be furnished adjacent to or in connection with housing projects;

(3) Furnish, dedicate, close, pave, install, grade, regrade, plan or replan streets, roads, roadways, alleys, sidewalks or other places which it is otherwise empowered to undertake;

(4) Plan or replan, zone or rezone any part of such state public body; make exceptions from building regulations and ordinances; any city or town also may change its map;

(5) Cause services to be furnished to the housing authority of the character which such state public body is otherwise empowered to furnish;

(6) Enter into agreements with respect to the exercise by such state public body of its powers relating to the repair, elimination or closing of unsafe, insanitary or unfit dwellings;

(7) Employ (notwithstanding the provisions of any other law) any funds belonging to or within the control of such state public body, including funds derived from the sale or furnishing of property or facilities to a housing authority, in the purchase of the bonds or other obligations of a housing authority; and exercise all the rights of any holder of such bonds or other obligations;

(8) Do any and all things, necessary or convenient to aid and cooperate in the planning, undertaking, construction or operation of such housing projects;

(9) Incur the entire expense of any public improvements made by such state public body in exercising the powers granted in this chapter;

(10) Enter into agreements (which may extend over any period, notwithstanding any provision or rule of law to the contrary), with a housing authority respecting action to be taken by such state public body pursuant to any of the powers granted by this chapter. Any law or statute to the contrary notwithstanding, any sale, conveyance, lease or agreement provided for in this section may be made by a state public body without appraisal, advertisement or public bidding: PROVIDED, There must be five days public notice given either by posting in three public places or publishing in the official county newspaper of the county wherein the property is located; and

(11) With respect to any housing project which a housing authority has acquired or taken over from the federal government and which the housing authority by resolution has found and declared to have been constructed in a manner that will promote the public interest and afford necessary safety, sanitation and other protection, no state public body shall require any changes to be made in the housing project or the manner of its construction or take any other action relating to such construction. [1991 c 167 § 5; 1965 c 7 § 35.83.030. Prior: 1939 c 24 § 4; RRS § 6889-34. Formerly RCW 74.28.030.]

35.83.040 Agreements as to payments by housing authority. In connection with any housing project located wholly or partly within the area in which it is authorized to act, any state public body may agree with a housing authority or the federal government that a certain sum (in no event

to exceed the amount last levied as the annual tax of such state public body upon the property included in said project prior to the time of its acquisition by the housing authority) or that no sum, shall be paid by the authority in lieu of taxes for any year or period of years. [1965 c 7 § 35.83.040. Prior: 1939 c 24 § 5; RRS § 6889-35. Formerly RCW 74.28.040.]

35.83.050 Advances to housing authority. Any city, town, or county located in whole or in part within the area of operation of a housing authority shall have the power from time to time to lend or donate money to such authority or to agree to take such action. Such housing authority, when it has money available therefor, shall make reimbursements for all such loans made to it. [1965 c 7 § 35.83.050. Prior: 1939 c 24 § 6; RRS § 6889-36. Formerly RCW 74.28.050.]

35.83.060 Procedure for exercising powers. The exercise by a state public body of the powers herein granted may be authorized by resolution of the governing body of such state public body adopted by a majority of the members of its governing body present at a meeting of said governing body, which resolution may be adopted at the meeting at which such resolution is introduced. Such a resolution or resolutions shall take effect immediately and need not be laid over or published or posted. [1965 c 7 § 35.83.060. Prior: 1939 c 24 § 7; RRS § 6889-37. Formerly RCW 74.28.060.]

35.83.070 Supplemental nature of chapter. The powers conferred by this chapter shall be in addition and supplemental to the powers conferred by any other law. [1965 c 7 § 35.83.070. Prior: 1939 c 24 § 8; RRS § 6889-39. Formerly RCW 74.28.070.]

Chapter 35.84

UTILITY AND OTHER SERVICES BEYOND CITY LIMITS

Sections

35.84.010	Electric energy—Sale of—Purchase.
35.84.020	Electric energy facilities—Right to acquire.
35.84.030	Limitation on right of eminent domain.
35.84.040	Fire apparatus—Use beyond city limits.
35.84.050	Fireman injured outside corporate limits.
35.84.060	Street railway extensions.

35.84.010 Electric energy—Sale of—Purchase. Every city or town owning its own electric power and light plant, shall have the right to sell and dispose of electric energy to any other city or town, public utility district, governmental agency, or municipal corporation, mutual association, or to any person, firm, or corporation, inside or outside its corporate limits, and to purchase electric energy therefrom. [1965 c 7 § 35.84.010. Prior: 1933 c 51 § 1; RRS § 9209-1.]

Reduced utility rates for low-income senior citizens and low-income disabled citizens: RCW 74.38.070.

35.84.020 Electric energy facilities—Right to acquire. Every city or town owning its own electric power

and light plant may acquire, construct, purchase, condemn and purchase, own, operate, control, add to and maintain lands, easements, rights-of-way, franchises, distribution systems, substations, inter-tie or transmission lines, to enable it to use, purchase, sell, and dispose of electric energy inside or outside its corporate limits, or to connect its electric plant with any other electric plant or system, or to connect parts of its own electric system. [1965 c 7 § 35.84.020. Prior: 1933 c 51 § 2; RRS § 9209-2.]

35.84.030 Limitation on right of eminent domain. Every city or town owning its own electric power and light plant may exercise the power of eminent domain as provided by law for the condemnation of private property for any of the corporate uses or purposes of the city or town: PROVIDED, That no city or town shall acquire, by purchase or condemnation, any publicly or privately owned electric power and light plant or electric system located in any other city or town except with the approval of a majority of the qualified electors of the city or town in which the property to be acquired is situated; nor shall any city or town acquire by condemnation the electric power and light plant or electric system, or any part thereof, belonging to or owned or operated by any municipal corporation, mutual, nonprofit, or cooperative association or organization, or by a public utility district. [1965 c 7 § 35.84.030. Prior: 1933 c 51 § 3; RRS § 9209-3.]

Eminent domain by cities: Chapter 8.12 RCW.

35.84.040 Fire apparatus—Use beyond city limits. Every municipal corporation which owns, operates, or maintains fire apparatus and equipment may permit, under conditions prescribed by the governing body of such corporation, such equipment and the personnel operating the same to go outside of the corporate limits of such municipality for the purpose of extinguishing or aiding in the extinguishing or control of fires. Any use made of such equipment or personnel under the authority of this section shall be deemed an exercise of a governmental function of such municipal corporation. [1965 c 7 § 35.84.040. Prior: 1941 c 96 § 1; Rem. Supp. 1941 § 9213-9.]

35.84.050 Fireman injured outside corporate limits. Whenever a fireman engages in any duty outside the limits of such municipality, such duty shall be considered as part of his duty as fireman for the municipality, and a fireman who is injured while engaged in such duties outside the limits of the municipality shall be entitled to the same benefits that he or his family would be entitled to receive had he been injured within the municipality. [1965 c 7 § 35.84.050. Prior: 1941 c 96 § 2; Rem. Supp. 1941 § 9563-1.]

35.84.060 Street railway extensions. Every municipal corporation which owns or operates an urban public transportation system as defined in RCW 47.04.082 within its corporate limits, may acquire, construct, extend, own or operate such urban public transportation system to any point or points not to exceed fifteen miles outside of its corporate limits: PROVIDED, That no municipal corporation shall extend its urban public transportation system beyond its

corporate limits to operate in any territory already served by a privately operated auto transportation company holding a certificate of public convenience and necessity from the utilities and transportation commission. [1969 ex.s. c 281 § 26; 1965 c 7 § 35.84.060. Prior: 1919 c 138 § 1; 1917 c 59 § 1; RRS § 9213.]

Chapter 35.85

VIADUCTS, ELEVATED ROADWAYS, TUNNELS AND SUBWAYS

Sections

35.85.010	Authority to construct viaducts, bridges, elevated roadways, etc.
35.85.020	Assessment district—Resolution—Hearing—Ordinance ordering improvement.
35.85.030	Limit of assessment—Lien—Priority.
35.85.040	Operation by city—Leases—Use of income.
35.85.050	Authority to construct tunnels and subways.
35.85.060	Procedure.
35.85.070	Assessments—Bonds.
35.85.080	Construction of chapter.

35.85.010 Authority to construct viaducts, bridges, elevated roadways, etc. Any city of the first class shall have power to provide for the construction, maintenance and operation upon public streets and upon the extensions and connections thereof over intervening tidelands to and across any harbor reserves, waterways, canals, rivers, natural watercourses and other channels, any bridges, drawbridges, viaducts, elevated roadways and tunnels or any combination thereof together with all necessary approaches thereto, with or without street railway tracks thereon or therein, and to make any and all necessary cuts, fills, or other construction, upon, in, or along such streets and approaches as a part of any such improvement, and to order any and all work to be done which shall be necessary to complete any such improvement. The word "approaches" as used in this section shall include any arterial highway or highways or streets connecting with any such bridge, drawbridge, viaduct, elevated roadway or tunnel, or combination thereof, which are necessary to give convenient access thereto or therefrom from any portion of the improvement district which may be specially benefited by such improvement and which is liable to assessment for such improvement.

Whenever it is desired to pay the whole or any portion of the cost and expense of any such improvement by special assessments, the council or other legislative body of such city shall in the ordinance ordering such improvement fix and establish the boundaries of the improvement district, the property within which is to bear such assessment, which district shall include as near as may be, all the property specially benefited by such improvement. [1965 c 7 § 35.85.010. Prior: 1911 c 103 § 1; 1909 ex.s. c 14 § 1; RRS § 9001.]

First class cities, generally: Chapter 35.22 RCW.

35.85.020 Assessment district—Resolution—Hearing—Ordinance ordering improvement. Any such improvement may be initiated by the city council, or other legislative body, by a resolution, declaring its intention to order such improvement, which resolution shall set forth the

nature and territorial extent of such proposed improvement, shall specify and describe the boundaries of the proposed improvement district and notify all persons who may desire to object thereto to appear and present such objections at a meeting of the council specified in such resolution and directing the board of public works, or other proper board, officer, or authority of the city, to submit to such council at or prior to the date fixed for such hearing the estimated cost and expense of the improvement, and a statement of the proportionate amount thereof which should be borne by the property within the proposed improvement district, and a statement of the aggregate assessed valuation of the real property exclusive of improvements, within said district, according to the valuation last placed upon it for purposes of general taxation. Such resolution shall be published in at least two consecutive issues of the official newspaper of the city, the date of the first publication to be at least thirty days prior to the date fixed by the resolution for hearing before the council.

Upon such hearing, or upon any adjournment thereof, the council shall have power to amend, change, extend, or contract the boundaries of the proposed improvement district as specified in the resolution, and to consider and determine all matters in relation to the proposed improvement, and, upon the conclusion of the hearing, or any adjournment thereof, shall have power by ordinance to order the improvement to be made and to adopt, fix and establish the boundaries of the improvement district. The action of such council in ordering such improvement, or in abandoning it, and in fixing and establishing the boundaries of the improvement district shall be final and conclusive. Any such ordinance may be passed upon majority vote of the council or other legislative body of the city.

Such ordinance may provide for the construction of the improvement in sections, the letting of separate contracts for each such section, and, in case the same is made in sections, separate assessment rolls to defray the cost and expense of any such section of such improvement may be prepared, and the amounts thereon appearing as finally determined, may be levied and assessed against real property within the improvement district. The provisions of law, charter and ordinance of any such city, relating to supplemental assessments, reassessments and omitted property shall be applicable to any improvement authorized in this chapter.

The city council, or other legislative body of such city, shall by general ordinance, make provision for hearing any objections in writing, to any assessment roll for such improvement, filed with the city clerk or comptroller at a prior date to the hearing thereon. Any right of appeal to the superior court provided by law to be taken from any local improvement assessment levied and assessed by any such city, may be exercised, within the time and in the manner therein provided, by any person so objecting to any assessment levied and assessed for any improvement authorized in this chapter. [1965 c 7 § 35.85.020. Prior: 1911 c 103 § 2; 1909 ex.s. c 14 § 2; RRS § 9002.]

Appeal from local improvement district assessments: RCW 35.44.200 through 35.44.270.

35.85.030 Limit of assessment—Lien—Priority. The city council may prescribe by general ordinance, the mode and manner in which the charge upon property in such local

improvement district shall be assessed and determined for the purpose of paying the cost and expense of establishing and constructing such improvement: PROVIDED, That no assessment shall be levied on any such district, the aggregate of which is a greater sum than twenty-five percent of the assessed value of all the real property in such district according to the last equalized assessment thereof for general taxation: PROVIDED FURTHER, That there shall be, in all cases, an opportunity for a hearing upon objections to the assessment roll by the parties affected thereby, before the council as a board of equalization, which hearing shall be after publication of a reasonable notice thereof, such notice to be published in such manner and for such time as may be prescribed by ordinance. At such hearing, or at legal adjournments thereof, such changes may be made in the assessment roll as the city council may find necessary to make the same just and equitable. Railroad rights-of-way shall be assessed for such benefits as shall inure or accrue to the owners, lessees, or operators of the same, resulting or to result from the construction and maintenance of any such improvement, whether such rights-of-way lie within the limits of any street or highway or not; such assessment to lie against the franchise rights when such right-of-way is within such street or highway.

When the assessment roll has been finally confirmed by the city council, the charges therein made shall be and become a lien against the property or franchise therein described, paramount to all other liens (except liens for assessments and taxes) upon the property assessed from the time the assessment roll shall be placed in the hands of the collector. [1965 c 7 § 35.85.030. Prior: 1909 ex.s. c 14 § 3; RRS § 9003.]

35.85.040 Operation by city—Leases—Use of income. As a part of the original construction of any improvement herein authorized, or afterward as an alteration or renewal thereof, any such city, notwithstanding any charter provision to the contrary, may, at its own cost, construct, maintain and operate street railway tracks in the roadway thereof, and may provide electric power for the propulsion of cars, and may lease the use of such tracks and power for the operation of street cars or interurban railways; or such city may authorize any operator of the street or interurban railways to construct and furnish such street railway tracks and electric power and use the same for street or interurban purposes, under lease or franchise ordinance: PROVIDED, That no such lease or franchise shall be exclusive, but shall at all times reserve the right to the city to permit other lines of street or interurban railway to use such street railway tracks in common with any preceding lessee or grantee, upon equal terms. The rate of lease or use of such street railway tracks for streets or interurban cars shall be as fixed by the legislative authority of the city, but shall not be less than one mill for each passenger carried, or ten cents for each freight car moved over such improvement. The income from such charges, rental and leasing shall be used wholly for the maintenance, repair and betterment of said improvement and the extinguishment of any debt incurred by the city in constructing it. [1965 c 7 § 35.85.040. Prior: 1909 ex.s. c 14 § 4; RRS § 9004.]

35.85.050 Authority to construct tunnels and subways. Any city of the first class shall have power to provide for the construction, maintenance and operation within such city of tunnels, subways, or both, with or without roadways, sidewalks, street railway tracks or any combination thereof therein, together with all necessary approaches thereto; and to order any and all work to be done which shall be necessary to complete any such improvement. The word "approaches," as used in this section, shall include any arterial highway or highways or streets connecting with any such tunnel or subway which may be necessary to give convenient access thereto or therefrom from any portion of the improvement district which may be specially benefited by such improvement, and which is liable to assessment for such improvement.

Whenever it is desired to pay the whole or any portion of the cost and expense of any such improvement by special assessments, the council or other legislative body of such city shall, in the ordinance ordering such improvement, fix and establish the boundaries of the improvement district, the property in which is to bear such assessment, which district shall include as near as may be all the property specially benefited by such improvement. [1965 c 7 § 35.85.050. Prior: 1925 ex.s. c 168 § 1; RRS § 9005-1.]

35.85.060 Procedure. Any such improvement may be initiated and assessments therefor determined and levied as prescribed in RCW 35.85.020 to 35.85.040, inclusive. [1965 c 7 § 35.85.060. Prior: 1925 ex.s. c 168 § 2; RRS § 9005-2.]

35.85.070 Assessments—Bonds. Any assessments so levied shall be collected, and bonds may be issued for the payment of the whole or any part of the cost of such improvement, in the manner now or hereafter provided for the collection of assessments and the issuance of bonds for other local improvements. [1965 c 7 § 35.85.070. Prior: 1925 ex.s. c 168 § 3; RRS § 9005-3.]

35.85.080 Construction of chapter. The provisions and remedies provided by this chapter are cumulative of existing provisions and remedies, and nothing herein contained shall be held to repeal any provision of the existing law or of any charter of any city upon the subject matter thereof, but such existing law or charter provision shall continue in full force and effect, and it shall be optional with the city authorities to proceed under either such existing law, charter provision or this chapter. [1965 c 7 § 35.85.080. Prior: (i) 1909 ex.s. c 14 § 5; RRS § 9005. (ii) 1925 ex.s. c 168 § 4; RRS § 9005-4.]

Chapter 35.86

OFF-STREET PARKING FACILITIES

Sections

35.86.010	Space and facilities authorized.
35.86.020	Financing.
35.86.030	Acquisition and disposition of real property.
35.86.040	Operation—Leasing.
35.86.045	Operation of parking facilities by cities prohibited, except—Bid requirements and procedure.

- 35.86.050 Procedure to establish—Plan, surveys, hearings.
 35.86.060 Maximum parking fee schedule.
 35.86.080 Leasing for store space in lieu of undesirable off-street parking facility.
 35.86.910 Chapter prevails over inconsistent laws.

35.86.010 Space and facilities authorized. Cities of the first, second, and third classes are authorized to provide off-street parking space and facilities located on land dedicated for park or civic center purposes, or on other municipally-owned land where the primary purpose of such off-street parking facility is to provide parking for persons who use such park or civic center facilities. In addition a city may own other off-street parking facilities and operate them in accordance with RCW 35.86A.120. [1975 1st ex.s. c 221 § 1; 1967 ex.s. c 144 § 13; 1965 c 7 § 35.86.010. Prior: 1961 c 186 § 1; 1959 c 302 § 1.]

Severability—1975 1st ex.s. c 221: "If any provision of this 1975 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 1st ex.s. c 221 § 5.]

Severability—1967 ex.s. c 144: See note following RCW 36.900.030.

Off-street parking space and facilities in towns: RCW 35.27.550 through 35.27.600.

Public parks in or beneath off-street parking space or facilities—Revenue bond financing—Special funds—Use of off-street and on-street parking revenues: RCW 35.41.010.

35.86.020 Financing. In order to provide for off-street parking space and/or facilities, such cities are authorized, in addition to the powers already possessed by them for financing public improvements, to finance their acquisition and construction through the issuance and sale of revenue bonds or general obligation bonds or both. Any bonds issued by such cities pursuant to this section shall be issued in the manner and within the limitations prescribed by the Constitution and the laws of this state.

In addition local improvement districts may be created and their financing procedures used for this purpose in accordance with the provisions of Title 35 RCW as now or hereafter amended.

Such cities may authorize and finance the economic and physical surveys and plans, acquisition and construction, for off-street parking spaces and facilities, and the maintenance and management of such off-street parking spaces and facilities either within their general budget or by issuing revenue bonds or general obligation bonds or both.

General obligation bonds issued hereunder may additionally be made payable from any otherwise unpledged revenue, fees or charges which may be derived from the ownership, operation, lease or license of off-street parking space or facilities or which may be derived from the license of on-street parking space.

Such cities may, in addition to utilizing the pledging revenues from off-street parking spaces and facilities, utilize and pledge revenues from on-street parking meters in exercising any of the powers provided by this chapter, including the financing of economic and physical surveys and plans, acquisition, and construction, for off-street parking facilities, the maintenance and management thereof, and for the payment of debt service of revenue bonds issued therefor.

In the event revenue bonds are issued, such cities are authorized to make such covenants pertaining to the continued maintenance of on-street and/or off-street parking spaces and facilities and the fixing of rates and charges for the use thereof as are deemed necessary to effectuate the sale of such revenue bonds. [1969 ex.s. c 204 § 14; 1967 ex.s. c 144 § 14; 1965 c 7 § 35.86.020. Prior: 1961 c 186 § 2; 1959 c 302 § 2.]

Severability—1969 ex.s. c 204: See note following RCW 35.86A.010.

Severability—1967 ex.s. c 144: See note following RCW 36.900.030.

Public parks in or beneath off-street parking space or facilities—Revenue bond financing—Special funds—Use of off-street and on-street parking revenues: RCW 35.41.010.

35.86.030 Acquisition and disposition of real property. Such cities are authorized to obtain by lease, purchase, donation and/or gift, or by eminent domain in the manner provided by law for the exercise of this power by cities, such real property for off-street parking as the legislative bodies thereof determine to be necessary by ordinance. Such property or any fraction or fractions thereof may be sold, transferred, exchanged, leased, or otherwise disposed of by the city when its legislative body has determined by ordinance such property or fraction or fractions thereof is no longer necessary for off-street parking purposes. [1965 c 7 § 35.86.030. Prior: 1961 c 186 § 3; 1959 c 302 § 3.]

Eminent domain by cities: Chapter 8.12 RCW.

35.86.040 Operation—Leasing. Such cities are authorized to establish the method of operation of off-street parking space and/or facilities by ordinance, which may include leasing or municipal operation. [1975 1st ex.s. c 221 § 2; 1969 ex.s. c 204 § 13; 1965 c 7 § 35.86.040. Prior: 1959 c 302 § 4.]

Severability—1975 1st ex.s. c 221: See note following RCW 35.86.010.

Severability—1969 ex.s. c 204: See note following RCW 35.86A.010.

35.86.045 Operation of parking facilities by cities prohibited, exception—Bid requirements and procedure. See RCW 35.86A.120.

35.86.050 Procedure to establish—Plan, surveys, hearings. In the establishment of off-street parking space and/or facilities, cities shall proceed with the development of the plan therefor by making such economic and physical surveys as are necessary, shall prepare comprehensive plans therefor, and shall hold a public hearing thereon prior to the adoption of any ordinances relating to the leasing or acquisition of property and providing for the financing thereof for this purpose. [1965 c 7 § 35.86.050. Prior: 1959 c 302 § 5.]

35.86.060 Maximum parking fee schedule. The lease referred to in RCW 35.86.040 shall specify a schedule of maximum parking fees which the operator may charge. This maximum parking fee schedule may be modified from

time to time by agreement of the city and the operator. [1965 c 7 § 35.86.060. Prior: 1959 c 302 § 6.]

35.86.080 Leasing for store space in lieu of undesirable off-street parking facility. Cities are expressly authorized to lease space which would otherwise be wasted in an off-street parking facility for store space, both for the enhancement of civic beauty and aesthetic values and for revenue which such leasing can provide. [1965 c 7 § 35.86.080. Prior: 1961 c 186 § 4.]

35.86.910 Chapter prevails over inconsistent laws. Insofar as the provisions of this chapter are inconsistent with the provisions of any other law, the provisions of this chapter shall be controlling. [1965 c 7 § 35.86.910. Prior: 1959 c 302 § 9.]

Chapter 35.86A

OFF-STREET PARKING—PARKING COMMISSIONS

Sections

- 35.86A.010 Declaration.
- 35.86A.020 Authority of cities of first, second and third class to establish parking facilities through parking commissions.
- 35.86A.030 Definitions.
- 35.86A.040 Ownership, control and use of parking facilities.
- 35.86A.050 Parking commission—Creation authorized—Purpose—Membership—Terms—Vacancies—Expenses.
- 35.86A.060 Parking commission—Chairman—Rules—Resolutions.
- 35.86A.070 Powers and authority of parking commission.
- 35.86A.080 New off-street parking facilities—Powers of parking commission and city council.
- 35.86A.090 Powers of cities.
- 35.86A.100 Disposition of revenues—Expenditure procedure.
- 35.86A.110 Excise tax to reimburse taxing authorities for loss of property tax revenue.
- 35.86A.120 Operation of parking facilities—Bid requirements and procedure.

35.86A.010 Declaration. It is hereby determined and declared:

(1) The free circulation of traffic of all kinds through our cities is necessary to the health, safety and general welfare of the public, whether residing in, traveling to or through the cities of this state;

(2) The most efficient use of the street and highway system requires availability of strategically located parking for vehicles in localities where large numbers of persons congregate;

(3) An expanding suburban population has increased demands for further concentration of uses in central metropolitan areas, necessitating an increasing investment in streets and highways;

(4) On-street parking is now inadequate, and becomes increasingly an inefficient and uneconomical method for temporary storage of vehicles in commercial, industrial and high-density residential areas, causing such immediate adverse consequences as the following, among others:

(a) Serious traffic congestion from on-street parking, which interferes with use of streets for travel, disrupts public surface transportation at peak hours, impedes rapid and effective fighting of fires and disposition of police forces,

slows emergency vehicles, and inflicts hardship upon handicapped persons and others dependent upon private vehicles for transportation;

(b) On-street parking absorbs right-of-way useful and usable for travel;

(c) On-street parking reduces the space available for truck and passenger loading for the abutting properties, hinders ready access, and impedes cleaning of streets;

(d) Inability to temporarily store automobiles has discouraged the public from travel to and within our cities, from congregating at public events, and from using public facilities.

(5) Insufficient off-street parking has had long-range results, as the following, among others:

(a) Metropolitan street and highway systems have lost efficiency and the free circulation of traffic and persons has been impaired;

(b) The growth and development of metropolitan areas has been retarded;

(c) Business, industry, and housing has become unnecessarily and uneconomically dispersed;

(d) Limited and valuable land area is under used.

All of which cause loss of payrolls, business and productivity, and property values, with resulting impairment of the public health, safety and welfare, the utility of our streets and highways, and tax revenues;

(6) Establishment of public off-street parking facilities will promote the public health, safety, convenience, and welfare, by:

(a) Expediting the movement of the public, and of goods in metropolitan areas, alleviating traffic congestion, and preserving the large investment in streets and highways;

(b) Permitting a greater use of public facilities, congregation of the public, and more intensive development of private property within the community;

(7) Establishment of public off-street parking is a necessary ancillary to and extension of an efficient street and highway system in metropolitan areas, as much so as a station or terminal is to a railroad or urban transit line;

(8) Public off-street parking facilities, open to the public and owned by a city or town, are and remain a public use and a public function, irrespective of whether:

(a) Parking fees are charged to users;

(b) The management or operation of one or more parking facilities is conducted by a public agency, or under contract or lease by private enterprise; or

(c) A portion of the facilities is used for commercial, store or automobile accessory purposes;

(9) Public parking facilities under the control of a parking commission are appropriately treated differently from other parking facilities of a city. [1969 ex.s. c 204 § 1.]

Severability—1969 ex.s. c 204: "If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1969 ex.s. c 204 § 15.] This applies to chapter 35.86A RCW and RCW 35.86.020 and 35.86.040.

35.86A.020 Authority of cities of first, second and third class to establish parking facilities through parking commissions. Cities of the first, second and third class are authorized and empowered to establish and maintain public

off-street parking facilities through a parking commission; the use of property and property rights for such purpose is declared to be a public use; and parking facilities under the control of such parking commission shall be governed by the provisions of this chapter. [1969 ex.s. c 204 § 2.]

35.86A.030 Definitions. (1) "Parking facilities" means lots, garages, parking terminals, buildings and structures and accommodations for parking of motor vehicles off the street or highway, open to public use, with or without charge.

(2) "Parking commission" shall mean the department or agency created by the legislative authority of the municipality as hereinafter provided.

(3) "City council" shall mean the city council or legislative authority of the municipality.

(4) "Mayor" shall mean the chief executive officer of the municipality. [1969 ex.s. c 204 § 3.]

35.86A.040 Ownership, control and use of parking facilities. Parking facilities established pursuant to this chapter shall be owned by the city, under the control of the parking commission (unless relinquished), and for the use of the public. The provisions of chapter 35.86 RCW as now or hereafter amended shall not apply to such parking facilities or other facilities under parking commission control. [1969 ex.s. c 204 § 4.]

35.86A.050 Parking commission—Creation authorized—Purpose—Membership—Terms—Vacancies—Expenses. Any city of the first, second or third class may by ordinance create a parking commission for the purpose of establishing and operating off-street parking facilities.

Such parking commission shall consist of five members appointed by the mayor and confirmed by the city council, who shall serve without compensation but may be reimbursed for necessary expenses. One member of the parking commission shall be selected from among persons actively engaged in the private parking industry, if available.

Three of those first appointed shall be designated to serve for one, two, and three years respectively, and two shall be designated to serve four years. The terms for all subsequently appointed members shall be four years. In event of any vacancy, the mayor, subject to confirmation of the city council, shall make appointments to fill the unexpired portion of the term.

A member may be reappointed, and shall hold office until his successor has been appointed and has qualified. Members may be removed by the mayor upon consent of the city council. [1969 ex.s. c 204 § 5.]

35.86A.060 Parking commission—Chairman—Rules—Resolutions. The parking commission shall select from its members a chairman, and may establish its own rules, regulations and procedures not inconsistent with this chapter. No resolution shall be adopted by the parking commission except upon the concurrence of at least three members. [1969 ex.s. c 204 § 6.]

35.86A.070 Powers and authority of parking commission. The parking commission is authorized and empowered, in the name of the municipality by resolution to:

(1) Own and acquire property and property rights by purchase, gift, devise, or lease for the construction, maintenance, or operation of off-street parking facilities, or for effectuating the purpose of this chapter, and accept grants-in-aid, including compliance with conditions attached thereto;

(2) Construct, maintain, and operate off-street parking facilities located on land dedicated for park or civic center purposes, or on other municipally-owned land where the primary purpose of such off-street parking facility is to provide parking for persons who use such park or civic center facilities, and undertake research, and prepare plans incidental thereto subject to applicable statutes and charter provisions for municipal purchases, expenditures, and improvements; and in addition may own other off-street parking facilities and operate them in accordance with RCW 35.86A.120: PROVIDED, That the provisions of chapter 35.86 RCW as now or hereafter amended shall not apply to such construction, operation or maintenance;

(3) Establish and collect parking fees, require that receipts be provided for parking fees, make exemption for handicapped persons, lease space for commercial, store, advertising or automobile accessory purposes, and regulate prices and service charges, for use of and within and the aerial space over parking facilities under its control;

(4) Subject to applicable city civil service provisions, provide for the appointment, removal and control of officers and employees, and prescribe their duties and compensation, and to control all equipment and property under the commission's jurisdiction;

(5) Contract with private persons and organizations for the management and/or operation of parking facilities under its control, and services related thereto, including leasing of such facilities or portions thereof;

(6) Cause construction of parking facilities as a condition of an operating agreement or lease, derived through competitive bidding, or in the manner authorized by chapter 35.42 RCW;

(7) Execute and accept instruments, including deeds, necessary or convenient for the carrying on of its business; acquire rights to develop parking facilities over or under city property; and to contract to operate and manage parking facilities under the jurisdiction of other city departments or divisions and of other public bodies;

(8) Determine the need for and recommend to the city council:

(a) The establishment of local improvement districts to pay the cost of parking facilities or any part thereof;

(b) The issuance of bonds or other financing by the city for construction of parking facilities;

(c) The acquisition of property and property rights by condemnation from the public, or in street areas;

(9) Transfer its control of property to the city and liquidate its affairs, so long as such transfer does not contravene any covenant or agreement made with the holders of bonds or other creditors; and

(10) Require payment of the excise tax hereinafter provided.

Parking fees for parking facilities under the control of the parking commission shall be maintained commensurate with and neither higher nor lower than prevailing rates for parking charged by commercial operators in the general area.

[1980 c 127 § 1; 1975 1st ex.s. c 221 § 3; 1969 ex.s. c 204 § 7.]

Severability—1975 1st ex.s. c 221: See note following RCW 35.86.010.

35.86A.080 New off-street parking facilities—Powers of parking commission and city council. (1) Whenever the parking commission intends to construct new off-street parking facilities it shall:

(a) Prepare plans for such proposed development, which shall meet the approval of the planning commission, other appropriate city planning agency, or city council;

(b) Prepare a report to the city council stating the proposed method of financing and property acquisition;

(c) Specify the property rights, if any, to be secured from the public or of property devoted to public use; the uses of streets necessary therefor, or realignment or vacation of streets and alleys; the relocation of street utilities; and any street area to be occupied or closed during construction.

(2) In the event the proposed parking facility shall require:

(a) Creation of a local improvement district;

(b) Issuance of bonds, allocation or appropriation of municipal revenues from other sources, or guarantees of or use of the credit of the municipality;

(c) Exercise of the power of eminent domain; or

(d) Use of, or vacation, realignment of streets and alleys, or relocation of municipal utilities.

One or more public hearings shall be held thereon before the city council, or an assigned committee thereof, which shall report its recommendations to be approved, revised, or rejected by the city council. Such hearings may be consolidated with any required hearings for street vacations, or creation of a local improvement district. Pursuant to such hearing, the city council may:

(1) Create a local improvement district to finance all or part of the parking facility, in accordance with Title 35 RCW, as now existing or hereinafter amended: **PROVIDED, HOWEVER,** That assessments against property within the district may be measured per lot, per square foot, by property valuation, or any other method as fairly reflects the special benefits derived therefrom, and credit in calculating the assessment may be allowed for property rights or services performed;

(2) Provide for issuance of revenue bonds payable from revenues of the proposed parking facility, from other off-street parking facilities, on-street meter collections, or allocations of other sources of funds; issue general obligation bonds; make reimbursable or nonrefundable appropriations from the general fund, or reserves; and/or guarantee bonds issued or otherwise pledge the city's credit, all in such combination, and under such terms and conditions as the city council shall specify;

(3) Authorize acquisition of the necessary property and property rights by eminent domain proceedings, in the manner authorized by law for cities in Title 8 RCW: **PROVIDED,** That the city council shall first determine that the proposed parking facility will promote the circulation of traffic or the more convenient or efficient use by the public of streets or public facilities in the immediate area than would exist if the proposed parking facility were not

provided, or that the parking facility otherwise enhances the public health, safety and welfare; and

(4) Authorize and execute the necessary transfer or control of property rights; vacate or realign streets and alleys or permit uses within the same; and direct relocation of street utilities.

In event none of the four above powers need be exercised, the city council's approval of construction plans shall be deemed full authority to construct and complete the parking facility. [1969 ex.s. c 204 § 8.]

35.86A.090 Powers of cities. The city may:

(1) Transfer control of off-street parking facilities under other departments to the parking commission under such conditions as deemed appropriate;

(2) Issue revenue bonds pursuant to chapter 35.41 RCW, and RCW 35.24.305, and 35.81.100 as now or hereafter amended, and such other statutes as may authorize such bonds for parking facilities authorized herein;

(3) Issue general obligation bonds pursuant to chapters 39.44, 39.52 RCW, and RCW 35.81.115 as now or hereafter amended, and such other statutes and applicable provisions of the state Constitution that may authorize such bonds for parking facilities authorized herein;

(4) Appropriate funds for the parking commission; and

(5) Enact such ordinances as may be necessary to carry out the provisions of this chapter, notwithstanding any charter provisions to the contrary. [1969 ex.s. c 204 § 9.]

35.86A.100 Disposition of revenues—Expenditure procedure. All revenues received shall be paid to the municipal treasurer for the credit of the general fund, or such other funds as may be provided by ordinance.

Expenditures of the parking commission shall be made in accordance with the budget adopted by the municipality pursuant to chapter 35.32A RCW. [1969 ex.s. c 204 § 10.]

35.86A.110 Excise tax to reimburse taxing authorities for loss of property tax revenue. Such cities shall pay to the county treasurer an annual excise tax equal to the amount which would be paid upon real property devoted to the purpose of off-street parking, were it in private ownership. This section shall apply to parking facilities acquired and/or operated under this chapter. The proceeds of such excise tax shall be allocated by the county treasurer to the various taxing authorities in which such property is situated, in the same manner as though the property were in private ownership. [1969 ex.s. c 204 § 11.]

35.86A.120 Operation of parking facilities—Bid requirements and procedure. Except for off-street parking facilities situated on real property leased or rented to a city and not used for park and civic center parking, cities may operate off-street parking facilities with city forces. Leased or rented off-street parking facilities shall be operated by responsible, experienced private operators of such facilities. The call for bids shall specify the terms and conditions under which the facility will be leased for private operation. The call for bids shall specify the time and place at which the bids will be received and the time and when the same will be opened, and such call shall be advertised once a week for

two successive weeks before the time fixed for the filing of bids in a newspaper of general circulation in the city. If no bid is received for the operation of such an off-street parking facility, or if the bids received are not satisfactory, the legislative body of the city may reject such bids and shall readvertise the facility for lease. In the event that no bids or no satisfactory bids shall have been received following the second advertising, the city may negotiate with a private operator for the operation of the facility without competitive bidding. In the event the city shall be unable to negotiate for satisfactory private operation within a reasonable time, the city may operate the facility for a period not to exceed three years, at which time it shall readvertise as provided above in this section. [1980 c 127 § 2; 1975 1st ex.s. c 221 § 4; 1969 ex.s. c 204 § 12.]

Severability—1975 1st ex.s. c 221: See note following RCW 35.86.010.

Chapter 35.87

PARKING FACILITIES—CONVEYANCE OF LAND FOR IN CITIES OVER 300,000

Sections

- 35.87.010 Sale, lease or conveyance of real property for free public parking authorized—"Municipality" defined.
- 35.87.020 Notice of intention to sell, lease or convey real property in business area—Posting—Publication—Preference right to purchase or lease.
- 35.87.030 Consideration, terms and conditions—Reversion.
- 35.87.040 RCW 35.87.020 inapplicable to sale, lease or conveyance to federal government or agency or to the state or any county, city or political subdivision.

35.87.010 Sale, lease or conveyance of real property for free public parking authorized—"Municipality" defined. Any municipality may sell, lease or convey any real property located in an area zoned to permit the operation of retail business, when such property is no longer needed for the use or purposes of the municipality, to any private corporation or association established to develop and maintain free public parking facilities. "Municipality" as used in RCW 35.87.010 through 35.87.040, means any city with a population over three hundred thousand and any municipal corporation or other political subdivision located within the boundaries of such city. [1967 ex.s. c 144 § 2.]

Severability—1967 ex.s. c 144: See note following RCW 36.900.030.

35.87.020 Notice of intention to sell, lease or convey real property in business area—Posting—Publication—Preference right to purchase or lease. Before any municipality may sell, lease or convey any real property located in an area zoned to permit the operation of retail business, it shall post in a conspicuous place on such property and publish in the official newspaper for the county in which such property is located for fifteen days prior to such sale, lease or conveyance a notice giving the legal description of such property and disclosing an intention to sell, lease or convey such property; and it shall offer in its notice, and shall give, the first right of purchase or lease of the whole or any part of such property to any private corporation or association (1) established to develop and maintain free

public parking facilities and (2) which agrees to dedicate such property for free public parking. [1967 ex.s. c 144 § 3.]

Severability—1967 ex.s. c 144: See note following RCW 36.900.030.

35.87.030 Consideration, terms and conditions—Reversion. A sale, lease or conveyance to such corporation or association may be made for such consideration and on such terms and conditions as the municipality deems appropriate: PROVIDED, That the price charged such corporation or association shall not be in excess of the fair market value of such property: PROVIDED FURTHER, That all deeds, leases and other instruments of conveyance shall incorporate a reversion to the municipality of the property or property interest so deeded, leased or conveyed, in the event that such property should no longer be used as a free public parking facility. [1967 ex.s. c 144 § 4.]

Severability—1967 ex.s. c 144: See note following RCW 36.900.030.

35.87.040 RCW 35.87.020 inapplicable to sale, lease or conveyance to federal government or agency or to the state or any county, city or political subdivision. The provisions of RCW 35.87.020 shall not apply to any sale, lease or conveyance to the federal government or to any agency thereof, or to the state or any agency, county, city, town or other political subdivision of this state. [1967 ex.s. c 144 § 5.]

Severability—1967 ex.s. c 144: See note following RCW 36.900.030.

Chapter 35.87A

PARKING AND BUSINESS IMPROVEMENT AREAS

Sections

- 35.87A.010 Authorized—Purposes—Special assessments.
- 35.87A.020 Definitions.
- 35.87A.030 Initiation petition or resolution—Contents.
- 35.87A.040 Resolution of intention to establish—Contents—Hearing.
- 35.87A.050 Notice of hearing.
- 35.87A.060 Hearings.
- 35.87A.070 Change of boundaries.
- 35.87A.080 Special assessments—Classification of businesses—Assessments for separate purposes.
- 35.87A.090 Special assessments—Same basis or rate for classes not required—Factors as to parking facilities.
- 35.87A.100 Ordinance to establish—Adoption—Contents.
- 35.87A.110 Use of revenue—Contracts to administer operation of area.
- 35.87A.120 Use of assessment proceeds restricted.
- 35.87A.130 Collection of assessments.
- 35.87A.140 Changes in assessment rates.
- 35.87A.150 Benefit zones—Authorized—Rates.
- 35.87A.160 Benefit zones—Establishment, modification and disestablishment of area provisions and procedure to be followed.
- 35.87A.170 Exemption period for new businesses.
- 35.87A.180 Disestablishment of area—Hearing.
- 35.87A.190 Disestablishment of area—Assets and liabilities.
- 35.87A.200 Bids required—Monetary amount.
- 35.87A.210 Computing cost of improvement for bid requirement.
- 35.87A.220 Existing laws not affected—Chapter supplemental—Purposes may be accomplished in conjunction with other methods.
- 35.87A.900 Severability—1971 ex.s. c 45.

35.87A.010 Authorized—Purposes—Special assessments. To aid general economic development and to facilitate merchant and business cooperation which assists trade, the legislature hereby authorizes all counties and all incorporated cities and towns, including unclassified cities and towns operating under special charters:

(1) To establish, after a petition submitted by the operators responsible for 60 percent of the assessments by businesses within the area, parking and business improvement areas, hereafter referred to as area or areas, for the following purposes:

- (a) The acquisition, construction or maintenance of parking facilities for the benefit of the area;
- (b) Decoration of any public place in the area;
- (c) Promotion of public events which are to take place on or in public places in the area;
- (d) Furnishing of music in any public place in the area;
- (e) Providing professional management, planning, and promotion for the area, including the management and promotion of retail trade activities in the area; or
- (f) Providing maintenance and security for common, public areas.

(2) To levy special assessments on all businesses within the area and specially benefited by a parking and business improvement area to pay in whole or in part the damages or costs incurred therein as provided in this chapter. [1985 c 128 § 1; 1981 c 279 § 1; 1971 ex.s. c 45 § 1.]

35.87A.020 Definitions. (1) "Business" as used in this chapter means all types of business, including professions.

(2) "Legislative authority" as used in this chapter means the legislative authority of any city or town including unclassified cities or towns operating under special charters or the legislative authority of any county. [1971 ex.s. c 45 § 2.]

35.87A.030 Initiation petition or resolution—Contents. For the purpose of establishing a parking and business improvement area, an initiation petition may be presented to the legislative authority having jurisdiction of the area in which the proposed parking and business improvement area is to be located or the legislative authority may by resolution initiate a parking and business improvement area. The initiation petition or resolution shall contain the following:

- (1) A description of the boundaries of the proposed area;
- (2) The proposed uses and projects to which the proposed special assessment revenues shall be put and the total estimated cost thereof;
- (3) The estimated rate of levy of special assessment with a proposed breakdown by class of business if such classification is to be used.

The initiating petition shall also contain the signatures of the persons who operate businesses in the proposed area which would pay fifty percent of the proposed special assessments. [1971 ex.s. c 45 § 3.]

35.87A.040 Resolution of intention to establish—Contents—Hearing. The legislative authority, after receiving a valid initiation petition or after passage of an initiation

resolution, shall adopt a resolution of intention to establish an area. The resolution shall state the time and place of a hearing to be held by the legislative authority to consider establishment of an area and shall restate all the information contained in the initiation petition or initiation resolution regarding boundaries, projects and uses, and estimated rates of assessment. [1971 ex.s. c 45 § 4.]

35.87A.050 Notice of hearing. Notice of a hearing held under the provisions of this chapter shall be given by:

- (1) One publication of the resolution of intention in a newspaper of general circulation in the city; and
- (2) Mailing a complete copy of the resolution of intention to each business in the proposed, or established, area. Publication and mailing shall be completed at least ten days prior to the time of the hearing. [1971 ex.s. c 45 § 5.]

35.87A.060 Hearings. Whenever a hearing is held under this chapter, the legislative authority shall hear all protests and receive evidence for or against the proposed action. The legislative authority may continue the hearing from time to time. Proceedings shall terminate if protest is made by businesses in the proposed area which would pay a majority of the proposed special assessments. [1971 ex.s. c 45 § 6.]

35.87A.070 Change of boundaries. If the legislative authority decides to change the boundaries of the proposed area, the hearing shall be continued to a time at least fifteen days after such decision and notice shall be given as prescribed in RCW 35.87A.050, showing the boundary amendments, but no resolution of intention is required. [1971 ex.s. c 45 § 7.]

35.87A.080 Special assessments—Classification of businesses—Assessments for separate purposes. For purposes of the special assessments to be imposed pursuant to this chapter, the legislative authority may make a reasonable classification of businesses, giving consideration to various factors such as business and occupation taxes imposed, square footage of the business, number of employees, gross sales, or any other reasonable factor relating to the benefit received, including the degree of benefit received from parking. Whenever it is proposed that a parking and business improvement area provide more than one of the purposes listed in RCW 35.87A.010, special assessments may be imposed in a manner that measures benefit from each of the separate purposes, or any combination of the separate purposes. Special assessments shall be imposed and collected annually, or on another basis specified in the ordinance establishing the parking and business improvement area. [1985 c 128 § 2; 1981 c 279 § 2; 1971 ex.s. c 45 § 8.]

35.87A.090 Special assessments—Same basis or rate for classes not required—Factors as to parking facilities. The special assessments need not be imposed on different classes of business, as determined pursuant to RCW 35.87A.080, on the same basis or the same rate: PROVIDED, HOWEVER, That the special assessments imposed for the purpose of the acquisition, construction or maintenance of parking facilities for the benefit of the area shall be

imposed on the basis of benefit determined by the legislative authority after giving consideration to the total cost to be recovered from the businesses upon which the special assessment is to be imposed, the total area within the boundaries of the parking and business improvement area, the assessed value of the land and improvements within the area, the total business volume generated within the area and within each business, and such other factors as the legislative authority may find and determine to be a reasonable measure of such benefit. [1971 ex.s. c 45 § 9.]

35.87A.100 Ordinance to establish—Adoption—Contents. If the legislative authority, following the hearing, decides to establish the proposed area, it shall adopt an ordinance to that effect. This ordinance shall contain the following information:

- (1) The number, date and title of the resolution of intention pursuant to which it was adopted;
- (2) The time and place the hearing was held concerning the formation of such area;
- (3) The description of the boundaries of such area;
- (4) A statement that the businesses in the area established by the ordinance shall be subject to the provisions of the special assessments authorized by RCW 35.87A.010;
- (5) The initial or additional rate or levy of special assessment to be imposed with a breakdown by classification of business, if such classification is used; and
- (6) A statement that a parking and business improvement area has been established.
- (7) The uses to which the special assessment revenue shall be put: PROVIDED, HOWEVER, That such use shall conform to the use as declared in the initiation petition presented pursuant to RCW 35.87A.030. [1971 ex.s. c 45 § 10.]

35.87A.110 Use of revenue—Contracts to administer operation of area. The legislative authority of each city or town or county shall have sole discretion as to how the revenue derived from the special assessments is to be used within the scope of the purposes; however, the legislative authority may appoint existing advisory boards or commissions to make recommendations as to its use, or the legislative authority may create a new advisory board or commission for the purpose.

The legislative authority may contract with a chamber of commerce or other similar business association operating primarily within the boundaries of the legislative authority to administer the operation of a parking and business improvement area, including any funds derived pursuant thereto: PROVIDED, That such administration must comply with all applicable provisions of law including this chapter, with all county, city, or town resolutions and ordinances, and with all regulations lawfully imposed by the state auditor or other state agencies. [1971 ex.s. c 45 § 11.]

35.87A.120 Use of assessment proceeds restricted. The special assessments levied hereunder must be for the purposes specified in the ordinances and the proceeds shall not be used for any other purpose. [1971 ex.s. c 45 § 12.]

35.87A.130 Collection of assessments. Collections of assessments imposed pursuant to this chapter shall be made at the same time and in the same manner as otherwise prescribed by Title 35 RCW or in such other manner as the legislative authority shall determine. [1971 ex.s. c 45 § 13.]

35.87A.140 Changes in assessment rates. Changes may be made in the rate or additional rate of special assessment as specified in the ordinance establishing the area, by ordinance adopted after a hearing before the legislative authority.

The legislative authority shall adopt a resolution of intention to change the rate or additional rate of special assessment at least fifteen days prior to the hearing required by this section. This resolution shall specify the proposed change and shall give the time and place of the hearing: PROVIDED, That proceedings to change the rate or impose an additional rate of special assessments shall terminate if protest is made by businesses in the proposed area which would pay a majority of the proposed increase or additional special assessments. [1971 ex.s. c 45 § 14.]

35.87A.150 Benefit zones—Authorized—Rates. The legislative authority may, for each of the purposes set out in RCW 35.87A.010, establish and modify one or more separate benefit zones based upon the degree of benefit derived from the purpose and may impose a different rate of special assessment within each such benefit zone. [1971 ex.s. c 45 § 15.]

35.87A.160 Benefit zones—Establishment, modification and disestablishment of area provisions and procedure to be followed. All provisions of this chapter applicable to establishment or disestablishment of an area also apply to the establishment, modification, or disestablishment of benefit zones pursuant to *RCW 35.87A.150. The establishment or the modification of any such zone shall follow the same procedure as provided for the establishment of a parking and business improvement area and the disestablishment shall follow the same procedure as provided for disestablishment of an area. [1971 ex.s. c 45 § 16.]

*Reviser's note: "RCW 35.87A.150" has been translated from "section 13 of this act," as the reference to section 13, herein codified as RCW 35.87A.130, was apparently erroneous.

35.87A.170 Exemption period for new businesses. Businesses established after the creation of an area within the area may be exempted from the special assessments imposed pursuant to this chapter for a period not exceeding one year from the date they commenced business in the area. [1971 ex.s. c 45 § 17.]

35.87A.180 Disestablishment of area—Hearing. The legislative authority may disestablish an area by ordinance after a hearing before the legislative authority. The legislative authority shall adopt a resolution of intention to disestablish the area at least fifteen days prior to the hearing required by this section. The resolution shall give the time and place of the hearing. [1971 ex.s. c 45 § 18.]

35.87A.190 Disestablishment of area—Assets and liabilities. Upon disestablishment of an area, any proceeds of the special assessments, or assets acquired with such proceeds, or liabilities incurred as a result of the formation of such area, shall be subject to disposition as the legislative authority shall determine: PROVIDED, HOWEVER, Any liabilities, either current or future, incurred as a result of action taken to accomplish the purposes of RCW 35.87A.010 shall not be an obligation of the general fund or any special fund of the city or town, but such liabilities shall be provided for entirely from available revenue generated from the projects or facilities authorized by RCW 35.87A.010 or from special assessments on the property specially benefited within the area. [1971 ex.s. c 45 § 19.]

35.87A.200 Bids required—Monetary amount. Any city or town or county authorized by this chapter to establish a parking improvement area shall call for competitive bids by appropriate public notice and award contracts, whenever the estimated cost of such work or improvement, including cost of materials, supplies and equipment, exceeds the sum of two thousand five hundred dollars. [1971 ex.s. c 45 § 20.]

35.87A.210 Computing cost of improvement for bid requirement. The cost of the improvement for the purposes of this chapter shall be aggregate of all amounts to be paid for the labor, materials and equipment on one continuous or inter-related project where work is to be performed simultaneously or in near sequence. Breaking an improvement into small units for the purposes of avoiding the minimum dollar amount prescribed in RCW 35.87A.200 is contrary to public policy and is prohibited. [1971 ex.s. c 45 § 21.]

35.87A.220 Existing laws not affected—Chapter supplemental—Purposes may be accomplished in conjunction with other methods. This chapter providing for parking and business improvement areas shall not be deemed or construed to affect any existing act, or any part thereof, relating to special assessments or other powers of counties, cities and towns, but shall be supplemental thereto and concurrent therewith.

The purposes and functions of parking and business improvement areas as set forth by the provisions of this chapter may be accomplished in part by the establishment of an area pursuant to this chapter and in part by any other method otherwise provided by law, including provisions for local improvements. [1971 ex.s. c 45 § 22.]

35.87A.900 Severability—1971 ex.s. c 45. If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provisions to other persons or circumstances is not affected. [1971 ex.s. c 45 § 23.]

Chapter 35.88

WATER POLLUTION—PROTECTION FROM

Sections

- 35.88.010 Authority over sources of supply.
- 35.88.020 Enforcement of ordinance—Special police.
- 35.88.030 Pollution declared to be a nuisance—Abatement.
- 35.88.040 Pollution as criminal nuisance—Punishment.
- 35.88.050 Prosecution—Trial—Abatement of nuisance.
- 35.88.060 Health officers and mayor must enforce.
- 35.88.070 Injunction proceeding.
- 35.88.080 Inland cities over 100,000—Discharge of sewage and other discharges prohibited—Nuisance.
- 35.88.090 Inland cities over 100,000—Investigation of disposal systems by secretary of social and health services.

Furnishing impure water: RCW 70.54.020.

Pollution of watershed or source of drinking water: RCW 70.54.010, 70.54.030.

Sewer districts: Title 56 RCW.

Sewerage improvement districts: Chapter 85.08 RCW.

Water districts: Title 57 RCW.

35.88.010 Authority over sources of supply. For the purpose of protecting the water furnished to the inhabitants of cities and towns from pollution, cities and towns are given jurisdiction over all property occupied by the works, reservoirs, systems, springs, branches and pipes, by means of which, and of all the lakes, rivers, springs, streams, creeks, or tributaries constituting the sources of supply from which the cities and towns or the companies or individuals furnishing water to the inhabitants thereof obtain their supply of water, or store or conduct it, and over all property acquired for any of the foregoing works or purposes or for the preservation and protection of the purity of the water supply, and over all property within the areas draining into the lakes, rivers, springs, streams, creeks, or tributaries constituting the sources of supply whether they or any of them are within the city or town limits or outside. [1965 c 7 § 35.88.010. Prior: 1907 c 227 § 1, part; 1899 c 70 § 1, part; RRS § 9473, part.]

35.88.020 Enforcement of ordinance—Special police. Every city and town may by ordinance prescribe what acts shall constitute offenses against the purity of its water supply and the punishment or penalties therefor and enforce them. The mayor of each city and town may appoint special policemen, with such compensation as the city or town may fix, who shall, after taking oath, have the powers of constables, and who may arrest with or without warrant any person committing, within the territory over which any city or town is given jurisdiction by this chapter, any offense declared by law or by ordinance, against the purity of the water supply, or which violate any rule or regulation lawfully promulgated by the state board of health for the protection of the purity of such water supply. Every special policeman whose appointment is authorized herein may take any person arrested for any such offense or violation before any court having jurisdiction thereof to be proceeded with according to law. Every such special policeman shall, when on duty wear in plain view a badge or shield bearing the words "special police" and the name of the city or town by which he has been appointed. [1965 c

7 § 35.88.020. Prior: 1907 c 227 § 1, part; 1899 c 70 § 1, part; RRS § 9473, part.]

35.88.030 Pollution declared to be a nuisance—Abatement. The establishment or maintenance of any slaughter pens, stock feeding yards, hogpens, or the deposit or maintenance of any uncleanly or unwholesome substance, or the conduct of any business or occupation, or the allowing of any condition upon or sufficiently near the (1) sources from which the supply of water for the inhabitants of any city or town is obtained, or (2) where its water is stored, or (3) the property or means through which the same may be conveyed or conducted so that such water would be polluted or the purity of such water or any part thereof destroyed or endangered, is prohibited and declared to be unlawful, and is declared to constitute a nuisance, and may be abated as other nuisances are abated. [1965 c 7 § 35.88.030. Prior: 1899 c 70 § 2, part; RRS § 9474, part.]

35.88.040 Pollution as criminal nuisance—Punishment. Any person who does, establishes, maintains, or creates any of the things which have the effect of polluting any such sources of water supply, or water, and any person who does any of the things in RCW 35.88.030 declared to be unlawful, shall be deemed guilty of creating and maintaining a nuisance, and may be prosecuted therefor, and upon conviction thereof may be fined in any sum not exceeding five hundred dollars. [1965 c 7 § 35.88.040. Prior: 1899 c 70 § 2, part; RRS § 9474, part.]

Nuisance: Chapter 9.66 RCW.

35.88.050 Prosecution—Trial—Abatement of nuisance. If upon the trial of any person for the violation of any of the provisions of this chapter he is found guilty of creating or maintaining a nuisance or of violating any of the provisions of this chapter, he shall forthwith abate the nuisance, and if he fails so to do within one day after such conviction, unless further time is granted by the court, a warrant shall be issued by the court wherein the conviction was obtained, directed to the sheriff of the county in which such nuisance exists and the sheriff shall forthwith proceed to abate the said nuisance and the cost thereof shall be taxed against the person so convicted as a part of the costs of such case. [1965 c 7 § 35.88.050. Prior: 1899 c 70 § 3; RRS § 9475.]

35.88.060 Health officers and mayor must enforce. The city health officer, city physician, board of public health, mayor, or any other officer, who has the sanitary condition of the city or town in charge, shall see that the provisions of this chapter are enforced and upon complaint being made to any such officer of an alleged violation, he shall immediately investigate the said complaint and if the same appears to be well founded he shall file a complaint against the person or persons violating any of the provisions of this chapter and cause their arrest and prosecution. [1965 c 7 § 35.88.060. Prior: 1899 c 70 § 4; RRS § 9476.]

35.88.070 Injunction proceeding. If any provision of this chapter is being violated, the city or town supplied with

the water or a corporation owning waterworks for the purpose of supplying the city or town or the inhabitants thereof with water may, by civil action in the superior court of the proper county, have the maintenance of the nuisance which pollutes or tends to pollute the said water, enjoined and such injunction may be perpetual. [1965 c 7 § 35.88.070. Prior: 1899 c 70 § 5; RRS § 9477.]

35.88.080 Inland cities over 100,000—Discharge of sewage and other discharges prohibited—Nuisance. Any city not located on tidewater, having a population of one hundred thousand or more, is hereby prohibited from discharging, draining or depositing, or causing to be discharged, drained or deposited, any sewage, garbage, feculent matter, offal, refuse, filth, or any animal, mineral, or vegetable matter or substance, offensive, injurious or dangerous to health, into any springs, streams, rivers, lakes, tributaries thereof, wells, or into any subterranean or other waters used or intended to be used for human or animal consumption or for domestic purposes.

Anything done, maintained, or suffered, in violation of any of the provisions of this section, shall be deemed to be a public nuisance, and may be summarily abated as such by any court of competent jurisdiction at the suit of the secretary of social and health services or any person whose supply of water for human or animal consumption or for domestic purposes is or may be affected. [1979 c 141 § 40; 1965 c 7 § 35.88.080. Prior: (i) 1941 c 186 § 1; Rem. Supp. 1941 § 9354-1. (ii) 1941 c 186 § 3; Rem. Supp. 1941 § 9354-3.]

Nuisance: Chapter 9.66 RCW.

35.88.090 Inland cities over 100,000—Investigation of disposal systems by secretary of social and health services. The secretary of social and health services shall have the power, and it shall be his duty, to investigate the system of disposal of sewage, garbage, feculent matter, offal, refuse, filth, or any animal, mineral, or vegetable matter or substance, by cities not located on tidewater, having a population of one hundred thousand or more, and if he shall determine upon investigation that any such system or systems of disposal is or may be injurious or dangerous to health, he shall have the power, and it shall be his duty, to order such city or cities to provide for, construct, and maintain a system or systems of disposal which will not be injurious or dangerous to health. [1979 c 141 § 41; 1965 c 7 § 35.88.090. Prior: 1941 c 186 § 2; Rem. Supp. 1941 § 9354-2.]

Chapter 35.89

WATER REDEMPTION BONDS

Sections

35.89.010	Authority to issue water redemption bonds.
35.89.020	Bonds—Terms—Execution—Rights of owner.
35.89.030	Bonds exchange—Subrogation.
35.89.040	Water redemption fund—Creation.
35.89.050	Water redemption fund—Sources.
35.89.060	Water redemption fund—Trust fund.
35.89.070	Payment of interest on bonds.
35.89.080	Payment of principal of bonds.
35.89.090	Violations—Penalties—Personal liability.

35.89.100 Water systems—What included.
Water districts: Title 57 RCW.

35.89.010 Authority to issue water redemption bonds. If a public water system has been constructed within any local improvement district of any city or town for the construction of which bonds of the local improvement district were issued and are outstanding and unpaid, and if the city or town has taken over the system or is operating it as a public utility or has incorporated it into or connected it with any system operated by city or town as a public utility, from the operation of which such city or town derives a revenue, the city or town may by resolution of its council authorize the issue of bonds to an amount not exceeding the amount of the local improvement bonds issued for the construction of the water system then outstanding and unpaid with interest due and unpaid, and may redeem the outstanding local improvement bonds by exchanging therefor an equal amount at par of the bonds authorized by this chapter. The new bonds shall be called water redemption bonds. [1965 c 7 § 35.89.010. Prior: (i) 1929 c 85 § 1; 1923 c 52 § 1; RRS § 9154-1. (ii) 1923 c 52 § 2, part; RRS § 9154-2, part.]

35.89.020 Bonds—Terms—Execution—Rights of owner. (1) Water redemption bonds shall be in denominations of not more than one thousand nor less than one hundred dollars each, and shall bear interest at a rate or rates as authorized by the city or town council, payable semiannually, and shall bear a serial number and shall be signed by the mayor of the city or town and shall be otherwise executed in such manner and payable at such time and place not exceeding twenty years after the date of issue as the city or town council shall determine and such bonds shall be payable only out of the special fund created by authority of this chapter and shall be a valid claim of the owner thereof only against that fund and the fixed portion or amount of the revenues of the water system pledged to the fund, and shall not constitute an indebtedness of the city or town. Such bonds may be in any form, including bearer bonds or registered bonds as provided in RCW 39.46.030.

(2) Notwithstanding subsection (1) of this section, such bonds may be issued and sold in accordance with chapter 39.46 RCW. [1983 c 167 § 66; 1970 ex.s. c 56 § 46; 1969 ex.s. c 232 § 23; 1965 c 7 § 35.89.020. Prior: 1923 c 52 § 2, part; RRS § 9154-2, part.]

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.

35.89.030 Bonds exchange—Subrogation. Water redemption bonds issued under the authority of this chapter shall only be sold or disposed of in exchange for an equal amount in par value of principal and interest of the local improvement district bonds issued for the construction of water systems taken over and operated by the city or town, or incorporated into or connected with a water system operated by it.

Upon the exchange of the water redemption bonds authorized by this chapter for local improvement district bonds the city or town shall be subrogated to all the rights of the owners and holders of such local improvement district bonds against the property of the local improvement district and against any person or corporation liable thereon.

Any money derived by the city or town from the sale or enforcement of such local improvement district bonds shall be paid into the city's water redemption fund. [1965 c 7 § 35.89.030. Prior: 1923 c 52 § 3; RRS § 9154-3.]

35.89.040 Water redemption fund—Creation. The city or town council before issuing water redemption bonds shall by ordinance establish a fund for the payment of the bonds at maturity and of interest thereon as it matures to be designated the water redemption fund. [1965 c 7 § 35.89.040. Prior: 1923 c 52 § 4; RRS § 9154-4.]

35.89.050 Water redemption fund—Sources. Every city and town shall have power to regulate and control the use and price of water supplied through a water system taken over from a local improvement district.

It shall establish such rates and charges for the water as shall be sufficient after providing for the operation and maintenance of the system to provide for the payment of the water redemption bonds at maturity and of interest thereon as it matures, and such portion shall be included in and collected as a part of the charges made by such city or town for water supplied through such water system and such portion shall be paid into the water redemption fund. [1965 c 7 § 35.89.050. Prior: 1923 c 52 § 5; RRS § 9154-5.]

35.89.060 Water redemption fund—Trust fund. All moneys paid into or collected for the water redemption fund shall be used for the payment of principal and interest of the water redemption bonds issued under the authority of this chapter and no part thereof while any of said bonds are outstanding and unpaid, shall be diverted to any other fund or use: PROVIDED, That when both principal and interest on all water redemption bonds issued and outstanding have been paid, any unexpended balance remaining in the fund may be transferred to the general fund or such other fund as the city or town council may direct. [1965 c 7 § 35.89.060. Prior: 1923 c 52 § 8; RRS § 9154-8.]

35.89.070 Payment of interest on bonds. The treasurer of such city or town shall pay the interest on the water redemption bonds authorized by this chapter out of the money in the water redemption fund. [1965 c 7 § 35.89.070. Prior: 1923 c 52 § 6; RRS § 9154-6.]

35.89.080 Payment of principal of bonds. Whenever there is sufficient money in the water redemption fund, over and above the amount that will be required to pay the interest on the bonds up to the time of maturity of the next interest payment, to pay the principal of one or more bonds, the city or town treasurer shall call in and pay such bonds. The bonds shall be called and paid in their numerical order, and the call shall be made by publication in the official newspaper of the city or town. The call shall state the total amount and the serial number or numbers of the bonds

called and that they will be paid on the date when the next semiannual payment of interest will be due, and that interest on the bonds called will cease from such date. [1965 c 7 § 35.89.080. Prior: 1923 c 52 § 7; RRS § 9154-7.]

35.89.090 Violations—Penalties—Personal liability.

Every ordinance, resolution, order, or action of the council, board, or officer of any city or town, and every warrant or other instrument made, issued, passed or done in violation of the provisions of this chapter shall be void.

Every officer, agent, employee, or member of the council of the city or town, and every person or corporation who shall knowingly commit any violation of the provisions of this chapter or knowingly aid in such violation, shall be liable to the city or town for all money transferred, diverted or paid out in violation thereof and such liability shall attach to and be enforceable against the official bond, if any, of such official agent, employee, or member of the council. [1965 c 7 § 35.89.090. Prior: 1923 c 52 § 9; RRS § 9154-9.]

35.89.100 Water systems—What included. The term "water system" as used in this chapter shall include and be applicable to all reservoirs, storage and clarifying tanks, conduits, mains, laterals, pipes, hydrants and other equipment used or constructed for the purpose of supplying water for public or domestic use, and shall include not only water systems constructed by local improvement districts, but also any system with which the same may be incorporated or connected. [1965 c 7 § 35.89.100. Prior: 1923 c 52 § 10; RRS § 9154-10.]

Chapter 35.91

MUNICIPAL WATER AND SEWER FACILITIES ACT

Sections

- 35.91.010 Declaration of purpose—Short title.
- 35.91.020 Contracts with owners of real estate for water or sewer facilities—Reimbursement of costs by subsequent users.
- 35.91.025 Extension outside city subject to review by boundary review board.
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Water districts: Title 57 RCW.

35.91.010 Declaration of purpose—Short title. The improvement of public health and the implementation of both urban and rural development being furthered by adequate and comprehensive water facilities and storm and sanitary sewer systems, and there being a need for legislation enabling such aids to the welfare of the state, there is hereby enacted the "municipal water and sewer facilities act." [1965 c 7 § 35.91.010. Prior: 1959 c 261 § 1.]

35.91.020 Contracts with owners of real estate for water or sewer facilities—Reimbursement of costs by subsequent users. The governing body of any city, town,

county, sewer district, water district, or drainage district, hereinafter referred to as a "municipality" may contract with owners of real estate for the construction of storm, sanitary, or combination sewers, pumping stations, and disposal plants, water mains, hydrants, reservoirs, or appurtenances, hereinafter called "water or sewer facilities," within their boundaries or (except for counties) within ten miles from their corporate limits connecting with the public water or sewerage system to serve the area in which the real estate of such owners is located, and to provide for a period of not to exceed fifteen years for the reimbursement of such owners and their assigns by any owner of real estate who did not contribute to the original cost of such water or sewer facilities and who subsequently tap onto or use the same of a fair pro rata share of the cost of the construction of said water or sewer facilities, including not only those directly connected thereto, but also users connected to laterals or branches connecting thereto, subject to such reasonable rules and regulations as the governing body of such municipality may provide or contract, and notwithstanding the provisions of any other law. To the extent it may require in the performance of such contract, such municipality may install said water or sewer facilities in and along the county streets in the area to be served as hereinabove provided, subject to such reasonable requirements as to the manner of occupancy of such streets as the county may by resolution provide. The provisions of such contract shall not be effective as to any owner of real estate not a party thereto unless such contract has been recorded in the office of the county auditor of the county in which the real estate of such owner is located prior to the time such owner taps into or connects to said water or sewer facilities. The power of the governing body of such municipality to so contract also applies to water or sewer facilities in process of construction on June 10, 1959, or which have not been finally approved or accepted for full maintenance and operation by such municipality upon June 10, 1959. [1981 c 313 § 11; 1967 c 113 § 1; 1965 c 7 § 35.91.020. Prior: 1959 c 261 § 2.]

Severability—1981 c 313: See note following RCW 36.94.020.

35.91.025 Extension outside city subject to review by boundary review board. The extension of water or sewer facilities outside of the boundaries of a city or town may be subject to potential review by a boundary review board under chapter 36.93 RCW. [1989 c 84 § 33.]

35.91.030 Approval and acceptance of facilities by municipality—Rates, costs. Upon the completion of water or sewer facilities pursuant to contract mentioned in the foregoing section, the governing body of any such municipality shall be authorized to approve their construction and accept the same as facilities of the municipality and to charge for their use such water or sewer rates as such municipality may be authorized by law to establish, and if any such water or sewer facilities are so approved and accepted, all further maintenance and operation costs of said water or sewer lines and facilities shall be borne by such municipality. [1965 c 7 § 35.91.030. Prior: 1959 c 261 § 3.]

35.91.040 Contract payment to be made prior to tap, connection, or use—Removal of tap or connection. No person, firm or corporation shall be granted a permit or be authorized to tap into, or use any such water or sewer facilities or extensions thereof during the period of time prescribed in such contract without first paying to the municipality, in addition to any and all other costs and charges made or assessed for such tap, or use, or for the water lines or sewers constructed in connection therewith, the amount required by the provisions of the contract under which the water or sewer facilities so tapped into or used were constructed. All amounts so received by the municipality shall be paid out by it under the terms of such contract within sixty days after the receipt thereof. Whenever any tap or connection is made into any such contracted water or sewer facilities without such payment having first been made, the governing body of the municipality may remove, or cause to be removed, such unauthorized tap or connection and all connecting tile, or pipe located in the facility right of way and dispose of unauthorized material so removed without any liability whatsoever. [1965 c 7 § 35.91.040. Prior: 1959 c 261 § 4.]

35.91.050 Owner's pro rata share of cost to which he did not contribute. Whenever the cost, or any part thereof, of any water or sewer improvement, whether local or general, is or will be assessed against the owners of real estate and such water or sewer improvement will be connected into or will make use of, contracted water or sewer facilities constructed under the provisions of this chapter and to the cost of which such owners, or any of them, did not contribute, there shall be included in the engineer's estimate before the hearing on any such improvement, separately itemized, and in such assessments, a sum equal to the amount provided in or computed from such contract as the fair pro rata share due from such owners upon and for such contracted water or sewer facilities. [1965 c 7 § 35.91.050. Prior: 1959 c 261 § 5.]

Chapter 35.92 MUNICIPAL UTILITIES

Sections

- 35.92.010 Authority to acquire and operate waterworks—Generation of electricity—Classification of services for rates.
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Local improvement districts, creation: Chapter 35.43 RCW.

Public utility districts: Title 54 RCW.

Sewer districts: Title 56 RCW.

Sewerage improvement districts: Chapter 85.08 RCW.

Special assessments or taxation for local improvements: State Constitution Art. 7 § 9.

Street railways: Chapter 81.64 RCW.

Water districts: Title 57 RCW.

35.92.010 Authority to acquire and operate waterworks—Generation of electricity—Classification of services for rates. A city or town may construct, condemn and purchase, purchase, acquire, add to, alter, maintain and operate waterworks, within or without its limits, for the purpose of furnishing the city and its inhabitants, and any other persons, with an ample supply of water for all purposes, public and private, including water power and other power derived therefrom, with full power to regulate and control the use, distribution, and price thereof: PROVIDED, That the rates charged must be uniform for the same class of customers or service. Such waterworks may include facilities for the generation of electricity as a byproduct and such electricity may be used by the city or town or sold to an 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.

In classifying customers served or service furnished, the city or town governing body may in its discretion consider any or all of the following factors: The difference in cost of service to the various customers; location of the various customers within and without the city or town; 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 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. No rate shall be charged that is less than the cost of the water and service to the class of customers served.

For such purposes any city or town may take, condemn and purchase, purchase, acquire, and retain water from any public or navigable lake or watercourse, surface or ground, and, by means of aqueducts or pipe lines, conduct it to the city or town; and it may erect and build dams or other works across or at the outlet of any lake or watercourse in this state for the purpose of storing and retaining water therein up to and above high water mark; and for all the purposes of erecting such aqueducts, pipe lines, dams, or waterworks or other necessary structures in storing and retaining water, or for any of the purposes provided for by this chapter, the city or town may occupy and use the beds and shores up to the high water mark of any such watercourse or lake, and acquire the right by purchase, or by condemnation and purchase, or otherwise, to any water, water rights, easements

or privileges named in this chapter, or necessary for any of said purposes, and the city or town may acquire by purchase or condemnation and purchase any properties or privileges necessary to be had to protect its water supply from pollution. Should private property be necessary for any such purposes or for storing water above high water mark, the city or town may condemn and purchase, or purchase and acquire such private property. 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 city or town that does not own or operate an electric utility system 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. [1991 c 347 § 18. Prior: 1985 c 445 § 4; 1985 c 444 § 2; 1965 c 7 § 35; 192.010; prior: 1959 c 90 § 6; 1957 c 209 § 2; prior: 1951 c 252 § 1; 1947 c 214 § 1, part; 1933 c 163 § 1, part; 1931 c 53 § 1, part; 1923 c 173 § 1, part; 1913 c 45 § 1, part; 1909 c 150 § 1, part; 1899 c 128 § 1, part; 1897 c 112 § 1, part; 1893 c 8 § 1, part; 1890 p 520 § 1, part; Rem. Supp. 1947 § 9488, part. Formerly RCW 80.40.010.]

Purposes—1991 c 347: See note following RCW 90.42.005.

Severability—1991 c 347: See RCW 90.42.900.

Intent—1985 c 444: "For the purposes of this act, the legislature finds it is the policy of the state of Washington that:

(1) The quality of the natural environment shall be protected and, where possible, enhanced as follows: Perennial rivers and streams of the state shall be retained with base flows necessary to provide for preservation of wildlife, fish, scenic, aesthetic and other environmental values, and navigational values. Lakes and ponds shall be retained substantially in their natural condition. Withdrawals of water which would conflict therewith shall be authorized only in those situations where it is clear that overriding considerations of the public interest will be served.

(2) Development of water supply systems, whether publicly or privately owned, which provide water to the public generally in regional areas within the state shall be encouraged. Development of water supply systems for multiple domestic use which will not serve the public generally shall be discouraged where water supplies are available from water systems serving the public." [1985 c 444 § 1.]

Construction—Economic feasibility study—1985 c 444: "(1) Nothing in this act exempts any city or town, water district, or sewer district from compliance with applicable state and federal statutes and regulations including but not limited to: State environmental policy act, chapter 43.21C RCW; national environmental policy act, 42 U.S.C. Sec. 4321 et seq.; federal power act, 16 U.S.C. Sec. 791 et seq.; public utility regulatory policies act, 15 U.S.C. Sec. 717f; Pacific northwest electric power planning and conservation act, 16 U.S.C. Sec. 839; energy financing voter approval act, chapter 80.52 RCW; water resources act, chapter 90.54 RCW; federal clean water act, 33 U.S.C. Sec. 1251 et seq.; the public water system coordination act, chapter 70.116 RCW; and the state clean water act, chapter 90.48 RCW.

(2) In addition, if the work proposed under this act involves a new water supply project combined with an electric generation facility with an installed capacity in excess of five megawatts which may produce electricity for sale in excess of present and future needs of the water system, then each of those with a greater than twenty-five percent ownership interest in the project shall jointly prepare an independent economic feasibility study evaluating the cost-effectiveness of the combined facility in the context of forecast regional water needs, alternate sources of water supply, and the potential impact of the combined facility on rates charged for water and electricity.

In addition to the economic feasibility study, the results of the environmental impact statement required by chapter 43.21C RCW and any review by the department of ecology made pursuant to chapter 90.54 RCW shall be made available to the public at least sixty days prior to any public vote on the new combined project.

(3) This act supplements the authority of cities and towns, water districts, and sewer districts and does not restrict or impose limits on any authority such municipal corporations may otherwise have under any laws

of this state nor may the authority of such municipal corporations under other laws of this state be construed more narrowly on account of this act." [1985 c 444 § 7.]

Severability—1985 c 444: "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 444 § 8.]

Validating—1917 c 12: "Whenever any city or town has heretofore issued or authorized to be issued by such vote of its electors as is required by law at any election duly and legally held to vote on such proposition, such utility bonds for the purpose of purchasing, paying for or acquiring any such utility as is described in this act, in every such case such utility bonds are hereby declared to be legal and valid, and such city or town is hereby authorized and empowered to proceed to issue and negotiate such bonds and to continue and conclude proceedings for the purchase or acquirement of such utility, and is hereby given full power to maintain and operate the same within all and every part of such contiguous territory whether incorporated or unincorporated." [1917 c 12 § 2.]

Validating—1909 c 150: "That in all cases where the qualified electors of any city or town have heretofore, at any election, ratified any plan or system of any public utility mentioned in section 1 of this act, and shall have authorized a general indebtedness of such city or town and the issuance of bonds therefor, or the creation of a special fund or funds out of the revenues of the public utility the plan or system of which was so ratified, and the issuance of bonds or warrants payable only out of such fund or funds; and pursuant to such authorization or ratification a general indebtedness shall have been incurred or authorized to be incurred, and bonds or other obligations issued or contracted to be issued or authorized to be issued, or a special fund or funds shall have been created out of the revenue of any such public utility by pledging or setting aside a fixed proportion of such revenues, or a fixed amount out of and not exceeding a fixed proportion or a fixed amount without regard to any fixed proportion, and bonds or warrants payable either upon the call of such city or town or at a fixed date, but only out of such special fund or funds, issued or contracted to be issued or authorized to be issued, or a contract or contracts for the purchase, construction, acquisition, improvement, betterment, or addition to such public utility entered into; such general indebtedness, bonds or other obligations, contracts, special funds, and bonds or warrants, payable out of such special funds, and all proceedings relating thereto, are hereby ratified, confirmed and validated; and any bonds or other obligations constituting a general indebtedness, or bonds or warrants payable out of such special funds, heretofore so authorized, may be hereafter issued or sold as if all of said proceedings were taken pursuant to and under the authority of this act, and in full compliance therewith." [1909 c 150 § 5.]

Eminent domain by cities: Chapter 8.12 RCW.

Evaluation of application to appropriate water for electric generation facility: RCW 90.54.170.

35.92.012 May accept and operate water district's property when boundaries are identical. A town, whose boundaries are identical with those of a water district which is free from all debts and liabilities except contractual obligations between the district and the town, may accept the property and assets of the water district and operate such property and assets as a municipal waterworks, if the district and the town each participate in a summary dissolution proceedings for the district as provided in RCW 57.04.110. [1965 c 7 § 35.92.012. Prior: 1955 c 358 § 2. Formerly RCW 80.40.012.]

35.92.014 Acquisition of out-of-state waterworks. Municipalities of this state under ordinance of the governing body are empowered to acquire by purchase or lease, and to maintain and operate, in cooperation with neighboring municipalities of states bordering this state, the out-of-state property, plant and equipment of privately owned utilities supplying water to the purchasing municipalities from an out-of-state source: PROVIDED, The legislature of the state in which such property, plant, equipment and supply are

located, by enabling legislation similar to this, authorizes its municipalities to join in such acquisition, maintenance and operation. [1965 c 7 § 35.92.014. Prior: 1951 c 39 § 1. Formerly RCW 80.40.014.]

35.92.015 Acquisition of out-of-state waterworks—Joint acquisition and operation. The governing bodies of the municipalities acting jointly under RCW 35.92.014 and this section shall have authority by mutual agreement to exercise jointly all powers granted to each individual municipality in the acquisition, maintenance and operation of a water supply system. [1965 c 7 § 35.92.015. Prior: 1951 c 39 § 2. Formerly RCW 80.40.015.]

35.92.017 Authority to assist customers in the acquisition of water conservation equipment—Limitations. Any city or town engaged in the sale or distribution of water is hereby authorized, within limits established by the Constitution of the state of Washington, to assist the owners of structures in financing the acquisition and installation of fixtures, systems, and equipment, for compensation or otherwise, for the conservation or more efficient use of water in the structures under a water conservation plan adopted by the city or town if the cost per unit of water saved or conserved by the use of the fixtures, systems, and equipment is less than the cost per unit of water supplied by the next least costly new water source available to the city or town to meet future demand. Except where otherwise authorized, assistance shall be limited to:

(1) Providing an inspection of the structure, either directly or through one or more inspectors under contract, to determine and inform the owner of the estimated cost of purchasing and installing conservation fixtures, systems, and equipment for which financial assistance will be approved and the estimated life cycle savings to the water system and the consumer that are likely to result from the installation of the fixtures, systems, or equipment;

(2) Providing a list of businesses that sell and install the fixtures, systems, and equipment within or in close proximity to the service area of the city or town, each of which businesses shall have requested to be included and shall have the ability to provide the products in a workmanlike manner and to utilize the fixtures, systems, and equipment in accordance with the prevailing national standards;

(3) Arranging to have approved conservation fixtures, systems, and equipment installed by a private contractor whose bid is acceptable to the owner of the structure and verifying the installation; and

(4) Arranging or providing financing for the purchase and installation of approved conservation fixtures, systems, and equipment. The fixtures, systems, and equipment shall be purchased or installed by a private business, the owner, or the utility.

Pay back shall be in the form of incremental additions to the utility bill, billed either together with use charge or separately. Loans shall not exceed one hundred twenty months in length. [1989 c 421 § 3.]

Intent—Water conservation encouraged—1989 c 421: "The conservation and efficient use of water is found and declared to be a public purpose of highest priority. The legislature further finds and declares that all municipal corporations, public utility districts, water districts, and other political subdivisions of the state that are engaged in the sale or distribution

of water should be granted the authority to develop and carry out programs that will conserve resources, reduce waste, and encourage more efficient use of water by consumers.

In order to establish the most effective state-wide program for water conservation, the legislature hereby encourages any company, corporation, or association engaged in selling or furnishing utility services to assist their customers in the acquisition and installation of fixtures, systems, and equipment, for compensation or otherwise, for the conservation or more efficient use of water." [1989 c 421 § 1.]

Contingent effective date—1989 c 421: "This act shall take effect on the same date as the proposed amendment to Article VIII of the state Constitution, authorizing the use of public moneys or credit to promote conservation or more efficient use of water, is validly submitted and is approved and ratified by the voters at a general election held in November 1989. If the proposed amendment is not so approved and ratified, this act shall be void in its entirety." [1989 c 421 § 6.] Senate Joint Resolution No. 8210 was approved and ratified by the voters at the November 7, 1989, general election.

35.92.020 Authority to acquire and operate sewerage and solid waste handling systems, plants, sites, or facilities—Classification of services for rates. A city or town may construct, condemn and purchase, purchase, acquire, add to, alter, maintain, and operate systems, plants, sites, or other facilities of sewerage, or solid waste handling as defined by RCW 70.95.030, and shall have full authority to manage, regulate, operate, control, and to fix the price of service of those systems, plants, sites, or other facilities within and without the limits of the city or town. The rates charged shall be uniform for the same class of customers or service. In classifying customers served or service furnished by a system or systems of sewerage, the legislative authority of the city or town may in its discretion consider any or all of the following factors: The difference in cost of service to customers; the location of customers within and without the city or town; the difference in cost of maintenance, operation, repair, and replacement of the parts of the system; the different character of the service furnished customers; the quantity and quality of the sewage delivered and the time of its delivery; capital contributions made to the systems, plants, sites, or other facilities, including but not limited to, assessments; and any other factors that present a reasonable difference as a ground for distinction. [1989 c 399 § 6; 1985 c 445 § 5; 1965 c 7 § 35.92.020. Prior: 1959 c 90 § 7; 1957 c 288 § 3; 1957 c 209 § 3; prior: 1947 c 214 § 1, part; 1933 c 163 § 1, part; 1931 c 53 § 1, part; 1923 c 173 § 1, part; 1913 c 45 § 1, part; 1909 c 150 § 1, part; 1899 c 128 § 1, part; 1897 c 112 § 1, part; 1893 c 8 § 1, part; 1890 p 520 § 1, part; Rem. Supp. 1947 § 9488, part. Formerly RCW 80.40.020.]

35.92.021 Public property subject to rates and charges for storm water control facilities. Except as otherwise provided in RCW 90.03.525, any public entity and public property, including the state of Washington and state property, shall be subject to rates and charges for storm water control facilities to the same extent private persons and private property are subject to such rates and charges that are imposed by cities and towns pursuant to RCW 35.92.020. In setting these rates and charges, consideration may be made of in-kind services, such as stream improvements or donation of property. [1986 c 278 § 56; 1983 c 315 § 2.]

Severability—1986 c 278: See note following RCW 36.01.010.

Severability—1983 c 315: See note following RCW 90.03.500.

Flood control zone districts—Storm water control improvements: Chapter 86.15 RCW.

Rates and charges for storm water control facilities—Limitations—Definitions: RCW 90.03.500 through 90.03.525. See also RCW 35.67.025, 36.89.085, 36.94.145, and 56.08.012.

35.92.023 Solid waste—Compliance with chapter 70.95 RCW required. See RCW 35.21.154.

35.92.025 Authority to make charges for connecting to water or sewerage system—Interest charges. Cities and towns are authorized to charge property owners seeking to connect to the water or sewerage system of the city or town as a condition to granting the right to so connect, in addition to the cost of such connection, such reasonable connection charge as the legislative body of the city or town shall determine proper in order that such property owners shall bear their equitable share of the cost of such system. The equitable share may include interest charges applied from the date of construction of the water or sewer system until the connection, or for a period not to exceed ten years, at a rate commensurate with the rate of interest applicable to the city or town at the time of construction or major rehabilitation of the water or sewer system, or at the time of installation of the water or sewer lines to which the property owner is seeking to connect but not to exceed ten percent per year: PROVIDED, That the aggregate amount of interest shall not exceed the equitable share of the cost of the system allocated to such property owners. Connection charges collected shall be considered revenue of such system. [1985 c 445 § 6; 1965 c 7 § 35.92.025. Prior: 1959 c 90 § 8. Formerly RCW 80.40.025.]

35.92.027 Extension of water and sewer facilities outside city subject to review by boundary review board. The extension of water or sewer facilities outside of the boundaries of a city or town may be subject to potential review by a boundary review board under chapter 36.93 RCW. [1989 c 84 § 34.]

35.92.030 Authority to acquire and operate stone or asphalt plants. A city or town may also construct, condemn and purchase, purchase, acquire, add to, alter, maintain, and operate works, plants and facilities for the preparation and manufacture of all stone or asphalt products or compositions or other materials which may be used in street construction or maintenance, together with the right to use them, and also fix the price of and sell such products for use in the construction of municipal improvements. [1985 c 445 § 8; 1965 c 7 § 35.92.030. Prior: 1957 c 288 § 4; 1957 c 209 § 4; prior: 1947 c 214 § 1, part; 1933 c 163 § 1, part; 1931 c 53 § 1, part; 1923 c 173 § 1, part; 1913 c 45 § 1, part; 1909 c 150 § 1, part; 1899 c 128 § 1, part; 1897 c 112 § 1, part; 1893 c 8 § 1, part; 1890 p 520 § 1, part; Rem. Supp. 1947 § 9488, part. Formerly RCW 80.40.030.]

Eminent domain by cities: Chapter 8.12 RCW.

35.92.040 Authority to acquire and operate public markets and cold storage plants—"Public markets" defined. A city or town may also construct, acquire, and operate public markets and cold storage plants for the sale

and preservation of butter, eggs, meats, fish, fruits, vegetables, and other perishable provisions. Whenever the words "public markets" are used in this chapter and the public market is managed in whole or in part by a public corporation created by a city, the words shall be construed to include all real or personal property located in a district or area designated by a city as a public market and traditionally devoted to providing farmers, crafts vendors and other merchants with retail space to market their wares to the public. Property located in such a district or area need not be exclusively or primarily used for such traditional public market retail activities and may include property used for other public purposes including, but not limited to, the provision of human services and low-income or moderate-income housing. [1990 c 189 § 4; 1965 c 7 § 35.92.040. Prior: 1957 c 288 § 5; 1957 c 209 § 5; prior: 1947 c 214 § 1, part; 1933 c 163 § 1, part; 1931 c 53 § 1, part; 1923 c 173 § 1, part; 1913 c 45 § 1, part; 1909 c 150 § 1, part; 1899 c 128 § 1, part; 1897 c 112 § 1, part; 1893 c 8 § 1, part; 1890 p 520 § 1, part; Rem. Supp. 1947 § 9488, part. Formerly RCW 80.40.040.]

35.92.050 Authority to acquire and operate utilities.

A city or town may also construct, condemn and purchase, purchase, acquire, add to, alter, maintain and operate works, plants, facilities for the purpose of furnishing the city or town and its inhabitants, and any other persons, with gas, electricity, and other means of power and facilities for lighting, heating, fuel, and power purposes, public and private, with full authority to regulate and control the use, distribution, and price thereof, together with the right to handle and sell or lease, any meters, lamps, motors, transformers, and equipment or accessories of any kind, necessary and convenient for the use, distribution, and sale thereof; authorize the construction of such plant or plants by others for the same purpose, and purchase gas, electricity, or power from either within or without the city or town for its own use and for the purpose of selling to its inhabitants and to other persons doing business within the city or town and regulate and control the use and price thereof. [1985 c 445 § 9; 1965 c 7 § 35.92.050. Prior: 1957 c 288 § 6; 1957 c 209 § 6; prior: 1947 c 214 § 1, part; 1933 c 163 § 1, part; 1931 c 53 § 1, part; 1923 c 173 § 1, part; 1913 c 45 § 1, part; 1909 c 150 § 1, part; 1899 c 128 § 1, part; 1897 c 112 § 1, part; 1893 c 8 § 1, part; 1890 p 520 § 1, part; Rem. Supp. 1947 § 9488, part. Formerly RCW 80.40.050.]

35.92.052 First class cities operating electrical facilities—Participation in agreements to use or own high voltage transmission facilities and other electrical generating facilities—Terms—Limitations. (1) Cities of the first class which operate electric generating facilities and distribution systems shall have power and authority to participate and enter into agreements for the use or undivided ownership of high voltage transmission facilities and capacity rights in those facilities and for the undivided ownership of any type of electric generating plants and facilities, including, but not limited to, nuclear and other thermal power generating plants and facilities and transmission facilities including, but not limited to, related transmission facilities, to be called "common facilities"; and for the planning, financing,

acquisition, construction, operation, and maintenance with: (a) Each other; (b) electrical companies which are subject to the jurisdiction of the Washington utilities and transportation commission or the regulatory commission of any other state, to be called "regulated utilities"; (c) rural electric cooperatives, including generation and transmission cooperatives in any state; (d) municipal corporations, utility districts, or other political subdivisions in any state; and (e) any agency of the United States authorized to generate or transmit electrical energy. It shall be provided in such agreements that each city shall use or own a percentage of any common facility equal to the percentage of the money furnished or the value of property supplied by it for the acquisition and construction of or additions or improvements to the facility and shall own and control or provide for the use of a like percentage of the electrical transmission or output. A city using or owning common facilities under this section may issue revenue bonds or other obligations to finance the city's share of the use or ownership of the common facilities.

(2) The agreement must provide that each participant shall defray its own interest and other payments required to be made or deposited in connection with any financing undertaken by it to pay its percentage of the money furnished or value of property supplied by it for the planning, acquisition, and construction of any common facility, or any additions or betterments. The agreement shall provide a uniform method of determining and allocating operation and maintenance expenses of a common facility.

(3) Each city participating in the ownership, use, or operation of a common facility shall pay all taxes chargeable to its share of the common facility and the electric energy generated under any applicable statutes and may make payments during preliminary work and construction for any increased financial burden suffered by any county or other existing taxing district in the county in which the common facility is located, under agreement with such county or taxing district.

(4) In carrying out the powers granted in this section, each such city shall be severally liable only for its own acts and not jointly or severally liable for the acts, omissions, or obligations of others. No money or property supplied by any such city for the planning, financing, acquisition, construction, operation, or maintenance of, or addition or improvement to any common facility shall be credited or otherwise applied to the account of any other participant therein, nor shall the undivided share of any city in any common facility be charged, directly or indirectly, with any debt or obligation of any other participant or be subject to any lien as a result thereof. No action in connection with a common facility shall be binding upon any city unless authorized or approved by resolution or ordinance of its governing body.

(5) Any city acting jointly outside the state of Washington, by mutual agreement with any participant under authority of this section, shall not acquire properties owned or operated by any public utility district, by any regulated utility, or by any public utility owned by a municipality without the consent of the utility owning or operating the property, and shall not participate in any condemnation proceeding to acquire such properties. [1992 c 11 § 1; 1989 c 249 § 1.]

35.92.054 May acquire electrical distribution property from public utility district. Any city or town may acquire by purchase or condemnation from any public utility district or combination of public utility districts any electrical distribution property within the boundaries of such city or town: PROVIDED, That such right of condemnation shall not apply to a city or town located within a public utility district that owns the electric distribution properties sought to be condemned. [1965 c 7 § 35.92.054. Prior: 1953 c 97 § 1; 1951 c 272 § 1. Formerly RCW 80.40.054.]
Right of county-wide utility district to acquire distribution properties: RCW 54.32.040.

35.92.060 Authority to acquire and operate transportation facilities. A city or town may also construct, condemn and purchase, purchase, acquire, add to, alter, maintain, operate, or lease cable, electric, and other railways, automobiles, motor cars, motor buses, auto trucks, and any and all other forms or methods of transportation of freight or passengers within the corporate limits of the city or town, and a first class city may also construct, purchase, acquire, add to, alter, maintain, operate, or lease cable, electric, and other railways beyond those corporate limits only within the boundaries of the county in which the city is located and of any adjoining county that has a population of at least forty thousand and fewer than one hundred twenty-five thousand and that is intersected by an interstate highway, for the transportation of freight and passengers above, upon, or underneath the ground. It may also fix, alter, regulate, and control the fares and rates to be charged therefor; and fares or rates may be adjusted or eliminated for any distinguishable class of users including, but not limited to, senior citizens, handicapped persons, and students. Without the payment of any license fee or tax, or the filing of a bond with, or the securing of a permit from, the state, or any department thereof, the city or town may engage in, carry on, and operate the business of transporting and carrying passengers or freight for hire by any method or combination of methods that the legislative authority of any city or town may by ordinance provide, with full authority to regulate and control the use and operation of vehicles or other agencies of transportation used for such business. [1991 c 124 § 1; 1990 c 43 § 49; 1985 c 445 § 10; 1981 c 25 § 2; 1965 c 7 § 35.92.060. Prior: 1957 c 288 § 7; 1957 c 209 § 7; prior: 1947 c 214 § 1, part; 1933 c 163 § 1, part; 1931 c 53 § 1, part; 1923 c 173 § 1, part; 1913 c 45 § 1, part; 1909 c 150 § 1, part; 1899 c 128 § 1, part; 1897 c 112 § 1, part; 1893 c 8 § 1, part; 1890 p 520 § 1, part; Rem. Supp. 1947 § 9488, part. Formerly RCW 80.40.060.]

Construction—Severability—Headings—1990 c 43: See notes following RCW 47.76.100.

Public transportation systems, financing, purchase of leased systems: Chapter 35.95 RCW.

35.92.070 Procedure—Election. When the governing body of a city or town deems it advisable that the city or town purchase, acquire, or construct any such public utility, or make any additions and betterments thereto or extensions thereof, it shall provide therefor by ordinance, which shall specify and adopt the system or plan proposed, and declare the estimated cost thereof, as near as may be, and the ordinance shall be submitted for ratification or rejection by

majority vote of the voters of the city or town at a general or special election.

(1) No submission shall be necessary:

(a) When the work proposed is an addition to, or betterment of, extension of, or an increased water supply for existing waterworks, or an addition, betterment, or extension of an existing system or plant of any other public utility;

(b) When in the charter of a city a provision has been adopted authorizing the corporate authorities thereof to provide by ordinance for acquiring, opening, or operating any of such public utilities; or

(c) When in the judgment of the corporate authority, the public health is being endangered by the discharge of raw or untreated sewage into any body of water and the danger to the public health may be abated by the construction and maintenance of a sewage disposal plant.

(2) Notwithstanding subsection (1) of this section, submission to the voters shall be necessary if:

(a) The project or work may produce electricity for sale in excess of present or future needs of the water system;

(b) The city or town does not own or operate an electric utility system;

(c) The work involves an ownership greater than twenty-five percent in a new water supply project combined with an electric generation facility; and

(d) The combined facility has an installed capacity in excess of five megawatts.

(3) Notwithstanding subsection (1) of this section, submission to the voters shall be necessary to make extensions to a public utility which would expand the previous service capacity by fifty percent or more, where such increased service capacity is financed by the issuance of general obligation bonds.

(4) Thirty days' notice of the election shall be given in the official newspaper of the city or town, by publication at least once each week in the paper during such time.

(5) When a proposition has been adopted, or in the cases where no submission is necessary, the corporate authorities of the city or town may proceed forthwith to purchase, construct, and acquire the public utility or make additions, betterments, and extensions thereto and to make payment therefor. [1987 c 145 § 1. Prior: 1985 c 445 § 11; 1985 c 444 § 3; 1965 c 7 § 35.92.070; prior: 1941 c 147 § 1; 1931 c 53 § 2; 1909 c 150 § 2; 1901 c 85 § 1; 1897 c 112 § 2; 1893 c 8 § 2; 1891 c 141 § 1; 1890 p 520 § 2; Rem. Supp. 1941 § 9489. Formerly RCW 80.40.070.]

Intent—Construction—Severability—1985 c 444: See notes following RCW 35.92.010.

Elections: Title 29 RCW.

Notice of elections: RCW 29.27.080.

35.92.075 Indebtedness incurred on credit of expected utility revenues. A city or town may contract indebtedness and borrow money for a period not in excess of two years for any public utility purpose on the credit of the revenues expected from such public utility. [1982 c 24 § 1.]

35.92.080 General obligation bonds. General obligation bonds may be issued by a city or town for the purposes of providing all or part of the costs of purchasing,

acquiring, or constructing a public utility or making any additions, betterments, or alterations thereto, or extensions thereof. The bonds shall be issued and sold in accordance with chapter 39.46 RCW.

There shall be levied each year a tax upon the taxable property of the city or town sufficient to pay the interest on and principal of the bonds then due, which taxes shall become due and collectible as other taxes: **PROVIDED**, That it may pledge to the payment of such principal and interest the revenue of the public utility being acquired, constructed, or improved out of the proceeds of sale of such bonds. Such pledge of revenue shall constitute a binding obligation, according to its terms, to continue the collection of such revenue so long as such bonds or any of them are outstanding, and to the extent that revenues are insufficient to meet the debt service requirements on such bonds, the governing body of the municipality shall provide for the levy of taxes sufficient to meet such deficiency. [1985 c 445 § 12; 1984 c 186 § 23; 1983 c 167 § 67; 1970 ex.s. c 56 § 47; 1969 ex.s. c 232 § 24; 1967 c 107 § 1; 1965 c 118 § 2; 1965 c 7 § 35.92.080. Prior: 1909 c 150 § 3, part; RRS § 9490, part. Formerly RCW 80.40.080.]

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.

35.92.090 Limit of indebtedness. The total general indebtedness incurred under this chapter, added to all other indebtedness of a city or town at any time outstanding, shall not exceed the amounts of indebtedness authorized by chapter 39.36 RCW, as now or hereafter amended, to be incurred without and with the assent of the voters: **PROVIDED**, That a city or town may become indebted to a larger amount, but not exceeding the amount authorized therefor by chapter 39.36 RCW, as now or hereafter amended, for supplying it with water, artificial light, and sewers when works for supplying such water, light, and sewers are owned and controlled by the city or town. [1965 c 7 § 35.92.090. Prior: 1909 c 150 § 3, part; RRS § 9490, part. Formerly RCW 80.40.090.]

Limitations upon indebtedness: State Constitution Art. 7 § 2 (Amendments 55, 59), Art. 8 § 6 (Amendment 27), RCW 84.52.050.

35.92.100 Revenue bonds or warrants. (1) When the voters of a city or town, or the corporate authorities thereof, have adopted a proposition for any public utility and either no general indebtedness has been authorized or the corporate authorities do not desire to incur a general indebtedness, and when the corporate authorities are authorized to exercise any of the powers conferred by this chapter without submitting the proposition to a vote, the corporate authorities may create a special fund for the sole purpose of defraying the cost of the public utility or addition, betterment, or extension thereto, into which special fund they may obligate and bind the city or town to set aside and pay a fixed proportion of the gross revenues of the utility, or any fixed amount out of and not exceeding a fixed proportion of such revenues, or a fixed amount without regard to any fixed proportion, and issue and sell bonds or warrants bearing interest at a rate or rates as authorized by the corporate authorities; payable semiannually, executed in such manner

and payable at such times and places as the corporate authorities shall determine, but the bonds or warrants and the interest thereon shall be payable only out of the special fund and shall be a lien and charge against payments received from any utility local improvement district assessments pledged to secure such bonds. Such bonds shall be negotiable instruments within the meaning of the negotiable instruments law, Title 62A RCW, notwithstanding same are made payable out of a particular fund contrary to the provisions of RCW 62A.3-105. Such bonds and warrants may be of any form, including bearer bonds or bearer warrants, or registered bonds or registered warrants as provided in RCW 39.46.030.

When corporate authorities deem it necessary to construct any sewage disposal plant, it may be considered as a part of the waterworks department of the city or town and the cost of construction and maintenance thereof may be chargeable to the water fund of the municipality, or to any other special fund which the corporate authorities may by ordinance designate.

In creating a special fund, the corporate authorities 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 above such cost of maintenance and operation and the amount or proportion, if any, of the revenue so previously pledged. Rates shall be maintained adequate to service such bonds and to maintain the utility in sound financial condition.

The bonds or warrants and interest thereon issued against any such fund shall be a valid claim of the owner thereof only as against the special fund and its fixed proportion or amount of the revenue pledged thereto, and shall not constitute an indebtedness of the city or town within the meaning of constitutional provisions and limitations. Each bond or warrant shall state upon its face that it is payable from a special fund, naming it and the ordinance creating it. The bonds and warrants shall be sold in such manner as the corporate authorities shall deem for the best interest of the city or town, and they may provide in any contract for the construction and acquirement of the proposed improvement that payment therefor shall be made only in such bonds and warrants at par value thereof.

When a special fund is created and any such obligation is issued against it, a fixed proportion, or a fixed amount out of and not exceeding such fixed proportion, or a fixed amount without regard to any fixed proportion, of revenue shall be set aside and paid into such fund as provided in the ordinance creating it, and in case the city or town fails to thus set aside and pay such fixed proportion or amount, the owner of any bond or warrant against the fund may bring action against the city or town and compel such setting aside and payment: **PROVIDED**, That whenever the corporate authorities of any city or town shall so provide by ordinance then all such bonds thereafter issued shall be on a parity, without regard to date of issuance or authorization and without preference or priority of right or lien with respect to participation of special funds in amounts from gross revenues for payment thereof.

(2) Notwithstanding subsection (1) of this section, such bonds and warrants may be issued and sold in accordance with chapter 39.46 RCW. [1983 c 167 § 68; 1983 c 3 § 57; 1970 ex.s. c 56 § 48; 1969 ex.s. c 232 § 25; 1967 c 52 § 25; 1965 c 7 § 35.92.100. Prior: 1953 c 231 § 1; 1931 c 53 § 3; 1909 c 150 § 4; RRS § 9491. Formerly RCW 80.40.100.]

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.

Construction—Severability—1967 c 52: See notes following RCW 35.43.042.

Instruments payable from a particular fund: RCW 62A.3-105.

Municipal revenue bond act: Chapter 35.41 RCW.

35.92.105 Revenue bonds, warrants, or other evidences of indebtedness for energy or water conservation programs. A city or town engaged in the sale or distribution of water or energy may issue revenue bonds, warrants, or other evidences of indebtedness in the manner provided by this chapter for the purpose of defraying the cost of financing programs for the conservation or more efficient use of energy or water. The bonds, warrants, or other evidences of indebtedness shall be deemed to be for capital purposes within the meaning of the uniform system of accounts for municipal corporations. [1992 c 25 § 1; 1981 c 273 § 1.]

Uniform system of accounts for municipal corporations: RCW 43.09.200.

35.92.110 Funding or refunding bonds. The legislative authority of a city or town which has any outstanding warrants or bonds issued for the purpose of purchasing, acquiring, or constructing any such public utility or for making any additions or betterments thereto or extensions thereof, whether the warrants or bonds are general obligation warrants or bonds of the municipality or are payable solely from a special fund, into which fund the city or town is bound and obligated to set aside and pay any proportion or part of the revenue of the public utility, for the purchase, acquisition, or construction of which utility or the making of any additions and betterments thereto or extensions thereof such outstanding warrants or bonds were issued, may, without submitting the matter to the voters, provide for the issuance of funding or refunding bonds with which to take up, cancel, retire, and refund such outstanding warrants or bonds, or any part thereof, at maturity thereof, or before the maturity thereof, if they are subject to call for prior redemption. [1965 c 7 § 35.92.110. Prior: 1935 c 81 § 1; RRS § 9492-1. Formerly RCW 80.40.110.]

35.92.120 Funding or refunding bonds—Bonds not general obligation. Such funding or refunding bonds shall not be a general indebtedness of the city or town, but shall be payable solely from a special fund created therefor by ordinance. Each bond shall state upon its face that it is payable from a special fund, naming the fund and the ordinance creating it. [1965 c 7 § 35.92.120. Prior: 1935 c 81 § 2; RRS § 9492-2. Formerly RCW 80.40.120.]

35.92.130 Funding or refunding bonds—Single issue may refund multiple series. At the option of the legislative authority of the city or town various series and issues of outstanding warrants or bonds, or parts thereof, issued for the purpose of acquiring or constructing any public utility, or for making any additions or betterments thereto or extensions thereof, may be funded or refunded by a single issue of funding or refunding bonds. No proportion or part of the revenue of any one such public utility shall be pledged for the payment of funding or refunding bonds issued to fund or refund warrants or bonds issued for the acquisition or construction, or the making of additions or betterments to or extensions of, any other public utility. [1965 c 7 § 35.92.130. Prior: 1935 c 81 § 3; RRS § 9492-3. Formerly RCW 80.40.130.]

35.92.140 Funding or refunding bonds—Issuance of bonds—Ordinance. When the legislative authority of a city or town determines to issue such funding or refunding bonds, it shall provide therefor by ordinance, which shall create a special fund for the sole purpose of paying the bonds and the interest thereon, into which fund the ordinance shall bind and obligate the city or town to set aside and pay a fixed amount without regard to any fixed proportion out of the gross revenue of the public utility as provided therein. In creating such special fund, the legislative authority shall have due regard to the cost of operation and maintenance of the utility as constructed or added to, and to any proportion or part of the revenue thereof previously pledged as a fund for the payment of bonds, warrants, or other indebtedness, and shall not bind and obligate the city or town to set aside into the fund a greater amount of the revenue of the utility than in its judgment will be available above the cost of maintenance and operation and the amount or proportion of the revenue thereof so previously pledged. [1965 c 7 § 35.92.140. Prior: 1935 c 81 § 4, part; RRS § 9492-4, part. Formerly RCW 80.40.140.]

35.92.150 Funding or refunding bonds—Terms of bonds. (1) Such funding or refunding bonds, together with the interest thereon, issued against the special fund shall be a valid claim of the owner thereof only as against such fund, and the amount of the revenue of the utility pledged thereto, and shall not constitute an indebtedness of the city or town within the meaning of constitutional or statutory provisions and limitations. They shall be sold in such manner as the corporate authorities shall deem for the best interest of the municipality. The effective rate of interest on the bonds shall not exceed the effective rate of interest on warrants or bonds to be funded or refunded thereby. Interest on the bonds shall be paid semiannually. The bonds shall be executed in such manner and payable at such time and place as the legislative authority shall by ordinance determine. Nothing in this chapter shall prevent a city or town from funding or refunding any of its indebtedness in any other manner provided by law. Such bonds may be of any form, including bearer bonds or registered bonds as provided in RCW 39.46.030.

(2) Notwithstanding subsection (1) of this section, such bonds may be issued and sold in accordance with chapter 39.46 RCW. [1983 c 167 § 69; 1965 c 7 § 35.92.150.]

Prior: 1935 c 81 § 4, part; RRS § 9492-4, part. Formerly RCW 80.40.150.]

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

35.92.160 Funding or refunding bonds—Recourse of bond owners. When such funding or refunding bonds have been issued and the city or town fails to set aside and pay into the special fund from which they are payable, the amount without regard to any fixed proportion out of the gross revenue of the public utility which the city or town has, by ordinance, bound and obligated itself to set aside and pay into the special fund, the owner of any funding or refunding bond may bring action against the city or town and compel such setting aside and payment. [1983 c 167 § 70; 1965 c 7 § 35.92.160. Prior: 1935 c 81 § 5; RRS § 9492-5. Formerly RCW 80.40.160.]

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

35.92.170 City may extend water system outside limits. When a city or town owns or operates a municipal waterworks system and desires to extend such utility beyond its corporate limits it may acquire, construct and maintain any addition to or extension of the system, and dispose of and distribute water to any other municipality, water district, community, or person desiring to purchase it. [1965 c 7 § 35.92.170. Prior: 1933 ex.s. c 17 § 1; RRS § 9502-1. Cf. 1917 c 12 § 1. Formerly RCW 80.40.170.]

Water districts: Title 57 RCW.

35.92.180 City may extend water system outside limits—May acquire property outside city. A city or town may construct, purchase, or acquire any waterworks, pipe lines, distribution systems and any extensions thereof, necessary to furnish such outside service. [1965 c 7 § 35.92.180. Prior: 1933 ex.s. c 17 § 2; RRS § 9502-2. Cf. 1917 c 12 § 1. Formerly RCW 80.40.180.]

35.92.190 City may extend water system outside limits—Cannot condemn irrigation system. No city or town may exercise the power of eminent domain to take or damage any waterworks, storage reservoir, site, pipe line distribution system or any extension thereof, or any water right, water appropriation, dam, canal, plant, or any interest in, or to any of the above used, operated, held, or owned by an irrigation district. [1965 c 7 § 35.92.190. Prior: 1933 ex.s. c 17 § 2A; RRS § 9502-2A. Formerly RCW 80.40.190.]

Eminent domain by cities: Chapter 8.12 RCW.

35.92.200 City may extend water system outside limits—Contracts for outside service. A city or town may enter into a firm contract with any outside municipality, community, corporation, or person, for furnishing them with water without regard to whether said water shall be considered as surplus or not and regardless of the source from which such water is obtained, which contract may fix the terms upon which the outside distribution systems will be installed and the rates at which and the manner in which payment shall be made for the water supplied or for the

service rendered. [1965 c 7 § 35.92.200. Prior: 1961 c 125 § 1; 1957 c 288 § 8; 1933 ex.s. c 17 § 3; RRS § 9502-3. Cf. 1917 c 12 § 1. Formerly RCW 80.40.200.]

35.92.220 Acquisition of water rights. A city or town, situated within or served by, an irrigation project, or projects, owned or operated by the United States government, a water users' association, associations, corporation, or corporations or another city or town or towns, where the legislative authority deems it feasible to furnish water for irrigation and domestic purposes, or either, and where the water used for irrigation and domestic purposes or either, is appurtenant or may become appurtenant to the land located within such city or town, may purchase, lease or otherwise acquire water or water rights for the purpose of furnishing the city or town and the inhabitants thereof with a supply of water for irrigation and domestic purposes, or either; purchase, construct or otherwise acquire systems and means of distribution and delivery of water within and without the limits of the city or town, or for the delivery of water where the owner of land within the city or town owns a water right appurtenant to his land, with full power to maintain, repair, reconstruct, regulate, and control the same, and if private property is necessary for such purposes, the city or town may condemn and purchase or purchase and acquire property, enter into any contract, and order any and all work to be done which shall be necessary to carry out such purposes, and it may do so either by the entire city or town or by assessment districts, consisting of the whole or any portion thereof, as the legislative authority of the city or town may determine. [1965 c 130 § 1; 1965 c 7 § 35.92.220. Prior: 1915 c 112 § 1; RRS § 9495. Formerly RCW 80.40.220.]

35.92.230 Acquisition of water rights—Special assessments. For the purpose of paying for a water right purchased by the city or town from the United States government where the purchase price has not been fully paid; paying annual maintenance or annual rental charge to the United States government or any corporation or individual furnishing the water for irrigation and domestic purposes, or either; paying assessments made by any water users' association; paying the cost of constructing or acquiring any system or means of distribution or delivery of water for said purposes; and for the upkeep, repair, reconstruction, operation, and maintenance thereof; and for any expense incidental to said purposes, the city or town may levy and collect special assessments against the property within any district created pursuant to RCW 35.92.220 as now or hereafter amended, to pay the whole or any part of any such costs and expenses. [1965 c 130 § 2; 1965 c 7 § 35.92.230. Prior: 1915 c 112 § 2; RRS § 9496. Formerly RCW 80.40.230.]

35.92.240 Acquisition of water rights—Levy of assessments. All such assessments shall be levied upon the several parcels of land located within the local improvement district in accordance to the special benefits conferred on such property in proportion to the surface area, one square foot of surface to be the unit of assessment: PROVIDED, That where the water right is acquired or a special improvement is made for a portion of any district, the cost of the water right or the cost of such special improvement shall be

levied in the same manner upon such portion of the district as shall be specially benefited thereby: PROVIDED FURTHER, That whenever a special improvement is made for a portion of any district, the land assessed for the cost thereof shall be entitled to an equitable reduction in the annual assessments in proportion to the reduced cost of operation on account of the construction of the improvement. [1965 c 7 § 35.92.240. Prior: 1915 c 112 § 3; RRS § 9497. Formerly RCW 80.40.240.]

35.92.250 Acquisition of water rights—District property need not be contiguous. One local improvement district may be established for any or all of the purposes embraced herein even though the area assessed for such purposes may not coincide or be contiguous: PROVIDED, That whenever the legislative body of the city or town decides to construct a special improvement in a distribution system, a separate local improvement district may be formed for such portion and bonds may be issued therefor as provided in the general local improvement law. [1965 c 7 § 35.92.250. Prior: 1915 c 112 § 4; RRS § 9498. Formerly RCW 80.40.250.]

Creation of local improvement districts: Chapter 35.43 RCW.

Issuance of bonds to pay for local improvements: Chapters 35.45, 35.48 RCW.

35.92.260 Acquisition of water rights—Mode of assessment. When a city or town makes local improvements for any of the purposes specified in RCW 35.92.220 and RCW 35.92.230, as now or hereafter amended, the proceedings relative to the creation of districts, financing of improvements, levying and collecting assessments and all other procedure shall be had, and the legislative authority shall proceed in accordance with the provisions of the laws relating to local improvement districts in cities of the first class: PROVIDED, That when the improvement is initiated upon petition, the petition shall set forth the fact that the signers are the owners according to the records in the office of the county auditor, of property to an aggregate amount of a majority of the surface area within the limits of the assessment district to be created: PROVIDED FURTHER, That when an assessment is made for any purpose other than the construction or reconstruction of any system or means of distribution or delivery of water, it shall not be necessary for the legislative authority to be furnished with a statement of the aggregate assessed valuation of the real estate exclusive of improvements in the district according to the valuation last placed upon it for purposes of general taxation, or the estimated amount of the cost of the improvement to be borne by each tract of land or other property, but a statement by the engineer or other officer, showing the estimated cost of the improvement per square foot, shall be sufficient: PROVIDED FURTHER, That when the legislative authority of a city or town shall deem it necessary to levy special assessments for the purposes specified in RCW 35.92.230, as now or hereafter amended, other than for the purpose of paying the costs of acquiring, constructing or reconstructing any system or means of distribution or delivery of water for irrigation or domestic purposes, the legislative authority for such city or town may hold a single hearing on the assessment rolls for all irrigation local improvement districts

within the city or town. Such legislative authority shall fix the date of such hearing and shall direct the city or town clerk to give notice thereof, in the form prescribed by RCW 35.44.080, by publication thereof in a legal newspaper of general circulation in the city or town, once, not less than fifteen days prior to the date fixed for hearing; and by mailing, not less than fifteen days prior to the date fixed for hearing, notice thereof to the owner or reputed owner of each item of property described on the assessment roll whose name appears on such roll at the address of such owner or reputed owner shown on the tax rolls of the county treasurer for each such item of property: PROVIDED FURTHER, That when an assessment roll is once prepared and does not include the cost of purchase, construction, or reconstruction of works of delivery or distribution and the legislative authority of such city or town decides to raise a similar amount the ensuing year, it shall not be necessary to prepare a new assessment roll, but the legislative authority may pass a resolution of intention estimating the cost for the ensuing year to be the same as the preceding year, and directing the clerk to give notice stating the estimated cost per square foot of all land within the district and refer persons interested to the books of the treasurer, and fixing the date for a hearing on such assessment roll. Notice of such hearing shall be given by the city or town clerk in the form and manner required in the preceding proviso. The treasurer shall be present at the hearing and shall note any changes on his books. The legislative authority shall have the same right to make changes in the assessment roll as in an original assessment, and after all changes have been made it shall, by ordinance, confirm the assessment and direct the treasurer to extend it on the books of his office. [1965 c 130 § 3; 1965 c 7 § 35.92.260. Prior: 1915 c 112 § 5; RRS § 9499. Formerly RCW 80.40.260.]

35.92.263 Acquisition of water rights—Water rights acquired by purchase of shares in water users' association or corporation—Authority to acquire and hold shares. Whenever the public interest, welfare, convenience and necessity require that a city or town acquire water rights for the purposes set forth in RCW 35.92.220, as now or hereafter amended, and that such water rights be acquired through the purchases of shares in a water users' association or corporation, such city or town shall have full authority and power to acquire, or to hold in trust, such shares as shall be necessary for said purposes. [1965 c 130 § 4.]

35.92.265 Acquisition of water rights—Existing local improvement districts validated—Debts, obligations, assessments, etc., declared legal and valid. Each and all of the respective areas of land heretofore organized into local improvement assessment districts for irrigation or domestic water supply purposes including all areas annexed thereto, under the provisions of chapter 112, Laws of 1915, codified as RCW 35.92.220-35.92.260, whether organized by or within a city or town other than a city of the first class or by or within a city of the first class, are hereby validated and declared to be duly existing local improvement districts having the respective boundaries set forth in their organization or annexation proceedings as shown by the files in the office of the clerk of the city or town in which formed. All

debts, contracts and obligations heretofore made or incurred by or in favor of any such local improvement district and any and all assessments or levies and all other things and proceedings done or taken by the city or town within, and by which such districts were organized, under or in pursuance of such organization, and under or in pursuance of the levy and collection of special assessments by the city or town to pay the whole or any part of the cost and expense or upkeep, repair, reconstruction, operation and maintenance of such local improvement districts and any expense incident to said purposes are hereby declared legal and valid and in full force and effect. [1965 c 130 § 5.]

35.92.270 Passenger transportation systems—Authority to make studies—Contracts with and acquisition of privately owned systems. Every passenger transportation system owned by a municipal corporation may:

(1) Engage in planning, studies and surveys with respect to areas within and beyond the corporate boundaries of such municipal corporation, in order to develop a sound factual basis for any possible future adjustment or expansion of such municipally owned passenger transportation system;

(2) Purchase or lease privately owned passenger transportation systems: PROVIDED, That such purchases shall not, per se, extend the area of service of such municipally owned passenger transportation system;

(3) Contract with privately owned passenger transportation systems in order to provide adequate service in the service area of the municipal transportation system. [1965 c 7 § 35.92.270. Prior: 1957 c 114 § 1. Formerly RCW 80.40.270.]

35.92.275 Assumption of obligations of private pension plan when urban transportation system acquired. See RCW 54.04.160.

35.92.280 Cities over 150,000, joint undertaking with P.U.D. as to electric utility properties—"Electric utility properties" defined. As used in RCW 35.92.280 through 35.92.310 "electric utility properties" shall mean any and all permits, licenses, property rights, water rights and any and all works, plants, dams, powerhouses, transmission lines, switchyards, substations, property and facilities of every kind and character which may be used, or may be useful, in the generation and transmission of electric power and energy, produced by water power, steam or any other methods. [1965 c 7 § 35.92.280. Prior: 1957 c 287 § 1. Formerly RCW 80.40.280.]

35.92.290 Cities over 150,000, joint undertaking with P.U.D. as to electric utility properties—Agreements. Any city or town with a population over one hundred fifty thousand within the state of Washington owning an electric public utility is authorized to cooperate with any public utility district within this state in the joint acquisition, purchase, construction, ownership, maintenance and operation, within or without the respective limits of any such city or town or public utility district, of electric utility properties. The respective governing bodies of any such city or town and of any such public utility district desiring to cooperate in the joint ownership, maintenance and operation of electric

utility properties pursuant to the authority contained in RCW 35.92.280 through 35.92.310, shall by mutual agreement provide for such joint ownership, maintenance and operation. Such agreement shall prescribe the rights and property interest which the parties thereto shall have in such electric utility properties, which property interest may be either divided or undivided; and shall further provide for the rights of the parties thereto in the ownership and disposition of the power and energy produced by such electric utility properties, and for the operation and management thereof. [1965 c 7 § 35.92.290. Prior: 1957 c 287 § 2. Formerly RCW 80.40.290.]

35.92.300 Cities over 150,000, joint undertaking with P.U.D. as to electric utility properties—Financing. Any city or town and any public utility district cooperating under the provisions of RCW 35.92.280 through 35.92.310 may, without an election or other proceedings under any existing law, contribute money and property, both real and personal, to any joint undertaking pursuant hereto, and may issue and sell revenue bonds to pay its respective share of the costs of acquisition and construction of such electric utility properties. Such bonds shall be issued under the provisions of applicable laws authorizing the issuance of revenue bonds for the acquisition and construction of electric public utility properties by cities, towns and public utility districts, as the case may be. [1965 c 7 § 35.92.300. Prior: 1957 c 287 § 3. Formerly RCW 80.40.300.]

Revenue bonds and warrants issued by cities and towns to finance acquisition of public utilities: RCW 35.92.100. public utility districts: Chapter 54.24 RCW.

35.92.310 Cities over 150,000, joint undertaking with P.U.D. as to electric utility properties—Authority granted is additional power. The authority and power granted by RCW 35.92.280 through 35.92.310 is an additional grant of power to cities, towns, and public utility districts to acquire and operate electric public utilities, and the provisions hereof shall be construed liberally to effectuate the authority herein conferred, and no restriction or limitation prescribed in any other law shall prohibit the cities, towns and public utility districts of this state from exercising the authority herein conferred: PROVIDED, That nothing in RCW 35.92.280 through 35.92.310 shall authorize any public utility district or city cooperating under the provisions of RCW 35.92.280 through 35.92.310 to condemn any property owned or operated by any privately owned utility. [1965 c 7 § 35.92.310. Prior: 1957 c 287 § 4. Formerly RCW 80.40.310.]

35.92.350 Electrical construction or improvement—Bid proposals—Contract proposal forms—Conditions for issuance—Refusal—Appeal. Any city or town owning an electrical utility shall require that bid proposals upon any electrical construction or improvement shall be made upon contract proposal form supplied by the governing authority of such utility, and in no other manner. The governing authority shall, before furnishing any person, firm or corporation desiring to bid upon any electrical work with a contract proposal form, require from such person, firm or corporation, answers to questions contained in a standard

form of questionnaire and financial statement, including a complete statement of the financial ability and experience of such person, firm, or corporation in performing electrical work. Such questionnaire shall be sworn to before a notary public or other person authorized to take acknowledgment of deeds, and shall be submitted once a year and at such other times as the governing authority may require. Whenever the governing authority is not satisfied with the sufficiency of the answers contained in such questionnaire and financial statement or whenever the governing authority determines that such person, firm, or corporation does not meet all of the requirements hereinafter set forth it may refuse to furnish such person, firm or corporation with a contract proposal form and any bid proposal of such person, firm or corporation must be disregarded. In order to obtain a contract proposal form, a person, firm or corporation shall have all of the following requirements:

- (1) Adequate financial resources, or the ability to secure such resources;
- (2) The necessary experience, organization, and technical qualifications to perform the proposed contract;
- (3) The ability to comply with the required performance schedule taking into consideration all of its existing business commitments;
- (4) A satisfactory record of performance, integrity, judgment, and skills; and
- (5) Be otherwise qualified and eligible to receive an award under applicable laws and regulations.

Such refusal shall be conclusive unless appeal therefrom to the superior court of the county where the utility district is situated or Thurston county be taken within fifteen days, which appeal shall be heard summarily within ten days after the same is taken and on five days' notice thereof to the governing authority of the utility. [1971 ex.s. c 220 § 1.]

35.92.355 Energy conservation—Legislative findings. The conservation of energy in all forms and by every possible means is found and declared to be a public purpose of highest priority. The legislature further finds and declares that all municipal corporations, quasi municipal corporations, and other political subdivisions of the state which are engaged in the generation, sale, or distribution of energy should be granted the authority to develop and carry out programs which will conserve resources, reduce waste, and encourage more efficient use of energy by consumers.

In order to establish the most effective state-wide program for energy conservation, the legislature hereby encourages any company, corporation, or association engaged in selling or furnishing utility services to assist their customers in the acquisition and installation of materials and equipment, for compensation or otherwise, for the conservation or more efficient use of energy. [1979 ex.s. c 239 § 1.]

Effective date—Contingency—1979 ex.s. c 239: See note following RCW 35.92.360.

35.92.360 Energy conservation plan—Financing authorized for energy conservation projects in structures or equipment—Limitations. Any city or town engaged in the generation, sale, or distribution of energy is hereby authorized, within limits established by the Constitution of the state of Washington, to assist the owners of structures or

equipment in financing the acquisition and installation of materials and equipment, for compensation or otherwise, for the conservation or more efficient use of energy in such structures or equipment pursuant to an energy conservation plan adopted by the city or town if the cost per unit of energy saved or produced by the use of such materials and equipment is less than the cost per unit of energy produced by the next least costly new energy resource which the city or town could acquire to meet future demand. Any financing authorized under this chapter shall only be used for conservation purposes in existing structures, and such financing shall not be used for any purpose which results in a conversion from one energy source to another. Except where otherwise authorized, such assistance shall be limited to:

- (1) Providing an inspection of the structure or equipment, either directly or through one or more inspectors under contract, to determine and inform the owner of the estimated cost of purchasing and installing conservation materials and equipment for which financial assistance will be approved and the estimated life cycle savings in energy costs that are likely to result from the installation of such materials or equipment;
- (2) Providing a list of businesses who sell and install such materials and equipment within or in close proximity to the service area of the city or town, each of which businesses shall have requested to be included and shall have the ability to provide the products in a workmanlike manner and to utilize such materials in accordance with the prevailing national standards.
- (3) Arranging to have approved conservation materials and equipment installed by a private contractor whose bid is acceptable to the owner of the residential structure and verifying such installation; and
- (4) Arranging or providing financing for the purchase and installation of approved conservation materials and equipment. Such materials and equipment shall be purchased from a private business and shall be installed by a private business or the owner.
- (5) Pay back shall be in the form of incremental additions to the utility bill, billed either together with use charge or separately. Loans shall not exceed one hundred twenty months in length. [1989 c 268 § 1; 1979 ex.s. c 239 § 2.]

Effective date—Contingency—1979 ex.s. c 239: "This 1979 act shall take effect on the same date as the proposed amendment to Article VIII of the state Constitution, authorizing the use of public moneys or credit to promote conservation or more efficient use of energy, is validly submitted and is approved and ratified by the voters at a general election held in November, 1979. If the proposed amendment is not so approved and ratified, this 1979 act shall be null and void in its entirety." [1979 ex.s. c 239 § 4.] The referenced constitutional amendment (1979 Substitute Senate Joint Resolution No. 120) was approved by the voters on November 6, 1979. See Article VIII, section 10 of the state Constitution.

35.92.370 Lease of real property under electrical transmission lines for private gardening purposes. A city or town owning facilities for the purpose of furnishing the city or town and its inhabitants with electricity may lease for private gardening purposes the real property under its electrical transmission and distribution lines for a nominal rent to any person who has an income of less than ten thousand dollars per year. [1981 c 100 § 1.]

35.92.380 Waiver or delay of collection of tap-in charges, connection or hookup fees for low income persons. Whenever a city or town waives or delays collection of tap-in charges, connection fees, or hookup fees for low income persons, or class of low income persons, to connect to lines or pipes used by the city or town to provide utility service, the waiver or delay shall be pursuant to a program established by ordinance. As used in this section, the provision of "utility service" includes, but is not limited to, water, sanitary or storm sewer service, electricity, gas, other means of power, and heat. [1980 c 150 § 1.]

Chapter 35.94

SALE OR LEASE OF MUNICIPAL UTILITIES

Sections

- 35.94.010 Authority to sell or let.
- 35.94.020 Procedure.
- 35.94.030 Execution of lease or conveyance.
- 35.94.040 Lease or sale of land or property originally acquired for public utility purposes.
- 35.94.050 Application of chapter to certain service provider agreements under chapter 70.150 RCW.

35.94.010 Authority to sell or let. A city may lease for any term of years or sell and convey any public utility works, plant, or system owned by it or any part thereof, together with all or any equipment and appurtenances thereof. [1965 c 7 § 35.94.010. Prior: 1917 c 137 § 1; RRS § 9512. Cf. 1907 c 86 §§ 1-3; 1897 c 106 §§ 1-4. Formerly RCW 80.48.010.]

35.94.020 Procedure. The legislative authority of the city, if it deems it advisable to lease or sell the works, plant, or system, or any part thereof, shall adopt a resolution stating whether it desires to lease or sell. If it desires to lease, the resolution shall state the general terms and conditions of the lease, but not the rent. If it desires to sell the general terms of sale shall be stated, but not the price. The resolution shall direct the city clerk, or other proper official, to publish the resolution not less than once a week for four weeks in the official newspaper of the city, together with a notice calling for sealed bids to be filed with the clerk or other proper official not later than a certain time, accompanied by a certified check payable to the order of the city, for such amount as the resolution shall require, or a deposit of a like sum in money. Each bid shall state that the bidder agrees that if his bid is accepted and he fails to comply therewith within the time hereinafter specified, the check or deposit shall be forfeited to the city. If bids for a lease are called for, bidders shall bid the amount to be paid as the rent for each year of the term of the lease. If bids for a sale are called for, the bids shall state the price offered. The legislative authority of the city may reject any or all bids and accept any bid which it deems best. At the first meeting of the legislative authority of the city held after the expiration of the time fixed for receiving bids, or at some later meeting, the bids shall be considered. In order for the legislative authority to declare it advisable to accept any bid it shall be necessary for two-thirds of all the members elected to the legislative authority to vote in favor of a resolution making the declaration. If the resolution is adopted it shall be

necessary, in order that the bid be accepted, to enact an ordinance accepting it and directing the execution of a lease or conveyance by the mayor and city clerk or other proper official. The ordinance shall not take effect until it has been submitted to the voters of the city for their approval or rejection at the next general election or at a special election called for that purpose, and a majority of the voters voting thereon have approved it. If approved it shall take effect as soon as the result of the vote is proclaimed by the mayor. If it is so submitted and fails of approval, it shall be rejected and annulled. The mayor shall proclaim the vote as soon as it is properly certified. [1985 c 469 § 40; 1965 c 7 § 35.94.020. Prior: 1917 c 137 § 2; RRS § 9513. Cf. 1907 c 86 §§ 1-3; 1897 c 106 §§ 1-4. Formerly RCW 80.48.020.]

Elections: Title 29 RCW.

35.94.030 Execution of lease or conveyance. Upon the taking effect of the ordinance the mayor and the city clerk or other proper official shall execute, in the name and on behalf of the city, the lease or conveyance directed thereby. The lessee or grantee shall accept and execute the instrument within ten days after notice of its execution by the city or forfeit to the city, the amount of the check or deposit accompanying his bid: PROVIDED, That if litigation in good faith is instituted within ten days to determine the rights of the parties, no forfeiture shall take place unless the lessee or grantee fails for five days after the termination of the litigation in favor of the city to accept and execute the lease or conveyance. [1965 c 7 § 35.94.030. Prior: 1917 c 137 § 3; RRS § 9514. Cf. 1907 c 86 §§ 1-3; 1897 c 106 §§ 1-4. Formerly RCW 80.48.030.]

35.94.040 Lease or sale of land or property originally acquired for public utility purposes. Whenever a city shall determine, by resolution of its legislative authority, that any lands, property, or equipment originally acquired for public utility purposes is surplus to the city's needs and is not required for providing continued public utility service, then such legislative authority by resolution and after a public hearing may cause such lands, property, or equipment to be leased, sold, or conveyed. Such resolution shall state the fair market value or the rent or consideration to be paid and such other terms and conditions for such disposition as the legislative authority deems to be in the best public interest.

The provisions of RCW 35.94.020 and 35.94.030 shall not apply to dispositions authorized by this section. [1973 1st ex.s. c 95 § 1.]

35.94.050 Application of chapter to certain service provider agreements under chapter 70.150 RCW. This chapter does not apply to dispositions of utility property in connection with an agreement entered into pursuant to chapter 70.150 RCW provided there is compliance with the procurement procedure under RCW 70.150.040. [1986 c 244 § 11.]

Severability—1986 c 244: See RCW 70.150.905.

Chapter 35.95

PUBLIC TRANSPORTATION SYSTEMS IN CITIES
AND METROPOLITAN MUNICIPAL
CORPORATIONS—FINANCING

Sections

35.95.010	Declaration of intent and purpose.
35.95.020	Definitions.
35.95.030	Appropriation of funds for transportation systems authorized—Referendum.
35.95.040	Levy and collection of excise taxes authorized—Business and occupation tax—Excise tax on residents—Appropriation and use of proceeds—Voter approval.
35.95.050	Collection of tax—Billing.
35.95.060	Funds derived from taxes—Restrictions on classification, etc.
35.95.070	Purchase of leased public transportation system—Purchase price.
35.95.080	Referendum rights not impaired.
35.95.090	Corporate authorities may refer ordinance levying tax to voters.
35.95.100	Public transportation systems.
35.95.900	Severability—1965 ex.s. c 111.

Contracts between political subdivisions for services or use of public transportation systems: RCW 39.33.050.

Local sales and use taxes for financing public transportation systems: RCW 82.14.045 through 82.14.060.

Public transportation systems: RCW 35.58.272 through 35.58.2794.

35.95.010 Declaration of intent and purpose. We, the legislature find that an increasing number of municipally owned, or leased, and operated transportation systems in the urban areas of the state of Washington, as in the nation, are finding it impossible, from the revenues derived from tolls, tariffs and fares, to maintain the financial solvency of such systems, and as a result thereof such municipalities have been forced to subsidize such systems to the detriment of other essential public services.

All persons in a community benefit from a solvent and adequate public transportation system, either directly or indirectly, and the responsibility of financing the operation, maintenance, and capital needs of such systems is a community obligation and responsibility which should be shared by all.

We further find and declare that the maintenance and operation of an adequate public transportation system is an absolute necessity and is essential to the economic, industrial and cultural growth, development and prosperity of a municipality and of the state and nation, and to protect the health and welfare of the residents of such municipalities and the public in general.

We further find and declare that the appropriation of general funds and levying and collection of taxes by such municipalities as authorized in the succeeding sections of this chapter is necessary, and any funds so derived and expended are for a public purpose for which public funds may properly be used. [1969 ex.s. c 255 § 1; 1965 ex.s. c 111 § 1.]

Construction—Severability—1969 ex.s. c 255: See notes following RCW 35.58.272.

35.95.020 Definitions. The following terms however used or referred to in this chapter, shall have the following meanings, unless a different meaning is required by the context:

(1) "Corporate authority" shall mean the council or other legislative body of a municipality.

(2) "Municipality" shall mean any incorporated city, town, county pursuant to RCW 36.57.100 and 36.57.110, any county transportation authority created pursuant to chapter 36.57 RCW, any public transportation benefit area created pursuant to chapter 36.57A RCW, or any metropolitan municipal corporation created pursuant to RCW 35.58.010, et seq: PROVIDED, That the term "municipality" shall mean in respect to any county performing the public transportation function pursuant to RCW 36.57.100 and 36.57.110 only that portion of the unincorporated area lying wholly within such unincorporated transportation benefit area.

(3) "Person" shall mean any individual, firm, partnership, corporation, company, association, joint stock association, school district or political subdivision of the state, fraternal, benevolent, religious or charitable society, club or organization, and shall include any trustee, receiver, assignee, or other person acting in a similar representative capacity. The term "person" shall not be construed to include the United States nor the state of Washington. [1975 1st ex.s. c 270 § 3; 1969 ex.s. c 255 § 2; 1967 ex.s. c 145 § 65; 1965 ex.s. c 111 § 2.]

Severability—Effective date—1975 1st ex.s. c 270: See notes following RCW 35.58.272.

Severability—Construction—1969 ex.s. c 255: See notes following RCW 35.58.272.

35.95.030 Appropriation of funds for transportation systems authorized—Referendum. The corporate authorities of any municipality are authorized to appropriate general funds for the operation, maintenance, and capital needs of municipally owned or leased and municipally operated public transportation systems subject to the right of referendum as provided by statute or charter. [1965 ex.s. c 111 § 3.]

35.95.040 Levy and collection of excise taxes authorized—Business and occupation tax—Excise tax on residents—Appropriation and use of proceeds—Voter approval. The corporate authorities of a municipality are authorized to adopt ordinances for the levy and collection of excise taxes and/or for the imposition of an additional tax for the act or privilege of engaging in business activities. Such business and occupation tax shall be imposed in such amounts as fixed and determined by the corporate authorities of the municipality and shall be measured by the application of rates against value of products, gross proceeds of sales, or gross income of the business, as the case may be. The terms "business", "engaging in business", "gross proceeds of sales", and "gross income of the business" shall for the purpose of this chapter have the same meanings as defined and set forth in chapter 82.04 RCW or as said chapter may hereafter be amended.

The excise taxes other than the business and occupation tax above provided for shall be levied and collected from all persons within the municipality in such amounts as shall be fixed and determined by the corporate authorities of the municipality: PROVIDED, That such excise tax shall not exceed one dollar per month for each housing unit. For the purposes of this section, the term "housing unit" shall mean a building or portion thereof designed for or used as the

residence or living quarters of one or more persons living together, or of one family.

All taxes herein authorized shall be taxes other than a retail sales tax defined in chapter 82.08 RCW and a use tax defined in chapter 82.12 RCW, and the municipality shall appropriate and use the proceeds derived from all taxes authorized herein only for the operation, maintenance and capital needs of its municipally owned or leased and municipally operated public transportation system.

Before any county transportation authority established pursuant to chapter 36.57 RCW or any public transportation benefit area authority established pursuant to chapter 36.57A RCW may impose any of the excise taxes authorized pursuant to this section, the authorization for imposition of such taxes shall be approved by the voters residing within such respective area.

The county on behalf of an unincorporated transportation benefit area established pursuant to RCW 36.57.100 and 36.57.110 may impose any of the excise taxes authorized pursuant to this section only within the boundaries of such unincorporated transportation benefit area. [1975 1st ex.s. c 270 § 4; 1965 ex.s. c 111 § 4.]

Severability—Effective date—1975 1st ex.s. c 270: See notes following RCW 35.58.272.

Municipal taxation of motor carriers of freight for hire: RCW 35.21.840.

35.95.050 Collection of tax—Billing. The tax levied under the provisions of RCW 35.95.040 shall be billed and collected at such times and in the manner fixed and determined by the corporate authorities in an ordinance levying the tax: PROVIDED, That the tax shall be designated and identified as a tax to be used solely for the operation, maintenance, and capital needs of the municipally owned or leased and municipally operated public transit system: AND PROVIDED FURTHER, That the corporate authorities may in connection with municipally owned or leased transit systems enter into contracts covering the operation and maintenance of such systems, including the employment of personnel. [1967 ex.s. c 145 § 66; 1965 ex.s. c 111 § 5.]

Severability—1967 ex.s. c 145: See RCW 47.98.043.

35.95.060 Funds derived from taxes—Restrictions on classification, etc. No funds derived from any tax levied under the provisions of this chapter shall, for any purpose whatsoever, be classified as or constitute income, earnings, or revenue of the public transportation system for which the tax is levied nor of any other public utility owned or leased and operated by such municipality; nor shall such funds constitute or be classified as any part of the rate structure or rate charged for the public utility. [1965 ex.s. c 111 § 6.]

35.95.070 Purchase of leased public transportation system—Purchase price. In the event the corporate authorities of any municipality during the term of a lease or any renewal thereof of a public transportation system desire to purchase the said system, the purchase price shall be no greater than the fair market value of the said system at the commencement of the lease. [1965 ex.s. c 111 § 7.]

Authority to acquire and operate transportation facilities: RCW 35.92.060.

35.95.080 Referendum rights not impaired. Nothing contained in this chapter nor the provisions of any city charter shall prevent a referendum on any ordinance or action adopted or taken by any municipality under the provisions of this chapter. [1965 ex.s. c 111 § 8.]

35.95.090 Corporate authorities may refer ordinance levying tax to voters. The corporate authorities of a municipality adopting an ordinance for the levy and collection of an excise tax or additional tax as provided in RCW 35.95.040 may refer such ordinance to the voters of the municipality before making such ordinance effective. [1967 ex.s. c 145 § 67.]

Severability—1967 ex.s. c 145: See RCW 47.98.043.

35.95.100 Public transportation systems. See RCW 35.58.272 through 35.58.2794.

35.95.900 Severability—1965 ex.s. c 111. If any provision of this chapter, or its application to any person or circumstance is held invalid, the remainder of the chapter, or the application of the provision to other persons or circumstances is not affected. [1965 ex.s. c 111 § 9.]

Chapter 35.96

ELECTRIC AND COMMUNICATION FACILITIES—CONVERSION TO UNDERGROUND

Sections

- 35.96.010 Declaration of public interest and purpose.
- 35.96.020 Definitions.
- 35.96.030 Conversion of electric and communication facilities to underground facilities authorized—Local improvement districts—Special assessments.
- 35.96.040 Contracts for conversion—Authorized—Provisions.
- 35.96.050 Notice to owners to convert service lines to underground—Objections—Hearing—Time limitation for conversion.
- 35.96.060 Application of provisions relating to local improvements in cities and towns to chapter.
- 35.96.070 Validation of preexisting debts, contracts, obligations, etc., made or incurred incidental to conversion of electric and communication facilities to underground facilities.
- 35.96.080 Authority granted deemed alternative and additional.
- 35.96.900 Severability—1967 c 119.

Counties, conversion of overhead electric and communication facilities to underground facilities: RCW 36.88.410 through 36.88.480.

Local improvements for underground utilities transmission lines: RCW 35.43.040(12).

35.96.010 Declaration of public interest and purpose. It is hereby found and declared that the conversion of overhead electric and communication facilities to underground facilities is substantially beneficial to the public safety and welfare, is in the public interest and is a public purpose, notwithstanding any resulting incidental private benefit to any electric or communication utility affected by such conversion. [1967 c 119 § 2.]

35.96.020 Definitions. As used in this chapter, unless specifically defined otherwise, or unless the context indicates otherwise:

"Conversion area" means that area in which existing overhead electric and communication facilities are to be

converted to underground facilities pursuant to the provisions of this chapter.

"Electric utility" means any publicly or privately owned utility engaged in the business of furnishing electric energy to the public in all or part of the conversion area and includes electrical companies as defined by RCW 80.04.010 and public utility districts.

"Communication utility" means any utility engaged in the business of affording telephonic, telegraphic, cable television or other communication service to the public in all or part of the conversion area and includes telephone companies and telegraph companies as defined by RCW 80.04.010. [1967 c 119 § 3.]

35.96.030 Conversion of electric and communication facilities to underground facilities authorized—Local improvement districts—Special assessments. Every city or town shall have the power to convert existing overhead electric and communication facilities to underground facilities pursuant to RCW 35.43.190 where such facilities are owned or operated by the city or town. Where such facilities are not so owned or operated, every city or town shall have the power to contract with electric and communication utilities, as hereinafter provided, for the conversion of existing overhead electric and communication facilities to underground facilities. To provide funds to pay the whole or any part of the cost of any such conversion, either where the existing overhead electric and communication facilities are owned or operated by the city or town or where they are not so owned or operated, every city or town shall have the power to create local improvement districts and to levy and collect special assessments against the real property specially benefited by such conversion. For the purpose of ascertaining the amount to be assessed against each lot or parcel of land within any local improvement district established pursuant to this chapter, in addition to other methods provided by law for apportioning special benefits, the legislative authority of any city or town may apportion all or part of the special benefits accruing on a square footage basis or on a per lot basis. [1967 c 119 § 4.]

35.96.040 Contracts for conversion—Authorized—Provisions. Every city or town shall have the power to contract with electric and communication utilities for the conversion of existing overhead electric and communication facilities to underground facilities including all work incidental to such conversion. Such contracts may include, among other provisions, any of the following:

- (1) For the supplying and approval by electric and communication utilities of plans and specifications for such conversion;
- (2) For the payment to the electric and communication utilities for any work performed or services rendered by it in connection with the conversion project;
- (3) For the payment to the electric and communication utilities for the value of the overhead facilities removed pursuant to the conversion;
- (4) For ownership of the underground facilities by the electric and communication utilities. [1967 c 119 § 5.]

35.96.050 Notice to owners to convert service lines to underground—Objections—Hearing—Time limitation for conversion. When service from the underground electric and communication facilities is available in all or part of a conversion area, the city or town shall mail a notice to the owners of all structures or improvements served from the existing overhead facilities in the area, which notice shall state that:

- (1) Service from the underground facilities is available;
- (2) All electric and communication service lines from the existing overhead facilities within the area to any structure or improvement must be disconnected and removed within ninety days after the date of the mailing of the notice;
- (3) Should such owner fail to convert such service lines from overhead to underground within ninety days after the date of the mailing of the notice, the city or town will order the electric and communication utilities to disconnect and remove the service lines;
- (4) Should the owner object to the disconnection and removal of the service lines he may file his written objections thereto with the city or town clerk within thirty days after the date of the mailing of the notice and failure to so object within such time will constitute a waiver of his right thereafter to object to such disconnection and removal.

If the owner of any structure or improvement served from the existing overhead electric and communication facilities within a conversion area shall fail to convert to underground the service lines from such overhead facilities to such structure or improvement within ninety days after the mailing to him of the notice, the city or town shall order the electric and communication utilities to disconnect and remove all such service lines: PROVIDED, That if the owner has filed his written objections to such disconnection and removal with the city or town clerk within thirty days after the mailing of the notice then the city or town shall not order such disconnection and removal until after the hearing on such objections.

Upon the timely filing by the owner of objections to the disconnection and removal of the service lines, the legislative authority of such city or town, or a committee thereof, shall conduct a hearing to determine whether the removal of all or any part of the service lines is in the public benefit. The hearing shall be held at such time as the legislative authority of such city or town may establish for hearings on the objections and shall be held in accordance with the regularly established procedure set by the legislative authority of the city or town. If the hearing is before a committee, the committee shall following the hearing report its recommendation to the legislative authority of the city or town for final action. The determination reached by the legislative authority shall be final in the absence of an abuse of discretion. [1967 c 119 § 6.]

35.96.060 Application of provisions relating to local improvements in cities and towns to chapter. Unless otherwise provided in this chapter, the general provisions relating to local improvements in cities and towns including but not limited to chapters 35.43, 35.44, 35.45, 35.48, 35.49, 35.50, 35.53 and 35.54 RCW shall apply to local improvements authorized by this chapter. [1967 c 119 § 7.]

35.96.070 Validation of preexisting debts, contracts, obligations, etc., made or incurred incidental to conversion of electric and communication facilities to underground facilities. All debts, contracts and obligations heretofore made or incurred by or in favor of any city or town incident to the conversion of overhead electric and communication facilities to underground facilities and all bonds, warrants, or other obligations issued by any such city or town, or by any local improvement district created to effect such conversion and any and all assessments heretofore levied in any such local improvement district, and all other things and proceedings relating thereto are hereby declared to be legal and valid and of full force and effect from the date thereof. [1967 c 119 § 8.]

35.96.080 Authority granted deemed alternative and additional. The authority granted by this chapter shall be considered an alternative and additional method for converting existing overhead electric and communication facilities to underground facilities, and for paying all or part of the cost thereof, and shall not be construed as a restriction or limitation upon any other authority for or method of converting any such facilities or placing such facilities underground or paying all or part of the cost thereof, including, but not limited to, existing authority or methods under chapter 35.43 RCW and chapter 35.44 RCW. [1967 c 119 § 10.]

35.96.900 Severability—1967 c 119. 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 119 § 9.]

Chapter 35.97 HEATING SYSTEMS

Sections

35.97.010	Definitions.
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35.97.050	Heating systems—Authorized by legislative authority of municipality—Competitive bidding.
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35.97.130	Revenue bonds and warrants—Holder may enforce.
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35.97.010 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Biomass energy system" means a system that provides for the production or collection of organic materials such as wood and agricultural residues and municipal solid waste that are primarily organic materials and the conversion or use of that material for the production of heat or substi-

tute fuels through several processes including, but not limited to, burning, pyrolysis, or anaerobic digestion.

(2) "Cogeneration" means the sequential generation of two or more forms of energy from a common fuel or energy source.

(3) "Cogeneration facility" means any machinery, equipment, structure, process, or property or any part thereof, installed or acquired for the primary purpose of cogeneration by a person or corporation.

(4) "Geothermal heat" means the natural thermal energy of the earth.

(5) "Waste heat" means the thermal energy which otherwise would be released to the environment from an industrial process, electric generation, or other process.

(6) "Heat" means thermal energy.

(7) "Heat source" includes but is not limited to (a) any integral part of a heat production or heat rejection system of an industrial facility, cogeneration facility, or electric power generation facility, (b) geothermal well or spring, (c) biomass energy system, (d) solar collection facility, and (e) hydrothermal resource or heat extraction process.

(8) "Municipality" means a county, city, town, irrigation district which distributes electricity, sewer district, water district, port district, or metropolitan municipal corporation.

(9) "Heating facilities or heating systems" means all real and personal property, or interests therein, necessary or useful for: (a) The acquisition, production, or extraction of heat; (b) the storage of heat; (c) the distribution of heat from its source to the place of utilization; (d) the extraction of heat at the place of utilization from the medium by which the heat is distributed; (e) the distribution of heat at the place of utilization; and (f) the conservation of heat.

(10) "Hydrothermal resource" means the thermal energy available in wastewater, sewage effluent, wells, or other water sources, natural or manmade. [1987 c 522 § 4; 1983 c 216 § 2.]

35.97.020 Heating systems authorized. (1) Counties, cities, towns, irrigation districts which distribute electricity, sewer districts, water districts, port districts, and metropolitan municipal corporations are authorized pursuant to this chapter to establish heating systems and supply heating services from Washington's heat sources.

(2) Nothing in this chapter authorizes any municipality to generate, transmit, distribute, or sell electricity. [1989 c 11 § 7; 1987 c 522 § 3; 1983 c 216 § 1.]

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

35.97.030 Heating systems—General powers of municipalities. A municipality may construct, purchase, acquire, add to, extend, maintain, and operate a system of heating facilities, within or without its limits, for the purpose of supplying its inhabitants and other persons with heat, with full power to regulate and control the use, distribution, and price of supplying heat, and to enter into agreements for the maintenance and operation of heating facilities under terms and conditions determined by the legislative authority of the municipality. The provision of heat and heating facilities and the establishment and operation of heating systems by a municipality under this chapter are hereby declared to be a public use and a public and strictly municipal purpose.

However, nothing in this chapter shall be construed to restrain or limit the authority of any individual, partnership, corporation, or private utility from establishing and operating heating systems. [1983 c 216 § 3.]

35.97.040 Heating systems—Specific powers of municipalities. In addition to the general powers under RCW 35.97.030, and not by way of limitation, municipalities have the following specific powers:

(1) The usual powers of a corporation, to be exercised for public purposes;

(2) To acquire by purchase, gift, or condemnation property or interests in property within and without the municipality, necessary for the construction and operation of heating systems, including additions and extensions of heating systems. No municipality may acquire any heat source by condemnation. To the extent judged economically feasible by the municipality, public property and rights of way shall be utilized in lieu of private property acquired by condemnation. The municipality shall determine in cooperation with existing users that addition of district heating facilities to any public property or rights of way shall not be a hazard or interference with existing uses or, if so, that the cost for any relocation of facilities of existing users shall be a cost and expense of installing the heating facility;

(3) To acquire, install, add to, maintain, and operate heating facilities at a heat source or to serve particular consumers of heat, whether such facilities are located on property owned by the municipality, by the consumer of heat, or otherwise;

(4) To sell, lease, or otherwise dispose of heating facilities;

(5) To contract for the operation of heating facilities;

(6) To apply and qualify for and receive any private or federal grants, loans, or other funds available for carrying out the objects of the municipality under this chapter;

(7) Full and exclusive authority to sell and regulate and control the use, distribution, rates, service, charges, and price of all heat supplied by the municipality and to carry out any other powers and duties under this chapter free from the jurisdiction and control of the utilities and transportation commission;

(8) To utilize fuels other than the heat sources described in RCW 35.97.020 on a standby basis, to meet start up and emergency requirements, to meet peak demands, or to supplement those heat sources as necessary to provide a reliable and economically feasible supply of heat;

(9) To the extent permitted by the state Constitution, to make loans for the purpose of enabling suppliers or consumers of heat to finance heating facilities;

(10) To enter into cooperative agreements providing for the acquisition, construction, ownership, financing, use, control, and regulation of heating systems and heating facilities by more than one municipality or by one or more municipalities on behalf of other municipalities. [1983 c 216 § 4.]

35.97.050 Heating systems—Authorized by legislative authority of municipality—Competitive bidding. If the legislative authority of a municipality deems it advisable that the municipality purchase, acquire, or construct a

heating system, or make any additions or extensions to a heating system, the legislative authority shall so provide by an ordinance or a resolution specifying and adopting the system or plan proposed, declaring the estimated cost thereof, as near as may be, and specifying the method of financing and source of funds. Any construction, alteration, or improvement of a heating system by any county, city, town, irrigation district, water district, sewer district, or port district shall be in compliance with the appropriate competitive bidding requirements in Titles 35, 36, 53, 56, 57, or 87 RCW. [1983 c 216 § 5.]

35.97.060 Municipality may impose rates and charges—Classification of customers. A municipality may impose rates, charges, or rentals for heat, service, and facilities provided to customers of the system if the rates charged are uniform for the same class of customers or service. In classifying customers served or service furnished, the legislative authority may consider: The difference in cost of service to the various customers; location of the various customers within or without the municipality; 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 heat furnished; the time heat is used; the demand on the system; capital contributions made to the system including, but not limited to, assessments or the amount of capital facilities provided for use by the customer; and any other matters which present a reasonable difference as a ground for distinction. [1983 c 216 § 6.]

35.97.070 Municipality may shut off heat for nonpayment—Late payment charges authorized. If prompt payment of a heating rate, charge, or rental is not made, a municipality after reasonable notice may shut off the heating supply to the building, place, or premises to which the municipality supplied the heating. A municipality may also make an additional charge for late payment. [1983 c 216 § 7.]

35.97.080 Connection charges authorized. A municipality may charge property owners seeking to connect to the heating system, as a condition to granting the right to connect and in addition to the cost of the connection, such reasonable connection charge as the legislative authority determines to be proper in order that the property owners bear their pro rata share of the cost of the system. Potential customers shall not be compelled to subscribe or connect to the heating system. The cost of connection to the system shall include the cost of acquisition and installation of heating facilities necessary or useful for the connection, including any heating facilities located or installed on the property being served. Connection charges may, in the discretion of the municipality, be made payable in installments over a period of not more than thirty years or the estimated life of the facilities installed, whichever is less. Installments, if any, shall bear interest and penalties at such rates and be payable at such times and in such manner as the legislative authority of the municipality may provide. [1983 c 216 § 8.]

35.97.090 Local improvement district—Assessments—Bonds and warrants. For the purpose of paying all or a portion of the cost of heating facilities, a municipality may form local improvement districts or utility local improvement districts, foreclose on, levy, and collect assessments, reassessments, and supplemental assessments; and issue local improvement district bonds and warrants in the manner provided by law for cities or towns. [1983 c 216 § 9.]

35.97.100 Special funds authorized. For the purpose of providing funds for defraying all or a portion of the costs of planning, purchase, leasing, condemnation, or other acquisition, construction, reconstruction, development, improvement, extension, repair, maintenance, or operation of a heating system, and the implementation of the powers in RCW 35.97.030 and 35.97.040, a municipality may authorize, by ordinance or resolution, the creation of a special fund or funds into which the municipality shall be obligated to set aside and pay all or any designated proportion or amount of any or all revenues derived from the heating system, including any utility local improvement district assessments, any grants received to pay the cost of the heating system, and any municipal license fees specified in the ordinance or resolution creating such special fund. [1983 c 216 § 10.]

35.97.110 Revenue bonds—Form, terms, etc. If the legislative authority of a municipality deems it advisable to finance all or a portion of the costs of planning, purchase, leasing, condemnation, or other acquisition, construction, reconstruction, development, improvement, and extension of a heating system, or for the implementation of the powers in RCW 35.97.030 and 35.97.040, or for working capital, interest during construction and for a period of up to one year thereafter, debt service and other reserves, and the costs of issuing revenue obligations, a municipality may issue revenue bonds against the special fund or fund created from revenues or assessments. The revenue bonds so issued may be issued in one or more series and shall be dated, shall bear interest at such rate or rates, and shall mature at such time or times as may be determined by the legislative authority of the municipality, and may be made redeemable before maturity at such price or prices and under such terms and conditions as may be fixed by the legislative authority of the municipality prior to the issuance of the bonds. The legislative authority of the municipality shall determine the form of the bonds, including any interest coupons to be attached thereto, and shall fix the denomination or denominations of the bonds and the place or places of payment of principal and interest. If an officer whose signature or a facsimile of whose signature appears on any bonds or coupons ceases to be such officer before the delivery of the bonds, the signature shall for all purposes have the same effect as if the officer had remained in office until the delivery. The bonds may be issued in coupon or in registered form or both, and provisions may be made for the registration of any coupon bonds as to the principal alone and also as to both principal and interest and for the reconversion into coupon bonds of any bonds registered as to both principal and interest. Bonds may be sold at public or

private sale for such price and bearing interest at such fixed or variable rate as may be determined by the legislative authority of the municipality.

The principal of and interest on any revenue bonds shall be secured by a pledge of the revenues and receipts derived from the heating system, including any amounts pledged to be paid into a special fund under RCW 35.97.100, and may be secured by a mortgage covering all or any part of the system, including any enlargements of and additions to such system thereafter made. The revenue bonds shall state upon their face that they are payable from a special fund, naming it and the ordinance creating it, and that they do not constitute a general indebtedness of the municipality. The ordinance or resolution under which the bonds are authorized to be issued and any such mortgage may contain agreements and provisions respecting the maintenance of the system, the fixing and collection of rates and charges, the creation and maintenance of special funds from such revenues, the rights and remedies available in the event of default, and other matters improving the marketability of the revenue bonds, all as the legislative authority of the municipality deems advisable. Any revenue bonds issued under this chapter may be secured by a trust agreement by and between the municipality and a corporate trustee, which may be any trust company or bank having the powers of a trust company within the state. Any such trust agreement or ordinance or resolution providing for the issuance of such bonds may contain such provisions for protecting and enforcing the rights and remedies of the bond owners as may be reasonable and proper and not in violation of law. Any such trust agreement may set forth the rights and remedies of the bond owners and of the trustee and may restrict the individual right of action by bond owners as is customary in trust agreements or trust indentures. [1983 c 216 § 11.]

35.97.120 Revenue warrants. Revenue warrants may be issued and such warrants and interest thereon may be payable out of the special fund or refunded through the proceeds of the sale of refunding revenue warrants or revenue bonds. Every revenue warrant and the interest thereon issued against the special fund is a valid claim of the owner thereof only as against that fund and the amount of revenue pledged to the fund, and does not constitute an indebtedness of the authorized municipality. Every revenue warrant shall state on its face that it is payable from a special fund, naming it and the ordinance or resolution creating it. [1983 c 216 § 12.]

35.97.130 Revenue bonds and warrants—Holder may enforce. If a municipality fails to set aside and pay into the special fund created for the payment of revenue bonds and warrants the amount which it has obligated itself in the ordinance or resolution creating the fund to set aside and pay therein, the holder of any bond or warrant issued against the bond may bring suit against the municipality to compel it to do so. [1983 c 216 § 13.]

35.97.900 Severability—1983 c 216. 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 216 § 15.]

Chapter 35.98 CONSTRUCTION

Sections

- 35.98.010 Continuation of existing law.
- 35.98.020 Title, chapter, section headings not part of law.
- 35.98.030 Invalidity of part of title not to affect remainder.
- 35.98.040 Repeals and saving.
- 35.98.050 Emergency—1965 c 7.

35.98.010 Continuation of existing law. The provisions of this title insofar as they are substantially the same as statutory provisions repealed by this chapter, and relating to the same subject matter, shall be construed as restatements and continuations, and not as new enactments. [1965 c 7 § 35.98.010.]

35.98.020 Title, chapter, section headings not part of law. Title headings, chapter headings, and section or subsection headings, as used in this title do not constitute any part of the law. [1965 c 7 § 35.98.020.]

35.98.030 Invalidity of part of title not to affect remainder. If any provision, section, or chapter of this title or its application to any person or circumstance is held invalid, the remainder of the provision, section, chapter, or title, or the application thereof to other persons or circumstances is not affected. [1965 c 7 § 35.98.030.]

35.98.040 Repeals and saving. See 1965 c 7 § 35.98.040.

35.98.050 Emergency—1965 c 7. This act is necessary for the immediate preservation of the public peace, health and safety, the support of the state government and its existing institutions and shall take effect immediately. [1965 c 7 § 35.98.050.]