

Title 79

PUBLIC LANDS

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Public Lands

Title 79

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**Chapter 79.02 RCW
PUBLIC LANDS MANAGEMENT—GENERAL**

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**PART 1
GENERAL PROVISIONS**

79.02.010 Definitions. The definitions in this section apply throughout this title unless the context clearly requires otherwise.

(1) "Aquatic lands" means all state-owned tidelands, shorelands, harbor areas, and the beds of navigable waters as defined in RCW 79.105.060 that are administered by the department.

(2) "Board" means the board of natural resources.

(3) "Commissioner" means the commissioner of public lands.

¹Section 1 is codified as RCW 79.24.020; section 10 as RCW 79.24.090, repealed by 1959 c 257 § 48.

²Section 9 is codified as RCW 79.24.040, repealed by 1959 c 257 § 48; section 10 as RCW 79.24.060; section 11 as RCW 79.24.070, repealed by 1959 c 257 § 48; and section 12 as RCW 79.24.030.

(4) "Community and technical college forest reserve lands" means lands managed under RCW 79.02.420.

(5) "Community forest trust lands" means those lands acquired and managed under the provisions of chapter 79.155 RCW.

(6) "Department" means the department of natural resources.

(7)(a) "Forest biomass" means the by-products of: Current forest management activities; current forest protection treatments prescribed or permitted under chapter 76.04 RCW; or the by-products of forest health treatment prescribed or permitted under chapter 76.06 RCW.

(b) "Forest biomass" does not include wood pieces that have been treated with chemical preservatives such as: Creosote, pentachlorophenol, or copper-chrome-arsenic; wood from existing old growth forests; wood required to be left on-site under chapter 76.09 RCW, the state forest practices act; and implementing rules, and other legal and contractual requirements; or municipal solid waste.

(8) "Improvements" means anything considered a fixture in law placed upon or attached to lands administered by the department that has changed the value of the lands or any changes in the previous condition of the fixtures that changes the value of the lands.

(9) "Land bank lands" means lands acquired under RCW 79.19.020.

(10) "Person" means an individual, partnership, corporation, association, organization, cooperative, public or municipal corporation, or agency of a federal, state, or local government unit, however designated.

(11) "Public lands" means lands of the state of Washington administered by the department including but not limited to state lands, state forestlands, lands included in a state forestland pool, and aquatic lands.

(12) "State forestland pool" or "land pool" means state forestlands acquired and managed under RCW 79.22.140.

(13) "State forestlands" means lands acquired under RCW 79.22.010, 79.22.040, and 79.22.020.

(14) "State lands" includes:

(a) School lands, that is, lands held in trust for the support of the common schools;

(b) University lands, that is, lands held in trust for university purposes;

(c) Agricultural college lands, that is, lands held in trust for the use and support of agricultural colleges;

(d) Scientific school lands, that is, lands held in trust for the establishment and maintenance of a scientific school;

(e) Normal school lands, that is, lands held in trust for state normal schools;

(f) Capitol building lands, that is, lands held in trust for the purpose of erecting public buildings at the state capital for legislative, executive, and judicial purposes;

(g) Institutional lands, that is, lands held in trust for state charitable, educational, penal, and reformatory institutions; and

(h) Land bank, escheat, donations, and all other lands, except aquatic lands, administered by the department that are not devoted to or reserved for a particular use by law.

(15) "Valuable materials" means any product or material on the lands, such as forest products, forage or agricultural crops, stone, gravel, sand, peat, and all other materials of

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value except: (a) Mineral, coal, petroleum, and gas as provided for under chapter 79.14 RCW; and (b) forest biomass as provided for under chapter 79.150 RCW. [2012 c 166 § 2; 2011 c 216 § 17. Prior: 2010 c 126 § 6; 2004 c 199 § 201; 2003 c 334 § 301; 1927 c 255 § 1; RRS § 7797-1; prior: 1911 c 36 § 1; 1907 c 256 § 1; 1897 c 89 §§ 4, 5; 1895 c 178 §§ 1, 2. Formerly RCW 79.01.004, 79.04.010.]

Reviser's note: The definitions in this section have been alphabetized pursuant to RCW 1.08.015(2)(k).

Findings—Intent—2012 c 166: "(1) The legislature finds:

(a) Compliance with the federal endangered species act on state forestlands within small, timber-dependent counties in southwest Washington is disproportionately burdensome when compared to the total budget in these counties;

(b) When compared to other forested parts of the state, there is a relatively small federal land base in these counties, which has resulted in substantial responsibility for endangered species act-related habitat conservation being borne by state forestlands;

(c) Within these counties, there is limited availability of private working forestland available for use as a replacement for encumbered state forestlands;

(d) Currently, county beneficiaries may not receive revenue derived from state forestlands located in any counties other than their own;

(e) Through the passing of chapter 354, Laws of 2009, the legislature established the need to relieve the impact of long-term endangered species-related encumbrances on state forestlands in small, timber-dependent counties in Washington;

(f) As a result of the implementation of chapter 354, Laws of 2009, replacement lands are to be purchased to maintain the land base and productivity of state forestlands in these counties;

(g) There is a need for timely reinvestment in the land base of state forestlands by replacing those transferred encumbered lands with new, productive, unencumbered forestland;

(h) The maintenance of a productive state forestland base in these counties is vital to maintaining a stable, viable natural resource economy that supports rural communities and creates local natural resource-based jobs; and

(i) These counties have articulated the need to reestablish sustainable long-term revenue from state forestlands through the acquisition of productive timberland beyond what will be funded by the land value of transferred encumbered lands under chapter 354, Laws of 2009.

(2) It is the intent of the legislature to authorize the board of natural resources to establish a state forestland pool for small, timber-dependent southwest Washington counties. This action allows the board of natural resources, if deemed appropriate after a required analysis, to use revenue designated for replacement of encumbered state forestland in one county to be pooled with other counties' land replacement funds to purchase forestland within any of the participating counties. This forestland would be managed as state forestland for the benefit of all counties participating in the pool, proportionate to their contribution of asset value to the land pool, according to a set of policy, administrative, and financial structures developed by the department of natural resources and adopted by the board of natural resources.

(3) It is the further intent of the legislature that the replacement forestlands purchased to be part of the land pool are to be maintained as working forestlands. For purposes of the land pool, the department of natural resources should seek out land threatened by encroaching development and land not likely to become further encumbered in an effort to preserve working forestland to the maximum extent possible." [2012 c 166 § 1.]

Intent—2003 c 334: "This act is intended to make technical amendments to certain codified statutes that deal with the department of natural resources. Any statutory changes made by this act should be interpreted as technical in nature and not be interpreted to have any substantive, policy implications." [2003 c 334 § 616.]

Additional notes found at www.leg.wa.gov

79.02.020 Witnesses—Compelling attendance. (1) The board or the commissioner has the power to compel through subpoena the attendance of witnesses and production of records for:

(a) Hearings pertaining to public lands as provided by this title;

(b) Determining the value and character of land, valuable materials, or improvements; and

(c) Determining waste or damage to the land.

(2) A subpoena may be served by any person authorized by law to serve process.

(3) Each witness subpoenaed is allowed the same fees and mileage as paid witnesses in courts of records in this state. The department shall pay these fees and mileage from its general fund appropriation.

(4) Any witness failing to comply with a subpoena, without legal excuse, is considered in contempt.

(a) The board or commissioner shall certify the facts to the court of the county in which the witness resides for contempt of court proceedings as provided in chapter 7.21 RCW.

(b) The certificate of the board or commissioner must be considered by the court as prima facie evidence of the guilt of the witness.

(c) Upon legal proof of the facts, the witness is subject to the same penalties as provided in like cases for contempt of court. [2003 c 334 § 302.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.02.030 Court review of actions. Any applicant to purchase, or lease, any public lands of the state, or any valuable materials thereon, and any person whose property rights or interests will be affected by such sale or lease, feeling aggrieved by any order or decision of the board, or the commissioner, concerning the same, may appeal therefrom to the superior court of the county in which such lands or materials are situated, by serving upon all parties who have appeared in the proceedings in which the order or decision was made, or their attorneys, a written notice of appeal, and filing such notice, with proof, or admission, of service, with the board, or the commissioner, within thirty days from the date of the order or decision appealed from, and at the time of filing the notice, or within five days thereafter, filing a bond to the state, in the penal sum of two hundred dollars, with sufficient sureties, to be approved by the secretary of the board, or the commissioner, conditioned that the appellant shall pay all costs that may be awarded against the appellant on appeal, or the dismissal thereof. Within thirty days after the filing of notice of appeal, the secretary of the board, or the commissioner, shall certify, under official seal, a transcript of all entries in the records of the board, or the commissioner, together with all processes, pleadings and other papers relating to and on file in the case, except evidence used in such proceedings, and file such transcript and papers, at the expense of the applicant, with the clerk of the court to which the appeal is taken. The hearing and trial of said appeal in the superior court shall be de novo before the court, without a jury, upon the pleadings and papers so certified, but the court may order the pleadings to be amended, or new and further pleadings to be filed. Costs on appeal shall be awarded to the prevailing party as in actions commenced in the superior court, but no costs shall be awarded against the state, the board, or the commissioner. Should judgment be rendered against the appellant, the costs shall be taxed against the appellant and the appellant's sureties on the appeal bond, except when the state is the only adverse party, and shall be included in the judgment, upon which execution may issue as in other cases. Any party feeling aggrieved by the judgment

of the superior court may seek appellate review as in other civil cases. Unless appellate review of the judgment of the superior court is sought, the clerk of said court shall, on demand, certify, under the clerk's hand and the seal of the court, a true copy of the judgment, to the board, or the commissioner, which judgment shall thereupon have the same force and effect as if rendered by the board, or the commissioner. In all cases of appeals from orders or decisions of the commissioner involving the prior right to purchase tidelands of the first class, if the appeal is not prosecuted, heard and determined, within two years from the date of the appeal, the attorney general shall, after thirty days' notice to the appellant of the attorney general's intention so to do, move the court for a dismissal of the appeal, but nothing herein shall be construed to prevent the dismissal of such appeal at any time in the manner provided by law. [2003 c 334 § 397. Prior: 1988 c 202 § 59; 1988 c 128 § 56; 1971 c 81 § 139; 1927 c 255 § 125; RRS § 7797-125; prior: 1901 c 62 §§ 1 through 7; 1897 c 89 § 52; 1895 c 178 § 82. Formerly RCW 79.01.500, 79.08.030.]

Intent—2003 c 334: See note following RCW 79.02.010.

Additional notes found at www.leg.wa.gov

79.02.040 Reconsideration of official acts. The department may review and reconsider any of its official acts relating to public lands until such time as a lease, contract, or deed shall have been made, executed, and finally issued, and the department may recall any lease, contract, or deed issued for the purpose of correcting mistakes or errors, or supplying omissions. [2004 c 199 § 202; 2003 c 334 § 432; 1982 1st ex.s. c 21 § 177; 1927 c 255 § 195; RRS § 7797-195. Formerly RCW 79.01.740, 43.65.080.]

Intent—2003 c 334: See note following RCW 79.02.010.

Additional notes found at www.leg.wa.gov

79.02.050 Effect of mistake or fraud. (1) Any sale, transfer, or lease in which the purchaser, transfer recipient, or lessee obtains the sale or lease by fraud or misrepresentation is void, and the contract of purchase or lease shall be of no effect. In the event of fraud, the contract, transferred property, or lease must be surrendered to the department, but the purchaser, transfer recipient, or lessee may not be refunded any money paid on account of the surrendered contract, transfer, or lease.

(2) In the event that a mistake is discovered in the sale or lease, or in the sale of valuable materials, the department may take action to correct the mistake in accordance with RCW 79.02.040 if maintaining the corrected contract, transfer, or lease is in the best interests of the affected trust or trusts. [2004 c 199 § 203; 2003 c 334 § 365; 2001 c 250 § 11; 1982 1st ex.s. c 21 § 164; 1959 c 257 § 28; 1927 c 255 § 60; RRS § 7797-60. Prior: 1903 c 79 § 3. Formerly RCW 79.01.240, 79.12.280.]

Intent—2003 c 334: See note following RCW 79.02.010.

Additional notes found at www.leg.wa.gov

79.02.060 Scope of provisions of chapter 199, Laws of 2004. The provisions of chapter 199, Laws of 2004 are not intended to affect the trust responsibilities or trust management by the department for any trust lands granted by the fed-

eral government or legislatively created trusts. The trust obligations relating to federally granted lands, state forestlands, community and technical college forest reserve lands, and university repayment lands shall not be altered by the definition clarifications contained in chapter 199, Laws of 2004. The rights, privileges, and prerogatives of the public shall not be altered in any way by chapter 199, Laws of 2004, and no additional or changed authority or power is granted to any person, corporation, or entity. [2004 c 199 § 301.]

Additional notes found at www.leg.wa.gov

79.02.080 Rewards for information regarding violations. The department is authorized to offer and pay a reward not to exceed ten thousand dollars in each case for information regarding violations of any statute or rule relating to the state's public lands and natural resources on those lands, except forest practices under chapter 76.09 RCW. No reward may be paid to any federal, state, or local government or agency employees for information obtained by them in the normal course of their employment. The department is authorized to adopt rules in pursuit of its authority under this section to determine the appropriate account or fund from which to pay the reward. The department is also authorized to adopt rules establishing the criteria for paying a reward and the amount to be paid. No appropriation shall be required for disbursement. [2003 c 334 § 436; 1994 c 56 § 1; 1990 c 163 § 8. Formerly RCW 79.01.765.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.02.090 Transfer of county auditor's duties. The duties of the county auditor in each county with a population of two hundred ten thousand or more, with regard to sales and leases dealt with under this title except RCW 79.11.250, 79.11.260, and *79.94.040, are transferred to the county treasurer. [2003 c 334 § 451; 1991 c 363 § 152; 1983 c 3 § 201; 1955 c 184 § 1. Formerly RCW 79.08.170.]

***Reviser's note:** RCW 79.94.040 was recodified as RCW 79.125.040 pursuant to 2005 c 155 § 1008.

Intent—2003 c 334: See note following RCW 79.02.010.

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

79.02.095 Statutes not applicable to state tidelands, shorelands, harbor areas, and the beds of navigable waters. RCW 79.11.080, 79.11.010, 79.11.110, *79.01.140, 79.11.160, 79.10.125, 79.13.130, *79.01.252, *79.01.256, *79.01.260, *79.01.264, 79.13.180, 79.02.260, 79.13.320, 79.13.410, 79.13.010, and *79.01.277 do not apply to state tidelands, shorelands, harbor areas, and the beds of navigable waters. [2003 c 334 § 317; 1979 ex.s. c 109 § 22. Formerly RCW 79.01.093.]

Reviser's note: RCW 79.01.140, 79.01.252, 79.01.256, 79.01.260, 79.01.264, and 79.01.277 were repealed by 2003 c 334 § 551.

Intent—2003 c 334: See note following RCW 79.02.010.

Additional notes found at www.leg.wa.gov

PART 2 FEDERAL LAND GRANTS

79.02.100 Appearance by commissioner before United States land offices. The commissioner of public

lands is authorized and directed to appear before the United States land offices in all cases involving the validity of the selections of any lands granted to the state, and to summon witnesses and pay necessary witness fees and stenographer fees in such contested cases. [1927 c 255 § 193; RRS § 7797-193. Formerly RCW 79.01.732, 43.12.070.]

79.02.110 Applications for federal certification that lands are nonmineral. The commissioner of public lands is authorized and directed to make applications, and to cause publication of notices of applications, to the interior department of the United States for certification that any land granted to the state is nonmineral in character, in accordance with the rules of the general land office of the United States. [1927 c 255 § 77; RRS § 7797-77. Prior: 1897 c 89 § 33. Formerly RCW 79.01.308, 79.08.130.]

79.02.120 Lieu lands—Selection agreements authorized. For the purpose of obtaining from the United States indemnity or lieu lands for such lands granted to the state for common schools, educational, penal, reformatory, charitable, capitol building, or other purposes, as have been or may be lost to the state, or the title to or use or possession of which is claimed by the United States or by others claiming by, through or under the United States, by reason of any of the causes entitling the state to select other lands in lieu thereof, the inclusion of the same in any reservation by or under authority of the United States, or any other appropriation or disposition of the same by the United States, whether such lands are now surveyed or unsurveyed, the department, with the advice and approval of the attorney general, is authorized and empowered to enter into an agreement or agreements, on behalf of the state, with the proper officer or officers of the United States for the relinquishment of any such lands and the selection in lieu thereof, under the provisions of RCW 79.02.120 through 79.02.140, of lands of the United States of equal area and value. [2003 c 334 § 488; 1988 c 128 § 63; 1913 c 102 § 1; RRS § 7824. Formerly RCW 79.28.010.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.02.130 Lieu lands—Examination and appraisal. Upon the making of any such agreement, the board shall be empowered and it shall be its duty to cause such examination and appraisal to be made as will determine the area and value, as nearly as may be, of the lands lost to the state, or the title to, use or possession of which is claimed by the United States by reason of the causes mentioned in RCW 79.02.120, and proposed to be relinquished to the United States, and shall cause an examination and appraisal to be made of any lands which may be designated by the officers of the United States as subject to selection by the state in lieu of the lands aforesaid, to the end that the state shall obtain lands in lieu thereof of equal area and value. [2003 c 334 § 489; 1988 c 128 § 64; 1913 c 102 § 2; RRS § 7825. Formerly RCW 79.28.020.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.02.140 Lieu lands—Transfer of title to lands relinquished. Whenever the title to any lands selected under the provisions of RCW 79.02.120 through 79.02.140 shall become vested in the state of Washington by the acceptance and approval of the lists of lands so selected, or other proper

action of the United States, the governor, on behalf of the state of Washington, shall execute and deliver to the United States a deed of conveyance of the lands of the state relinquished under the provisions of RCW 79.02.120 through 79.02.140, which deed shall convey to and vest in the United States all the right, title and interest of the state of Washington therein. [2003 c 334 § 490; 1913 c 102 § 3; RRS § 7826. Formerly RCW 79.28.030.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.02.150 Selection to complete uncompleted grants.

So long as any grant of lands by the United States to the state of Washington, for any purpose, or as lieu or indemnity lands therefor, remains incomplete, the commissioner of public lands shall, from time to time, cause the records in his or her office and in the United States land offices, to be examined for the purpose of ascertaining what of the unappropriated lands of the United States are open to selection, and whether any thereof may be of sufficient value and so situated as to warrant their selection as state lands, and in that case may cause the same to be inspected and appraised by one or more state land inspectors, and a full report made thereon by the smallest legal subdivisions of forty acres each, classifying such lands into grazing, farming, and timbered lands, and estimating the value of each tract inspected and the quantity and value of all valuable material thereon, and in the case of timbered lands the amount and value of the standing timber thereon, and the estimated value of such lands after the timber is removed, which report shall be made as amply and expeditiously as possible on blanks to be furnished by the commissioner of public lands for that purpose, under the oath of the inspector to the effect that he or she has personally examined the tracts mentioned in each forty acres thereof, and that said report and appraisal is made from such personal examination, and is, to the best of affiant's knowledge and belief, true and correct, and that the lands are not occupied by any bona fide settler.

The commissioner of public lands shall select such unappropriated lands as he or she shall deem advisable, and do all things necessary under the laws of the United States to vest title thereto in the state, and shall assign lands of equal value, as near as may be, to the various uncompleted grants. [2013 c 23 § 257; 1927 c 255 § 19; RRS § 7797-19. Prior: 1897 c 89 § § 5, 7, 9, 10. Formerly RCW 79.01.076, 79.08.050.]

Lieu lands: Chapter 79.02 RCW.

79.02.160 Relinquishment on failure or rejection of selection. In case any person interested in any tract of land heretofore selected by the territory of Washington or any officer, board, or agent thereof or by the state of Washington or any officer, board, or agent thereof or which may be hereafter selected by the state of Washington or the department, in pursuance to any grant of lands made by the United States to the territory or state of Washington for any purpose or upon any trust whatever, the selection of which has failed or been rejected or shall fail or shall be rejected for any reason, shall request it, the department shall have the authority and power on behalf of the state to relinquish to the United States such tract of land. [2004 c 199 § 204; 2003 c 334 § 308; 1927 c 255 § 20; RRS § 7797-20. Prior: 1899 c 63 § 1. Formerly RCW 79.01.080, 79.08.060.]

Intent—2003 c 334: See note following RCW 79.02.010.

Additional notes found at www.leg.wa.gov

PART 3

CONTRACTS/RECORDS/FEEES/APPLICATIONS

79.02.200 Abstracts of public lands. The department shall cause full and correct abstracts of all the public lands to be made and kept in suitable and well bound books, and other suitable records. Such abstracts shall show in proper columns and pages the section or part of section, lot or block, township and range in which each tract is situated, whether timber or prairie, improved or unimproved, the appraised value per acre, the value of improvements and the value of damages, and the total value, the several values of timber, stone, gravel, or other valuable materials thereon, the date of sale, the name of purchaser, sale price per acre, the date of lease, the name of lessee, the term of the lease, the annual rental, amount of cash paid, amount unpaid and when due, amount of annual interest, and in proper columns such other facts as may be necessary to show a full and complete abstract of the conditions and circumstances of each tract or parcel of land from the time the title was acquired by the state until the issuance of a deed or other disposition of the land by the state. [2003 c 334 § 382; 1982 1st ex.s. c 21 § 166; 1927 c 255 § 76; RRS § 7797-76. Prior: (i) 1897 c 89 § 32; RRS § 7823. (ii) 1911 c 59 § 9; RRS § 7899. Formerly RCW 79.01.304, 43.12.080.]

Intent—2003 c 334: See note following RCW 79.02.010.

Additional notes found at www.leg.wa.gov

79.02.210 Maps and plats—Record and index—Public inspection. All maps, plats, and field notes of surveys, required to be made by this title shall, after approval by the department, be deposited and filed in the office of the department, which shall keep a careful and complete record and index of all maps, plats, and field notes of surveys in its possession, in well bound books, which shall at all times be open to public inspection. [2003 c 334 § 426; 1988 c 128 § 57; 1927 c 255 § 187; RRS § 7797-187. Formerly RCW 79.01.708, 43.12.110.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.02.220 Seal. All notices, orders, contracts, certificates, rules and regulations, or other documents or papers made and issued by or on behalf of the department, or the commissioner, as provided in this title, shall be authenticated by a seal whereon shall be the vignette of George Washington, with the words "Seal of the commissioner of public lands, State of Washington." [2003 c 334 § 427; 1988 c 128 § 58; 1927 c 255 § 188; RRS § 7797-188. Formerly RCW 79.01.712, 43.65.070.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.02.230 Blank forms of applications for appraisal, transfer, sale, and lease of state lands, valuable materials. The department shall cause to be prepared, and furnish to applicants, blank forms of applications for the appraisal, transfer, and purchase of any state lands and the purchase of valuable materials situated thereon, and for the lease of state lands. These forms shall contain instructions to inform and aid applicants. [2003 c 334 § 310; 2001 c 250 § 1; 1982 1st

ex.s. c 21 § 150; 1959 c 257 § 2; 1927 c 255 § 21; RRS § 7797-21. Prior: 1909 c 223 § 2; 1907 c 256 § 5; 1903 c 74 § 1; 1897 c 89 § 11; 1895 c 178 §§ 17, 18. Formerly RCW 79.01.084, 79.08.040.]

Intent—2003 c 334: See note following RCW 79.02.010.

Additional notes found at www.leg.wa.gov

79.02.240 Fees. The department may charge and collect fees as determined by the board for each category of services performed based on costs incurred. [2003 c 334 § 428; 1979 ex.s. c 109 § 18; 1959 c 153 § 1; 1927 c 255 § 190; RRS § 7797-190. Formerly RCW 79.01.720, 43.12.120.]

Intent—2003 c 334: See note following RCW 79.02.010.

Additional notes found at www.leg.wa.gov

79.02.250 Reasonable fees—Disposition. (1) Applications for the purchase or use of lands and the sale of valuable materials by the department shall be accompanied by reasonable fees to be prescribed by the board in an amount sufficient to defray the cost of performing or otherwise providing for the processing, review, or inspection of the applications or activities permitted pursuant to the applications for each category of services performed.

(2) Fees shall be credited to the resource management cost account fund as established under RCW 79.64.020, the forest development account fund as established under RCW 79.64.100, or the agricultural college trust management account fund as established under RCW 79.64.090, as applicable. [2003 c 334 § 313.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.02.260 Fee book. The department shall keep a fee book, in which shall be entered all fees received, with the date paid and the name of the person paying the same, and the nature of the services rendered for which the fee is charged, which book shall be verified monthly by affidavit entered therein. All fees collected by the department shall be paid into the state treasury, as applicable, to the resource management cost account created in RCW 79.64.020, the forest development account created in RCW 79.64.100, or the agricultural college trust management account fund as established under RCW 79.64.090, and the receipt of the state treasurer taken and retained in the department's Olympia office as a voucher. [2003 c 334 § 429; 1979 ex.s. c 109 § 19; 1927 c 255 § 191; RRS § 7797-191. Formerly RCW 79.01.724, 43.12.130.]

Reviser's note: This section does not apply to state tidelands, shorelands, harbor areas, and the beds of navigable waters. See RCW 79.02.095.

Intent—2003 c 334: See note following RCW 79.02.010.

Additional notes found at www.leg.wa.gov

79.02.270 Deed. When the entire purchase price of any state lands shall have been fully paid, the commissioner shall certify such fact to the governor, and shall cause a quitclaim deed signed by the governor and attested by the secretary of state, with the seal of the state attached thereto, to be issued to the purchaser and to be recorded in the department's Olympia office. No fee is required for any deed of land issued by the governor other than the fee provided for in this title. [2003 c 334 § 360; 1982 1st ex.s. c 21 § 160; 1959 c 257 § 25; 1927 c 255 § 55; RRS § 7797-55. Prior: 1917 c 149 § 1; 1915

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c 147 § 3; 1907 c 256 § 3; 1897 c 89 § 16; 1895 c 178 §§ 25, 29. Formerly RCW 79.01.220, 79.12.390.]

Intent—2003 c 334: See note following RCW 79.02.010.

Additional notes found at www.leg.wa.gov

79.02.280 Assignment of contracts or leases. All contracts of purchase or leases issued by the department shall be assignable in writing by the contract holder or lessee and the assignee shall be subject to and governed by the provisions of law applicable to the assignor and shall have the same rights in all respects as the original purchaser, or lessee, of the lands, provided the assignment is approved by the department and entered of record in its office. [2004 c 199 § 205; 2003 c 334 § 377; 1982 1st ex.s. c 21 § 165; 1927 c 255 § 73; RRS § 7797-73. Prior: 1903 c 79 § 8. Formerly RCW 79.01.292, 79.12.270.]

Intent—2003 c 334: See note following RCW 79.02.010.

Additional notes found at www.leg.wa.gov

79.02.290 Subdivision of contracts or leases—Fee. Whenever the holder of a contract of purchase or the holder of any lease, except for mining of valuable minerals or coal, or extraction of petroleum or gas, shall surrender the same to the department with the request to have it divided into two or more contracts, or leases, the department may divide the same and issue new contracts, or leases, but no new contract, or lease, shall issue while there is due and unpaid any interest, rental, or taxes or assessments on the land held under such contract or lease, nor in any case where the department is of the opinion that the state's security would be impaired or endangered by the proposed division. For all such new contracts, or leases, a fee as provided under this chapter, shall be paid by the applicant. [2004 c 199 § 206; 2003 c 334 § 363; 1982 1st ex.s. c 21 § 163; 1979 ex.s. c 109 § 8; 1959 c 257 § 27; 1955 c 394 § 2; 1927 c 255 § 59; RRS § 7797-59. Prior: 1903 c 79 § 3. Formerly RCW 79.01.236, 79.12.260.]

Intent—2003 c 334: See note following RCW 79.02.010.

Additional notes found at www.leg.wa.gov

PART 4

TRESPASS/REGULATIONS/PENALTIES

79.02.300 Trespass, waste, damages—Prosecutions. (1) Every person who, without authorization, uses or occupies public lands, removes any valuable material as defined in RCW 79.02.010 from public lands, or causes waste or damage to public lands, or injures publicly owned personal property or publicly owned improvements to real property on public lands, is liable to the state for treble the amount of the damages. However, liability shall be for single damages if the department determines, or the person proves upon trial, that the person, at time of the unauthorized act or acts, did not know, or have reason to know, that he or she lacked authorization. Damages recoverable under this section include, but are not limited to, the market value of the use, occupancy, or things removed, had the use, occupancy, or removal been authorized; and any damages caused by injury to the land, publicly owned personal property or publicly owned improvement, including the costs of restoration. In addition, the person is liable for reimbursing the state for its reasonable costs including, but not limited to, its administrative costs,

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survey costs to the extent they are not included in damages awarded for restoration costs, and its reasonable attorneys' fees and other legal costs.

(2) This section does not apply in any case where liability for damages is provided under RCW 4.24.630, 64.12.030, or 79.02.320.

(3) The department is authorized and directed to investigate all trespasses and wastes upon, and damages to, public lands of the state, and to cause prosecutions for, and/or actions for the recovery of the same, to be commenced as provided by law. [2009 c 349 § 1; 2004 c 199 § 207; 2003 c 334 § 435; 1994 c 280 § 2; 1993 c 266 § 1; 1927 c 255 § 200; RRS § 7797-200. Prior: 1897 c 89 § 64; 1895 c 178 § 99. Formerly RCW 79.01.760, 79.40.040.]

Intent—2003 c 334: See note following RCW 79.02.010.

Waste and trespass: Chapter 64.12 RCW.

Additional notes found at www.leg.wa.gov

79.02.310 Trespasser guilty of theft, when. Every person who willfully commits any trespass upon any public lands of the state and cuts down, destroys, or injures any timber, or any tree, including a Christmas tree as defined in *RCW 76.48.020, standing or growing thereon, or takes, or removes, or causes to be taken, or removed, therefrom any wood or timber lying thereon, or maliciously injures or severs anything attached thereto, or the produce thereof, or digs, quarries, mines, takes or removes therefrom any earth, soil, stone, mineral, clay, sand, gravel, or any valuable materials, is guilty of theft under chapter 9A.56 RCW. [2009 c 349 § 2; 2003 c 53 § 379; 1927 c 255 § 197; RRS § 7797-197. Prior: 1889-90 pp 124-125 §§ 1, 4. Formerly RCW 79.01.748, 79.40.010.]

***Reviser's note:** RCW 76.48.020 was recodified as RCW 76.48.021 pursuant to 2009 c 245 § 29.

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

79.02.320 Removal of timber—Treble damages. Every person who shall cut or remove, or cause to be cut or removed, any timber growing or being upon any public lands of the state, including a Christmas tree as defined in *RCW 76.48.020, or who shall manufacture the same into logs, bolts, shingles, lumber or other articles of use or commerce, unless expressly authorized so to do by a bill of sale from the state, or by a lease or contract from the state under which he or she holds possession of such lands, or by provisions of law under which the bill of sale, lease or contract was issued, shall be liable to the state for treble the value of the timber or other articles cut, removed, or manufactured, to be recovered in a civil action, and shall forfeit to the state all interest in any article into which the timber is manufactured. [2009 c 349 § 3; 1927 c 255 § 199; RRS § 7797-199. Prior: 1897 c 89 § 66; 1895 c 178 § 101. Formerly RCW 79.01.756, 79.40.030.]

***Reviser's note:** RCW 76.48.020 was recodified as RCW 76.48.021 pursuant to 2009 c 245 § 29.

Firewood on state lands: Chapter 79.15 RCW.

Injunction to prevent waste on public land: RCW 64.12.050.

Injury to or removing trees, etc.—Damages: RCW 64.12.030.

Penalty for destroying native flora: RCW 47.40.080.

79.02.330 Lessee or contract holder guilty of misdemeanor. Every person being in lawful possession of any public lands of the state, under and by virtue of any lease or contract of purchase from the state, cuts down, destroys, or injures, or causes to be cut down, destroyed, or injured, any timber standing or growing thereon, or takes or removes, or causes to be taken or removed, therefrom, any wood or timber lying thereon, or maliciously injures or severs anything attached thereto, or the produce thereof, or digs, quarries, mines, takes, or removes therefrom, any earth, soil, clay, sand, gravel, stone, mineral, or other valuable material, or causes the same to be done, or otherwise injures, defaces, or damages, or causes to be injured, defaced, or damaged, any such lands unless expressly authorized so to do by the lease or contract under which possession of such lands is held, or by the provisions of law under and by virtue of which such lease or contract was issued, shall be guilty of a misdemeanor. [2003 c 334 § 434; 1927 c 255 § 198; RRS § 7797-198. Prior: 1899 c 34 §§ 1 through 3. Formerly RCW 79.01.752, 79.40.020.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.02.370 Protection against cedar theft. The board must establish procedures to protect against cedar theft and to ensure adequate notice is given for persons interested in purchasing cedar. [2003 c 334 § 333.]

Intent—2003 c 334: See note following RCW 79.02.010.

PART 5

OTHER TRUST/GRANT/FOREST RESERVE LANDS

79.02.400 Charitable, educational, penal, and reformatory real property—Inventory—Transfer. (1) Every five years the department of social and health services and other state agencies that operate institutions shall conduct an inventory of all real property subject to the charitable, educational, penal, and reformatory institution account and other real property acquired for institutional purposes or for the benefit of the blind, deaf, mentally ill, developmentally disabled, or otherwise disabled. The inventory shall identify which of those real properties are not needed for state-provided residential care, custody, or treatment. By December 1, 1992, and every five years thereafter the department shall report the results of the inventory to the house of representatives committee on capital facilities and financing, the senate committee on ways and means, and the joint legislative audit and review committee.

(2) Real property identified as not needed for state-provided residential care, custody, or treatment shall be transferred to the corpus of the charitable, educational, penal, and reformatory institution account. This subsection shall not apply to leases of real property to a consortium of three or more counties in order for the counties to construct or otherwise acquire correctional facilities for juveniles or adults or to real property subject to binding conditions that conflict with the other provisions of this subsection.

(3) The department of natural resources shall manage all property subject to the charitable, educational, penal, and reformatory institution account and, in consultation with the department of social and health services and other affected agencies, shall adopt a plan for the management of real prop-

erty subject to the account and other real property acquired for institutional purposes or for the benefit of the blind, deaf, mentally ill, developmentally disabled, or otherwise disabled.

(a) The plan shall be consistent with state trust land policies and shall be compatible with the needs of institutions adjacent to real property subject to the plan.

(b) The plan may be modified as necessary to ensure the quality of future management and to address the acquisition of additional real property. [1996 c 288 § 51; 1996 c 261 § 1; 1991 c 204 § 1. Formerly RCW 79.01.006.]

Reviser's note: This section was amended by 1996 c 261 § 1 and by 1996 c 288 § 51, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Department of social and health services duty: RCW 43.20A.035.

79.02.410 Charitable, educational, penal, and reformatory real property—High economic return potential—Income. Where charitable, educational, penal, and reformatory institutions land has the potential for lease for commercial, industrial, or residential uses or other uses with the potential for high economic return and is within urban or suburban areas, the department shall make every effort consistent with trust land management principles and all other provisions of law to lease the lands for such purposes, unless the land is subject to a lease to a state agency operating an existing state institution. The department is authorized, subject to approval by the board and only if a higher return can be realized, to exchange such lands for lands of at least equal value and to sell such lands and use the proceeds to acquire replacement lands. The department shall report to the appropriate legislative committees all charitable, educational, penal, and reformatory institutions land purchased, sold, or exchanged. Income from the leases shall be deposited in the charitable, educational, penal, and reformatory institutions account. The legislature shall give priority consideration to appropriating one-half of the money derived from lease income to providing community housing for persons who are mentally ill, developmentally disabled, or youth who are blind, deaf, or otherwise disabled. [2003 c 334 § 303; 1991 c 204 § 5. Formerly RCW 79.01.007.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.02.420 Finding—Intent—Community and technical college forest reserve land base—Management—Disposition of revenue. (1) The legislature finds that the state's community and technical colleges need a dedicated source of revenue to augment other sources of capital improvement funding. The intent of this section is to ensure that the forestland purchased under section 310, chapter 16, Laws of 1990 1st ex. sess. and known as the community and technical college forest reserve land base, is managed in perpetuity and in the same manner as state forestlands for sustainable commercial forestry and multiple use of lands consistent with RCW 79.10.120. These lands will also be managed to provide an outdoor education and experience area for organized groups. The lands will provide a source of revenue for the long-term capital improvement needs of the state community and technical college system.

(2) There has been increasing pressure to convert forestlands within areas of the state subject to population growth.

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Loss of forestland in urbanizing areas reduces the production of forest products and the available supply of open space, watershed protection, habitat, and recreational opportunities. The land known as the community and technical college forest reserve land base is forever reserved from sale. However, the timber and other products on the land may be sold, or the land may be leased in the same manner and for the same purposes as authorized for state granted lands if the department finds the sale or lease to be in the best interest of this forest reserve land base and approves the terms and conditions of the sale or lease.

(3) The land exchange and acquisition powers provided in RCW 79.17.020 may be used by the department to reposition land within the community and technical college forest reserve land base consistent with subsection (1) of this section.

(4) Up to twenty-five percent of the revenue from these lands, as determined by the board, will be deposited in the forest development account to reimburse the forest development account for expenditures from the account for management of these lands.

(5) The community college forest reserve account, created under section 310, chapter 16, Laws of 1990 1st ex. sess., is renamed the community and technical college forest reserve account. The remainder of the revenue from these lands must be deposited in the community and technical college forest reserve account. Money in the account may be appropriated by the legislature for the capital improvement needs of the state community and technical college system or to acquire additional forest reserve lands. [2003 c 334 § 225; 1996 c 264 § 1. Formerly RCW 76.12.240.]

Intent—2003 c 334: See note following RCW 79.02.010.

Chapter 79.10 RCW LAND MANAGEMENT AUTHORITIES AND POLICIES

Sections

PART 1 GENERAL PROVISIONS

79.10.010	Reports.
79.10.020	Department authority to accept land.
79.10.030	Management of acquired lands—Land acquired by escheat suitable for park purposes.
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PART 1
GENERAL PROVISIONS

79.10.010 Reports. (1) It shall be the duty of the department to report, and recommend, to each session of the legislature, any changes in the law relating to the methods of handling the public lands of the state that the department may deem advisable.

(2) The department shall provide a comprehensive biennial report to reflect the previous fiscal period. The report shall include, but not be limited to, descriptions of all department activities including: Revenues generated, program costs, capital expenditures, personnel, special projects, new and ongoing research, environmental controls, cooperative projects, intergovernmental agreements, the adopted sustainable harvest compared to the sales program, and outlines of ongoing litigation, recent court decisions, and orders on major issues with the potential for state liability. The report shall describe the status of the resources managed and the recreational and commercial utilization. The report must be delivered to the appropriate committees of the legislature and made available to the public.

(3) The department shall provide annual reports to the respective trust beneficiaries, including each county. The report shall include, but not be limited to, the following: Acres sold, acres harvested, volume from those acres, acres planted, number of stems per acre, acres precommercially thinned, acres commercially thinned, acres partially cut, acres clear cut, age of final rotation for acres clear cut, and the total number of acres off base for harvest and an explanation of why those acres are off base for harvest. [2003 c 334 § 433; 1997 c 448 § 3; 1987 c 505 § 76; 1985 c 93 § 3; 1927 c 255 § 196; RRS § 7797-196. Prior: 1907 c 114 § 1; RRS § 7801. Formerly RCW 79.01.744, 43.12.150.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.10.020 Department authority to accept land. The department is hereby authorized, when in its judgment it appears advisable, to accept on behalf of the state, any grant of land within the state which shall then become a part of the state forests. No grant may be accepted until the title has been examined and approved by the attorney general of the state and a report made to the board of natural resources of the result of the examination. [1986 c 100 § 48. Formerly RCW 79.01.074.]

79.10.030 Management of acquired lands—Land acquired by escheat suitable for park purposes. (1) Except as provided in subsection (2) of this section, the department shall manage and control all lands acquired by the state by escheat or under RCW 79.19.010 through 79.19.110 and all lands acquired by the state by deed of sale or gift or by devise, except such lands which are conveyed or devised to the state to be used for a particular purpose.

(2) When land is acquired by the state by escheat which because of its location or features may be suitable for park purposes, the department shall notify the state parks and recreation commission. The department and the commission shall jointly evaluate the land for its suitability for park purposes, based upon the features of the land and the need for park facilities in the vicinity. Where the department and commission determine that such land is suitable for park purposes, it shall be offered for transfer to the commission, or, in the event that the commission declines to accept the land, to the local jurisdiction providing park facilities in that area. When so offered, the payment required by the recipient agency shall not exceed the costs incurred by the department in managing and protecting the land since receipt by the state.

(3) The department may review lands acquired by escheat since January 1, 1983, for their suitability for park purposes, and apply the evaluation and transfer procedures authorized by subsection (2) of this section. [2003 c 334 § 398; 1993 c 49 § 1; 1984 c 222 § 13; 1927 c 255 § 154; RRS § 7797-154. Formerly RCW 79.01.612, 43.12.100.]

Intent—2003 c 334: See note following RCW 79.02.010.

Real property distributed to state by probate court decree, jurisdiction of commissioner of public lands over: RCW 11.08.220.

Additional notes found at www.leg.wa.gov

79.10.040 Gifts of land for offices. Any county, city or town is authorized and empowered to convey to the state of Washington any lands owned by such county, city or town upon the selection of such lands by the department and the department is hereby authorized to select and accept conveyances of lands from such counties, cities or towns, suitable for use by the department as locations for offices, warehouses and machinery storage buildings in the administration of the forestry laws and lands of the state of Washington: PROVIDED, HOWEVER, No consideration shall be paid by the state nor by the department for the conveyance of such lands by such county, city or town. [1988 c 128 § 25; 1937 c 125 § 1; RRS § 5812-3c. FORMER PART OF SECTION: 1937 c 125 § 2 now codified as RCW 76.12.045. Formerly RCW 76.12.040.]

79.10.050 Gifts of county or city land for offices, warehouses, etc.—Use of lands authorized. The department is authorized to use such lands for the purposes hereinbefore expressed and to improve said lands and build thereon any necessary structures for the purposes hereinbefore expressed and expend in so doing such funds as may be authorized by law therefor. [1988 c 128 § 26; 1937 c 125 § 2; RRS § 5812-3d. Formerly RCW 76.12.045, 76.12.040.]

79.10.060 Compliance with local ordinances, when. The department may comply with county or municipal zoning ordinances, laws, rules, or regulations affecting the use of public lands where such regulations are consistent with the treatment of similar private lands. [2004 c 199 § 209; 2003 c 334 § 544; 1971 ex.s. c 234 § 13. Formerly RCW 79.68.110.]

Intent—2003 c 334: See note following RCW 79.02.010.

Additional notes found at www.leg.wa.gov

79.10.070 Management of public lands within watershed area providing water supply for city or town—Lake Whatcom municipal watershed pilot project—Report—Exclusive method of condemnation by city or town for watershed purposes. (1) In the management of public lands lying within the limits of any watershed over and through which is derived the water supply of any city or town, the department may alter its land management practices to provide water with qualities exceeding standards established for intrastate and interstate waters by the department of ecology. However, if such alterations of management by the department reduce revenues from, increase costs of management of, or reduce the market value of public lands the city or town requesting such alterations shall fully compensate the department.

(2) The department shall initiate a pilot project for the municipal watershed delineated by the Lake Whatcom hydrographic boundaries to determine what factors need to be considered to achieve water quality standards beyond those required under chapter 90.48 RCW and what additional management actions can be taken on state trust lands that can contribute to such higher water quality standards. The department shall establish an advisory committee consisting of a representative each of the city of Bellingham, Whatcom county, the Whatcom county water district 10, the department of ecology, the department of fish and wildlife, and the department of health, and three general citizen members to assist in this pilot project. In the event of differences of opinion among the members of the advisory committee, the committee shall attempt to resolve these differences through various means, including the retention of facilitation or mediation services.

(3) The pilot project in subsection (2) of this section shall be completed by June 30, 2000. The department shall defer all timber sales in the Lake Whatcom hydrographic boundaries until the pilot project is complete.

(4) Upon completion of the study, the department shall provide a report to the natural resources committee of the house of representatives and to the natural resources, parks, and recreation committee of the senate summarizing the results of the study.

(5) The exclusive manner, notwithstanding any provisions of the law to the contrary, for any city or town to

acquire by condemnation ownership or rights in public lands for watershed purposes within the limits of any watershed over or through which is derived the water supply of any city or town shall be to petition the legislature for such authority. Nothing in RCW 79.44.003 and this chapter shall be construed to affect any existing rights held by third parties in the lands applied for. [2003 c 334 § 332; 1999 c 257 § 1; 1971 ex.s. c 234 § 11; 1927 c 255 § 32; RRS § 7797-32. Prior: 1915 c 147 § 2; 1909 c 223 § 3; 1907 c 256 § 6; 1901 c 148 § 1; 1899 c 129 § 1; 1897 c 89 § 12; 1895 c 178 § 23. Formerly RCW 79.01.128, 79.12.110.]

Intent—2003 c 334: See note following RCW 79.02.010.

Condemnation proceedings where state land involved: RCW 8.28.010.

Municipal corporation in adjoining state may condemn watershed property: RCW 8.28.050.

79.10.080 Classification of land after timber removed. When the merchantable timber has been sold and actually removed from any state lands, the department may classify the land, and may reserve from any future sale such portions thereof as may be found suitable for reforestation, and in such case, shall enter such reservation in its records. All lands reserved shall not be subject to sale or lease. The commissioner shall certify all such reservations for reforestation so made, to the board. It shall be the duty of the department to protect such lands, and the remaining timber thereon, from fire and to reforest the same. [2003 c 334 § 340; 1959 c 257 § 16; 1927 c 255 § 41; RRS § 7797-41. Prior: 1915 c 147 § 2; 1909 c 223 § 3; 1907 c 256 § 6; 1901 c 148 § 1; 1899 c 129 § 1; 1897 c 89 § 12; 1895 c 178 § 23. Formerly RCW 79.01.164, 79.12.200.]

Intent—2003 c 334: See note following RCW 79.02.010.

Acquisition, management, and disposition of state forestlands: Chapter 79.22 RCW.

79.10.090 Economic analysis of state lands held in trust—Scope—Use. Periodically at intervals to be determined by the board, the department shall cause an economic analysis to be made of those state lands held in trust, where the nature of the trust makes maximization of the economic return to the beneficiaries of income from state lands the prime objective. The analysis shall be by specific tracts, or where such tracts are of similar economic characteristics, by groupings of such tracts.

The most recently made analysis shall be considered by the department in making decisions as to whether to sell or lease state lands, standing timber or crops thereon, or minerals therein, including but not limited to oil and gas and other hydrocarbons, rocks, gravel, and sand.

The economic analysis shall include, but shall not be limited to the following criteria: (1) Present and potential sale value; (2) present and probable future returns on the investment of permanent state funds; (3) probable future inflationary or deflationary trends; (4) present and probable future income from leases or the sale of land products; and (5) present and probable future tax income derivable therefrom specifically including additional state, local, and other tax revenues from potential private development of land currently used primarily for grazing and other similar low priority use; such private development would include, but not be limited

to, development as irrigated agricultural land. [2003 c 334 § 320; 1969 ex.s. c 131 § 1. Formerly RCW 79.01.095.]

Intent—2003 c 334: See note following RCW 79.02.010.

PART 2 MULTIPLE USE

79.10.100 Concept to be utilized, when. The legislature hereby directs that a multiple use concept be utilized by the department in the administration of public lands where such a concept is in the best interests of the state and the general welfare of the citizens thereof, and is consistent with the applicable provisions of the various lands involved. [2004 c 199 § 210; 2003 c 334 § 534; 1971 ex.s. c 234 § 1. Formerly RCW 79.68.010.]

Intent—2003 c 334: See note following RCW 79.02.010.

Additional notes found at www.leg.wa.gov

79.10.110 "Multiple use" defined. "Multiple use" as used in RCW 79.10.070, 79.44.003, and this chapter shall mean the management and administration of state-owned lands under the jurisdiction of the department to provide for several uses simultaneously on a single tract and/or planned rotation of one or more uses on and between specific portions of the total ownership consistent with the provisions of RCW 79.10.100. [2003 c 334 § 535; 1971 ex.s. c 234 § 2. Formerly RCW 79.68.020.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.10.120 Multiple uses compatible with financial obligations of trust management—Other uses permitted, when. Multiple uses additional to and compatible with those basic activities necessary to fulfill the financial obligations of trust management may include but are not limited to:

- (1) Recreational areas;
- (2) Recreational trails for both vehicular and nonvehicular uses developed or maintained consistent with RCW 79.10.500;
- (3) Special educational or scientific studies;
- (4) Experimental programs by the various public agencies;
- (5) Special events;
- (6) Hunting and fishing and other sports activities;
- (7) Nonconsumptive wildlife activities as defined by the board of natural resources;
- (8) Maintenance of scenic areas;
- (9) Maintenance of historical sites;
- (10) Municipal or other public watershed protection;
- (11) Greenbelt areas;
- (12) Public rights-of-way;
- (13) Other uses or activities by public agencies;

If such additional uses are not compatible with the financial obligations in the management of trust land they may be permitted only if there is compensation from such uses satisfying the financial obligations. [2014 c 114 § 4; 2003 c 182 § 2; 1971 ex.s. c 234 § 5. Formerly RCW 79.68.050.]

Finding—2014 c 114: See note following RCW 79.10.500.

79.10.125 Land open to public for fishing, hunting, and nonconsumptive wildlife activities. All state lands hereafter leased for grazing or agricultural purposes shall be

open and available to the public for purposes of hunting and fishing, and for nonconsumptive wildlife activities, as defined by the board of natural resources, unless closed to public entry because of fire hazard or unless the department gives prior written approval and the area is lawfully posted by lessee to prohibit hunting and fishing, and nonconsumptive wildlife activities, thereon in order to prevent damage to crops or other land cover, to improvements on the land, to livestock, to the lessee, or to the general public, or closure is necessary to avoid undue interference with carrying forward a departmental or agency program. In the event any such lands are so posted it shall be unlawful for any person to hunt or fish, or pursue nonconsumptive wildlife activities, on any such posted lands. Such lands shall not be open and available for wildlife activities when access could endanger crops on the land or when access could endanger the person accessing the land.

The department shall insert the provisions of this section in all new grazing and agricultural leases. [2003 c 334 § 371; 2003 c 182 § 1; 1979 ex.s. c 109 § 9; 1969 ex.s. c 46 § 1; 1959 c 257 § 29; 1947 c 171 § 1; 1927 c 255 § 61; RRS § 7797-61. Prior: 1915 c 147 § 4; 1903 c 79 § 4; 1897 c 89 § 19; 1895 c 178 § 32. Formerly RCW 79.01.244, 79.12.430.]

Reviser's note: (1) This section does not apply to state tidelands, shorelands, harbor areas, and the beds of navigable waters. See RCW 79.02.095.

(2) This section was amended by 2003 c 182 § 1 and by 2003 c 334 § 371, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Intent—2003 c 334: See note following RCW 79.02.010.

Additional notes found at www.leg.wa.gov

79.10.130 Scope of department's authorized activities. (1) The department is hereby authorized to carry out all activities necessary to achieve the purposes of this section and RCW 79.10.060, 79.10.070, 79.10.100 through 79.10.120, 79.10.200 through 79.10.330, 79.44.003, and 79.105.050 including, but not limited to:

(a) Planning, construction, and operation of conservation, recreational sites, areas, roads, and trails developed or maintained consistent with RCW 79.10.500, by itself or in conjunction with any public agency, nonprofit organization, volunteer, or volunteer organization, including entering cooperative agreements for these purposes;

(b) Planning, construction, and operation of special facilities for educational, scientific, conservation, or experimental purposes by itself or in conjunction with any other public or private agency, including entering cooperative agreements for these purposes;

(c) Improvement of any lands to achieve the purposes of this section and RCW 79.10.060, 79.10.070, 79.10.100 through 79.10.120, 79.10.200 through 79.10.330, 79.44.003, and 79.105.050, including entering cooperative agreements with public agencies, nonprofit organizations, volunteers, and volunteer organizations for these purposes;

(d) Entering cooperative agreements with public agencies, nonprofit organizations, volunteers, and volunteer organizations regarding the use of lands managed by the department for the purpose of providing a benefit to lands managed by the department, including but not limited to the following benefits: The utilization of such lands for watershed purposes; carrying out restoration and enhancement projects on

such lands, such as improving, restoring, or enhancing habitat that provides for plant or animal species protection; improving, restoring, or enhancing watershed conditions; removing nonnative vegetation and providing vegetation management to restore, enhance, or maintain properly functioning conditions of the local ecosystem; and other similar projects on these lands that provide long-term environmental and other land management benefits, provided that the cooperative agreements are consistent with land management obligations;

(e) Authorizing individual volunteers and volunteer organizations to conduct restoration and enhancement projects on lands managed by the department through cooperative agreements authorized in this section or other arrangements that are consistent with land management obligations and that do not require the volunteers to pay a fee for the cooperative agreement purpose;

(f) Authorizing the receipt of gifts of personal property, services, and other items of value for the purposes of this section, as well as the exchange of consideration in cooperative agreements authorized under this section;

(g) The authority to make such leases, contracts, agreements, or other arrangements as are necessary to accomplish the purposes of this section and RCW 79.10.060, 79.10.070, 79.10.100 through 79.10.120, 79.10.200 through 79.10.330, 79.44.003, and 79.105.050. However, nothing in this section shall affect any existing requirements for public bidding or auction with private agencies or parties, except that agreements or other arrangements may be made with public schools, colleges, universities, governmental agencies, non-profit organizations, volunteers, and volunteer organizations. In addition, nothing in this section is intended to conflict with the department's trust obligations.

(2) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Nonprofit organization" means: (i) Any organization described in section 501(c)(3) of the internal revenue code of 1986 (26 U.S.C. Sec. 501(c)(3)) and exempt from tax under section 501(a) of the internal revenue code; or (ii) any not-for-profit organization that is organized and conducted for public benefit and operated primarily for charitable, civic, educational, religious, welfare, or health purposes.

(b) "Volunteer" or "volunteer organization" means an individual or entity performing services for a nonprofit organization or a governmental entity who does not receive compensation, other than reasonable reimbursement or allowances for expenses actually incurred, or any other thing of value, in excess of five hundred dollars per year. "Volunteer" includes a volunteer serving as a director, officer, trustee, or direct service volunteer. [2014 c 114 § 5; 2013 c 15 § 1; 2003 c 334 § 540; 1987 c 472 § 12; 1971 ex.s. c 234 § 7. Formerly RCW 79.68.070.]

Finding—2014 c 114: See note following RCW 79.10.500.

Intent—2003 c 334: See note following RCW 79.02.010.

79.10.140 Outdoor recreation—Construction, operation, and maintenance of primitive facilities—Right-of-way and public access—Use of state and federal outdoor recreation funds. The department is authorized:

(1) To construct, operate, and maintain primitive outdoor recreation and conservation facilities on lands under its jurisdiction which are of primitive character when deemed neces-

sary by the department to achieve maximum effective development of such lands and resources consistent with the purposes for which the lands are held. This authority shall be exercised only after review by the recreation and conservation funding board and determination by the recreation and conservation funding board that the department is the most appropriate agency to undertake such construction, operation, and maintenance. Such review is not required for campgrounds designated and prepared or approved by the department;

(2) To acquire right-of-way and develop public access to lands under the jurisdiction of the department and suitable for public outdoor recreation and conservation purposes;

(3) To receive and expend funds from federal and state outdoor recreation funding measures for the purposes of this section and RCW 79A.50.110. [2007 c 241 § 23; 2003 c 334 § 122; 1987 c 472 § 13; 1986 c 100 § 51; 1967 ex.s. c 64 § 1. Formerly RCW 43.30.300.]

Intent—Effective date—2007 c 241: See notes following RCW 79A.25.005.

Intent—2003 c 334: See note following RCW 79.02.010.

Exchange of lands to secure private lands for parks and recreation purposes: RCW 79A.50.110.

Recreation and conservation funding board: Chapter 79A.25 RCW.

Additional notes found at www.leg.wa.gov

79.10.200 Multiple use land resource allocation plan—Adoption—Factors considered. The department may adopt a multiple use land resource allocation plan for all or portions of the lands under its jurisdiction providing for the identification and establishment of areas of land uses and identifying those uses which are best suited to achieve the purposes of RCW 79.10.060, 79.10.070, 79.10.100 through 79.10.120, 79.10.130, 79.10.200 through 79.10.330, 79.44.003, and *79.90.456. Such plans shall take into consideration the various ecological conditions, elevations, soils, natural features, vegetative cover, climate, geographical location, values, public use potential, accessibility, economic uses, recreational potentials, local and regional land use plans or zones, local, regional, state, and federal comprehensive land use plans or studies, and all other factors necessary to achieve the purposes of RCW 79.10.060, 79.10.070, 79.10.100 through 79.10.120, 79.10.130, 79.10.200 through 79.10.330, 79.44.003, and *79.90.456. [2003 c 334 § 542; 1971 ex.s. c 234 § 9. Formerly RCW 79.68.090.]

***Reviser's note:** RCW 79.90.456 was recodified as RCW 79.105.050 pursuant to 2005 c 155 § 1003.

Intent—2003 c 334: See note following RCW 79.02.010.

79.10.210 Public lands identified and withdrawn. For the purpose of providing increased continuity in the management of public lands and of facilitating long range planning by interested agencies, the department is authorized to identify and to withdraw from all conflicting uses at such times and for such periods as it shall determine appropriate, limited acreages of public lands under its jurisdiction. Acreages so withdrawn shall be maintained for the benefit of the public and, in particular, of the public schools, colleges, and universities, as areas in which may be observed, studied, enjoyed, or otherwise utilized the natural ecological systems thereon, whether such systems be unique or typical to the

state of Washington. Nothing herein is intended to or shall modify the department's obligation to manage the land under its jurisdiction in the best interests of the beneficiaries of granted trust lands. [2003 c 334 § 539; 1971 ex.s. c 234 § 6. Formerly RCW 79.68.060.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.10.220 Conferring with other agencies. The department may confer with other public and private agencies to facilitate the formulation of policies and/or plans providing for multiple use concepts. The department is empowered to hold public hearings from time to time to assist in achieving the purposes of RCW 79.10.060, 79.10.070, 79.10.100 through 79.10.120, 79.10.130, 79.10.200 through 79.10.330, 79.44.003, and *79.90.456. [2003 c 334 § 543; 1971 ex.s. c 234 § 10. Formerly RCW 79.68.100.]

***Reviser's note:** RCW 79.90.456 was recodified as RCW 79.105.050 pursuant to 2005 c 155 § 1003.

Intent—2003 c 334: See note following RCW 79.02.010.

79.10.240 Department's existing authority and powers preserved. Nothing in RCW 79.10.060, 79.10.070, 79.10.100 through 79.10.120, 79.10.130, 79.10.200 through 79.10.330, 79.44.003, and *79.90.456 shall be construed to affect or repeal any existing authority or powers of the department in the management or administration of the lands under its jurisdiction. [2003 c 334 § 546; 1971 ex.s. c 234 § 12. Formerly RCW 79.68.900.]

***Reviser's note:** RCW 79.90.456 was recodified as RCW 79.105.050 pursuant to 2005 c 155 § 1003.

Intent—2003 c 334: See note following RCW 79.02.010.

79.10.250 Existing withdrawals for state park and state game purposes preserved. Nothing in RCW 79.10.060, 79.10.070, 79.10.100 through 79.10.120, 79.10.130, 79.10.200 through 79.10.330, 79.44.003, and *79.90.456 shall be construed to affect, amend, or repeal any existing withdrawal of public lands for state park or state game purposes. [2003 c 334 § 547; 1971 ex.s. c 234 § 15. Formerly RCW 79.68.910.]

***Reviser's note:** RCW 79.90.456 was recodified as RCW 79.105.050 pursuant to 2005 c 155 § 1003.

Intent—2003 c 334: See note following RCW 79.02.010.

79.10.280 Land use data bank—Contents, source.

(1) The department shall design expansion of its land use data bank to include additional information that will assist in the formulation, evaluation, and updating of intermediate and long-range goals and policies for land use, population growth and distribution, urban expansion, open space, resource preservation and utilization, and other factors which shape state-wide development patterns and significantly influence the quality of the state's environment. The system shall be designed to permit inclusion of other lands in the state and will do so as financing and time permit.

(2) Such data bank shall contain any information relevant to the future growth of agriculture, forestry, industry, business, residential communities, and recreation; the wise use of land and other natural resources which are in accordance with their character and adaptability; the conservation and protection of the soil, air, water, and forest resources; the

protection of the beauty of the landscape; and the promotion of the efficient and economical uses of public resources.

The information shall be assembled from all possible sources, including but not limited to, the federal government and its agencies, all state agencies, all political subdivisions of the state, all state operated universities and colleges, and any source in the private sector. All state agencies, all political subdivisions of the state, and all state universities and colleges are directed to cooperate to the fullest extent in the collection of data in their possession. Information shall be collected on all areas of the state but collection may emphasize one region at a time.

(3) The data bank shall make maximum use of computerized or other advanced data storage and retrieval methods. The department is authorized to engage consultants in data processing to ensure that the data bank will be as complete and efficient as possible.

(4) The data shall be made available for use by any governmental agency, research organization, university or college, private organization, or private person as a tool to evaluate the range of alternatives in land and resource planning in the state. [2003 c 334 § 545; 1971 ex.s. c 234 § 16. Formerly RCW 79.68.120.]

Intent—2003 c 334: See note following RCW 79.02.010.

PART 3
SUSTAINABLE HARVEST

79.10.300 Definitions. Unless the context clearly requires otherwise the definitions in this section apply throughout RCW 79.10.310, 79.10.320, and 79.10.330.

(1) "Arrearage" means the summation of the annual sustainable harvest timber volume since July 1, 1979, less the sum of state timber sales contract default volume and the state timber sales volume deficit since July 1, 1979.

(2) "Default" means the volume of timber remaining when a contractor fails to meet the terms of the sales contract on the completion date of the contract or any extension thereof and timber returned to the state under *RCW 79.01.1335.

(3) "Deficit" means the summation of the difference between the department's annual planned sales program volume and the actual timber volume sold.

(4) "Planning decade" means the ten-year period covered in the forestland management plan adopted by the board.

(5) "Sustainable harvest level" means the volume of timber scheduled for sale from state-owned lands during a planning decade as calculated by the department and approved by the board. [2003 c 334 § 537; 1987 c 159 § 2. Formerly RCW 79.68.035.]

***Reviser's note:** RCW 79.01.1335 expired December 31, 1984.

Intent—2003 c 334: See note following RCW 79.02.010.

Legislative findings—1987 c 159: "Adequately funding construction of the state's educational facilities represents one of the highest priority uses of state-owned lands. Many existing facilities need replacement and many additional facilities will be needed by the year 2000 to house students entering the educational system. The sale of timber from state-owned lands plays a key role in supporting the construction of school facilities. Currently and in the future, demands for school construction funds are expected to exceed available revenues.

The department of natural resources sells timber on a sustained yield basis. Since 1980, purchasers defaulted on sales contracts affecting over one billion one hundred million board feet of timber. Between 1981 and 1983,

the department sold six hundred million board feet of timber less than the sustainable harvest level. As a consequence of the two actions, the department entered their 1984-1993 planning decade with a timber sale arrearage which could be sold without adversely affecting the continued productivity of the state-owned forests." [1987 c 159 § 1.]

79.10.310 "Sustained yield plans" defined. "Sustained yield plans" as used in RCW 79.10.070, 79.44.003, and this chapter shall mean management of the forest to provide harvesting on a continuing basis without major prolonged curtailment or cessation of harvest. [2003 c 334 § 536; 1971 ex.s. c 234 § 3. Formerly RCW 79.68.030.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.10.320 Sustainable harvest program. The department shall manage the state-owned lands under its jurisdiction which are primarily valuable for the purpose of growing forest crops on a sustained yield basis insofar as compatible with other statutory directives. To this end, the department shall periodically adjust the acreages designated for inclusion in the sustained yield management program and calculate a sustainable harvest level. [2003 c 334 § 538; 1987 c 159 § 3; 1971 ex.s. c 234 § 4. Formerly RCW 79.68.040.]

Intent—2003 c 334: See note following RCW 79.02.010.

Legislative findings—1987 c 159: See note following RCW 79.10.300.

79.10.330 Arrearages—End of decade. If an arrearage exists at the end of any planning decade, the department shall conduct an analysis of alternatives to determine the course of action regarding the arrearage which provides the greatest return to the trusts based upon economic conditions then existing and forecast, as well as impacts on the environment of harvesting the additional timber. The department shall offer for sale the arrearage in addition to the sustainable harvest level adopted by the board of natural resources for the next planning decade if the analysis determined doing so will provide the greatest return to the trusts. [1987 c 159 § 4. Formerly RCW 79.68.045.]

Legislative findings—1987 c 159: See note following RCW 79.10.300.

79.10.340 Sustainable harvest sale. The board of natural resources shall offer for sale the sustainable harvest as identified in the 1984-1993 forestland management program, or as subsequently revised. In the event that decisions made by entities other than the department cause a decrease in the sustainable harvest the department shall offer additional timber sales from state-managed lands. [1989 c 424 § 9. Formerly RCW 43.30.390.]

Additional notes found at www.leg.wa.gov

PART 4 COOPERATIVE FOREST MANAGEMENT AGREEMENTS

79.10.400 Cooperative agreements. The department with regard to state forestlands and state lands is hereby authorized to enter into cooperative agreements with the United States of America, Indian tribes, and private owners of timberland providing for coordinated forest management, including time, rate, and method of cutting timber and method of silvicultural practice on a sustained yield unit. [2003 c 334 § 510; 1988 c 128 § 67; 1941 c 123 § 1; 1939 c

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130 § 1; Rem. Supp. 1941 § 7879-11. Formerly RCW 79.60.010, 79.52.070.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.10.410 Cooperative units. The department is hereby authorized and directed to determine, define, and declare informally the establishment of a sustained yield unit, comprising the land area to be covered by any such cooperative agreement and include therein such other lands as may be later acquired by the department and included under the cooperative agreement. [2003 c 334 § 511; 1988 c 128 § 68; 1939 c 130 § 2; RRS § 7879-12. Formerly RCW 79.60.020, 79.52.080.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.10.420 Limitations on agreements. The department shall agree that the cutting from combined national forestlands, state forestlands, and state lands will be limited to the sustained yield capacity of these lands in the management unit as determined by the contracting parties and approved by the board for state forestlands and by the department for state lands. Cooperation with the private contracting party or parties shall be contingent on limitation of production to a specified amount as determined by the contracting parties and approved by the board for state forestlands and by the department for state lands and shall comply with the other conditions and requirements of such cooperative agreement. [2003 c 334 § 512; 1988 c 128 § 69; 1939 c 130 § 3; RRS § 7879-13. Formerly RCW 79.60.030, 79.52.090.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.10.430 Easements—Life of agreements. The private contracting party or parties shall enjoy the right of easement over state forestlands and state lands included under said cooperative agreement for railway, road, and other uses necessary to the carrying out of the agreement. This easement shall be only for the life of the cooperative agreement and shall be granted without charge with the provision that payment shall be made for all merchantable timber cut, removed, or damaged in the use of such easement, payment to be based on the contract stumpage price for timber of like value and species and to be made within thirty days from date of cutting, removal, and/or damage of such timber and appraisal thereof by the department. [2003 c 334 § 513; 1988 c 128 § 70; 1941 c 123 § 2; Rem. Supp. 1941 § 7879-13a. Formerly RCW 79.60.040, 79.52.110.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.10.440 Sale agreements. During the period when any such cooperative agreement is in effect, the timber on the state forestlands and state lands which the department determines shall be included in the sustained yield unit may, from time to time, be sold at not less than its appraised value as approved by the department for state lands and the board for state forestlands, due consideration being given to existing forest conditions on all lands included in the cooperative management unit and such sales may be made in the discretion of the department and the contracting party or parties in the cooperative sustained yield agreement. These sale agreements shall contain such provisions as are necessary to effectually permit the department to carry out the purpose of this

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section and in other ways afford adequate protection to the public interests involved. [2003 c 334 § 514; 1988 c 128 § 71; 1939 c 130 § 4; RRS § 7879-14. Formerly RCW 79.60.050, 79.52.100.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.10.450 Minimum price. The sale of timber upon state forestland and state land within such sustained yield unit or units shall be made for not less than the appraised value thereof as heretofore provided for the sale of timber on state lands. However, if in the judgment of the department, it is to the best interests of the state to do so, the timber or any such sustained yield unit or units may be sold on a stumpage or scale basis for a price per thousand not less than the appraised value thereof. The department shall reserve the right to reject any and all bids if the intent of this chapter will not be carried out. Permanency of local communities and industries, prospects of fulfillment of contract requirements, and financial position of the bidder shall all be factors included in this decision. [2003 c 334 § 515; 1988 c 128 § 72; 1939 c 130 § 5; RRS § 7879-15. Formerly RCW 79.60.060, 79.52.040.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.10.460 Contracts—Requirements. A written contract shall be entered into with the successful bidder which shall fix the time when logging operations shall be commenced and concluded and require monthly payments for timber removed as soon as scale sheets have been tabulated and the amount of timber removed during the month determined, or require payments monthly in advance at the discretion of the board or the department. The board and the department shall designate the price per thousand to be paid for each species of timber and shall provide for supervision of logging operations, the methods of scaling and report, and shall require the purchaser to comply with all laws of the state of Washington with respect to fire protection and logging operation of the timber purchased; and shall contain such other provisions as may be deemed advisable. [2003 c 334 § 516; 1939 c 130 § 6; RRS § 7879-16. Formerly RCW 79.60.070, 79.52.050, part.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.10.470 Transfer or assignment of contracts. No transfer or assignment by the purchaser shall be valid unless the transferee or assignee is acceptable to the department and the transfer or assignment approved by it in writing. [2003 c 334 § 517; 1988 c 128 § 73; 1941 c 123 § 3; Rem. Supp. 1941 § 7879-16a. Formerly RCW 79.60.080, 79.52.120.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.10.480 Performance bond—Cash deposit. The purchaser shall, at the time of executing the contract, deliver a performance bond or sureties acceptable in regard to terms and amount to the department, but such performance bond or sureties shall not exceed ten percent of the estimated value of the timber purchased computed at the stumpage price and at no time shall exceed a total of fifty thousand dollars. The purchaser shall also be required to make a cash deposit equal to twenty percent of the estimated value of the timber purchased, computed at the stumpage bid. Upon failure of the purchaser to comply with the terms of the contract, the per-

formance bond or sureties may be forfeited to the state upon order of the department.

At no time shall the amount due the state for timber actually cut and removed exceed the amount of the deposit as set forth in this section. The amount of the deposit shall be returned to the purchaser upon completion and full compliance with the contract by the purchaser, or it may, at the discretion of the purchaser, be applied on final payment on the contract. [2003 c 334 § 518; 1988 c 128 § 74; 1941 c 123 § 4; 1939 c 130 § 7; Rem. Supp. 1941 § 7879-17. Formerly RCW 79.60.090, 79.52.060.]

Intent—2003 c 334: See note following RCW 79.02.010.

PART 5 MISCELLANEOUS PROVISIONS

79.10.500 Recreational trail policy—Development.

(1) The department must develop and implement, through an inclusive stakeholder process managed by the department, an official recreational trail policy that is consistent with this section and the management mandate of the department.

(2)(a) The recreational trail policy developed by the department under this section must provide that recreational trails be developed and managed in a manner that ensures the following principles are satisfied:

(i) Causing the least impact to the land;

(ii) Providing environmental and water quality protection; and

(iii) Maintaining the lowest construction and maintenance costs that are reasonable.

(b) The department should use trail standards developed by the United States forest service as primary guidelines for trail construction and maintenance. However, the department must develop its own construction standards and best management practices when the primary guidelines are deemed insufficient or inapplicable.

(c) Trails developed or maintained consistent with a recreational trail policy developed under this section must comply with Title 79 RCW and all applicable state laws and rules, including those administered by the department of ecology.

(d) After developing the recreational trail policy required in this section, and when developing or assessing recreational trail systems, the department should evaluate existing non-designated trails for compliance with trail standards and incorporate those trails, when compliant and consistent with the standards, into comprehensive recreational management plans.

(3) When appropriate, the department should incorporate public input on new and existing trail systems, and if deemed appropriate, the department should support formal or informal public forums to allow members of the local community to share concerns and ideas or organize themselves for volunteer trail maintenance.

(4)(a) A recreational trail policy developed by the department under this section must provide for the department to enter into a hold harmless agreement with all volunteers coordinating with the department under the policy or enter into other agreements that limit the department's liability from the actions of volunteers.

(b) Whenever volunteers or volunteer organizations are authorized to perform activities or carry out projects under

this subsection, the volunteers or members of the organizations may not be considered employees or agents of the department and the department is not subject to any liability whatsoever arising out of volunteer activities or projects. The liability of the department to volunteers and members of the volunteer organizations is limited in the same manner as provided for in RCW 4.24.210. [2014 c 114 § 2.]

Finding—2014 c 114: "The legislature finds that the citizens of the state will benefit from a coordinated effort to plan recreational trails on land managed by the department of natural resources that are accessible by the greatest number of people and are constructed to standards that are consistent statewide. The legislature recognizes that demand for outdoor recreational opportunities continues to expand while the places to enjoy outdoor recreation has diminished due to changes in private landownership and reduced access to federal lands that resulted from a reduction in federal forest road networks. As a result, the public has greater expectations of state-owned land for recreational use. Therefore, greater emphasis on policies that secure recreational access are needed, for public health and safety, as well as for maintaining protections for the state-owned land that are subject to the recreation so that the interests of current and future generations are afforded the same opportunities." [2014 c 114 § 1.]

79.10.510 Recreational facilities and trails—Local government permits. The department should work with representatives of local governments to find efficiencies in gaining local government permits for the development and maintenance of recreational facilities and trails. If barriers to permitting efficiencies require legislative action to overcome, then the department must provide options for solutions to the appropriate committees of the legislature. [2014 c 114 § 3.]

Finding—2014 c 114: See note following RCW 79.10.500.

Chapter 79.11 RCW STATE LAND SALES

Sections

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PART 1 SALE PROCEDURES

79.11.005 Sale of administrative sites. (1) The department is authorized to sell any real property not designated or acquired as state forestlands, but acquired by the state, either in the name of the forest board, the forestry board, or the division of forestry, for administrative sites, lien foreclosures, or other purposes whenever it shall determine that the lands are no longer or not necessary for public use.

(2) The sale may be made after public notice to the highest bidder for such a price as approved by the governor, but not less than the fair market value of the real property, plus the value of improvements thereon. Any instruments necessary to convey title must be executed by the governor in a form approved by the attorney general.

(3) All amounts received from the sale must be credited to the fund of the department of government that is responsible for the acquisition and maintenance of the property sold. [2003 c 334 § 201; 1988 c 128 § 12; 1955 c 121 § 1. Formerly RCW 76.01.010.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.11.010 Maximum and minimum acreage subject to sale—Exception—Approval by legislature or regents.

(1) Not more than one hundred and sixty acres of any land granted to the state by the United States shall be offered for sale in one parcel and no university lands shall be offered for sale except by legislative directive or with the consent of the board of regents of the University of Washington.

(2) Any land granted to the state by the United States may be sold for any lawful purpose in such minimum acreage as may be fixed by the department. [2003 c 334 § 321; 1982 c 54 § 1; 1979 ex.s. c 109 § 4; 1971 ex.s. c 200 § 1; 1970 ex.s. c 46 § 1; 1967 ex.s. c 78 § 1; 1959 c 257 § 5; 1955 c 394 § 1; 1927 c 255 § 24; RRS § 7797-24. Prior: 1915 c 147 § 15; 1909 p 256 § 4; 1907 c 256 § 5; 1903 c 91 § 3; 1897 c 89 § 11. Formerly RCW 79.01.096, 79.12.030.]

Reviser's note: This section does not apply to state tidelands, shorelands, harbor areas, and the beds of navigable waters. See RCW 79.02.095.

Intent—2003 c 334: See note following RCW 79.02.010.

Public lands, funds for support of common school fund: State Constitution Art. 9 § 3.

School and granted lands: State Constitution Art. 16.

University of Washington: Chapter 28B.20 RCW.

Additional notes found at www.leg.wa.gov

79.11.020 Powers/duties of department. The department shall exercise general supervision and control over the sale for any purpose of land granted to the state for educational purposes. It shall be the duty of the department to prepare all reports, data, and information in its records pertaining to any such proposed sale. The department shall have power, if it deems it advisable, to order that any particular sale of such land be held in abeyance pending further inspection.

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tion and report. The department may cause such further inspection and report of land involved in any proposed sale to be made and for that purpose shall have power to employ its own inspectors, cruisers, and other technical assistants. Upon the basis of such further inspection and report the department shall determine whether or not, and the terms upon which, the proposed sale shall be consummated. [2003 c 334 § 318; 1988 c 128 § 54; 1941 c 217 § 3; Rem. Supp. 1941 § 7797-23A. Formerly RCW 79.01.094, 43.65.060.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.11.030 Terms of sale. All state lands shall be sold on terms and conditions established by the board in light of market conditions. Sales by real estate contract or for cash may be authorized. All deferred payments shall draw interest at such rate as may be fixed, from time to time, by rule adopted by the board, and the rate of interest, as so fixed at the date of each sale, shall be stated in all advertising for and notice of sale and in the contract of sale. All remittances for payment of either principal or interest shall be forwarded to the department. [2003 c 334 § 359; 1984 c 222 § 11; 1982 1st ex.s. c 21 § 159; 1969 ex.s. c 267 § 1; 1959 c 257 § 24; 1927 c 255 § 54; RRS § 7797-54. Prior: 1917 c 149 § 1; 1915 c 147 § 3; 1907 c 256 § 3; 1897 c 89 § 16; 1895 c 178 §§ 25, 29. Formerly RCW 79.01.216, 79.12.380.]

Intent—2003 c 334: See note following RCW 79.02.010.

Additional notes found at www.leg.wa.gov

79.11.040 Who may purchase—Application—Fees. Any person desiring to purchase any state lands shall file an application on the forms provided by the department and accompanied by the fees authorized under RCW 79.02.250. [2003 c 334 § 311; 1982 1st ex.s. c 21 § 151; 1979 ex.s. c 109 § 2; 1967 c 163 § 4; 1959 c 257 § 3; 1927 c 255 § 22; RRS § 7797-22. Prior: 1909 c 223 § 2; 1907 c 256 § 5; 1903 c 74 § 1; 1897 c 89 § 11; 1895 c 178 §§ 17, 18. Formerly RCW 79.01.088, 79.12.010.]

Intent—2003 c 334: See note following RCW 79.02.010.

Additional notes found at www.leg.wa.gov

79.11.060 Entire section may be inspected. Whenever application is made to purchase less than a section of unplatted state lands, the department may order the inspection of the entire section or sections of which the lands applied for form a part. [2003 c 334 § 327; 1959 c 257 § 9; 1927 c 255 § 28; RRS § 7797-28. Prior: 1909 c 223 § 2. Formerly RCW 79.01.112, 79.12.070.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.11.070 Survey to determine area subject to sale. The department may cause any state lands to be surveyed for the purpose of ascertaining and determining the area subject to sale. [2003 c 334 § 330; 1982 1st ex.s. c 21 § 153; 1959 c 257 § 11; 1927 c 255 § 30; RRS § 7797-30. Prior: 1909 c 223 § 2; 1907 c 256 § 5; 1903 c 74 § 1; 1897 c 89 § 11; 1895 c 178 §§ 17, 18. Formerly RCW 79.01.120, 79.12.090.]

Intent—2003 c 334: See note following RCW 79.02.010.

Additional notes found at www.leg.wa.gov

79.11.080 Inspection and appraisal. When in the judgment of the department, there is sufficient interest for the appraisal and sale of state lands, the department shall cause each tract of land to be inspected as to its topography, development potential, forestry, agricultural, and grazing qualities, coal, mineral, stone, gravel, or other valuable material, the distance from any city or town, railroad, river, irrigation canal, ditch, or other waterway, and location of utilities. In case of an application to purchase land granted to the state for educational purposes, the department shall submit a report to the board, which board shall fix the value per acre of each lot, block, subdivision, or tract proposed to be sold in one parcel, which value shall be not less than ten dollars per acre. In case of applications to purchase state lands, other than lands granted to the state for educational purposes and capitol building lands, the department shall appraise and fix the value thereof. [2003 c 334 § 314; 1979 ex.s. c 109 § 3; 1967 ex.s. c 78 § 3; 1959 c 257 § 4; 1941 c 217 § 2; 1935 c 136 § 1; 1927 c 255 § 23; Rem. Supp. 1941 § 7797-23. Prior: 1909 c 223 § 2; 1907 c 256 § 5; 1903 c 74 § 1; 1897 c 89 § 11; 1895 c 178 §§ 17, 18. Formerly RCW 79.01.092, 79.12.020.]

Reviser's note: This section does not apply to state tidelands, shorelands, harbor areas, and the beds of navigable waters. See RCW 79.02.095.

Intent—2003 c 334: See note following RCW 79.02.010.

Additional notes found at www.leg.wa.gov

79.11.090 Sales by public auction—Appraised value. Except as provided in RCW 79.11.340, all sales of land under this chapter shall be at public auction, to the highest bidder, on the terms prescribed by law and as specified in the notice provided under RCW 79.11.120, and no land shall be sold for less than its appraised value. [2003 c 334 § 352; (2003 c 381 § 3 repealed by 2006 c 42 § 3); 1989 c 148 § 3; 1988 c 136 § 1; 1979 c 54 § 2; 1975 1st ex.s. c 45 § 1; 1971 ex.s. c 123 § 3; 1969 ex.s. c 14 § 4; 1961 c 73 § 3; 1959 c 257 § 21; 1933 c 66 § 1; 1927 c 255 § 50; RRS § 7797-50. Prior: 1923 c 19 § 1; 1913 c 36 § 1; 1909 c 223 § 4; 1907 c 152 § 1; 1897 c 89 § 14; 1895 c 178 § 28. Formerly RCW 79.01.200, 79.12.340.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.11.100 Date of sale limited by time of appraisal—Purchasers required to make independent appraisals. In no case shall any lands granted to the state be offered for sale under this chapter unless the same shall have been appraised by the board within ninety days prior to the date fixed for the sale. A purchaser of state lands may not rely upon the appraisal prepared by the department or made by the board for purposes of deciding whether to make a purchase from the department. All purchasers are required to make their own independent appraisals. [2004 c 199 § 211; 2003 c 334 § 328; 2001 c 250 § 2; 1982 1st ex.s. c 21 § 152; 1959 c 257 § 10; 1935 c 55 § 1 (adding section 29 to 1927 c 255 in lieu of original section 29 which was vetoed); RRS § 7797-29. Prior: 1909 c 223 § 2. Formerly RCW 79.01.116, 79.12.080.]

Intent—2003 c 334: See note following RCW 79.02.010.

Additional notes found at www.leg.wa.gov

79.11.110 Separate appraisal of improvements. Before any state lands are offered for sale, the department may establish the fair market value of those authorized improvements not owned by the state. [2003 c 334 § 336;

1979 ex.s. c 109 § 5; 1959 c 257 § 14; 1927 c 255 § 34; RRS § 7797-34. Prior: 1915 c 147 § 2; 1909 c 223 § 3; 1907 c 256 § 6; 1901 c 148 § 1; 1899 c 129 § 1; 1897 c 89 § 12; 1895 c 178 § 23. Formerly RCW 79.01.136, 79.12.130.]

Reviser's note: This section does not apply to state tidelands, shorelands, harbor areas, and the beds of navigable waters. See RCW 79.02.095.

Intent—2003 c 334: See note following RCW 79.02.010.

Additional notes found at www.leg.wa.gov

79.11.120 Sale procedure—Fixing date, place, and time of sale. When the department decides to sell any state lands, or with the consent of the board of regents of the University of Washington, or by legislative directive, decides to sell any lot, block, tract, or tracts of university lands, it is the duty of the department to fix the date, place, and time of sale.

(1) No sale may be conducted on any day that is a legal holiday.

(2) Sales must be held between the hours of 10:00 a.m. and 4:00 p.m. If all sales cannot be offered within this time period, the sale must continue on the following day between the hours of 10:00 a.m. and 4:00 p.m.

(3) Sales must take place:

(a) At the department's regional office administering the respective sale; or

(b) On county property designated by the board of county commissioners or county legislative authority of the county in which the whole or majority of state lands are situated. [2003 c 334 § 344; (2003 c 381 § 2 repealed by 2006 c 42 § 3); 2001 c 250 § 6; 1997 c 116 § 2; 1989 c 148 § 2; 1988 c 136 § 3; 1983 c 2 § 17. Prior: 1982 1st ex.s. c 21 § 156; 1982 c 27 § 1; 1971 ex.s. c 123 § 2; 1969 ex.s. c 14 § 3; 1959 c 257 § 18; 1927 c 255 § 46; RRS § 7797-46; prior: 1923 c 19 § 1; 1913 c 36 § 1; 1909 c 223 § 4; 1907 c 152 § 1; 1897 c 89 § 14; 1895 c 178 § 28. Formerly RCW 79.01.184, 79.12.300.]

Intent—2003 c 334: See note following RCW 79.02.010.

County auditor, transfer of duties: RCW 79.02.090.

School and granted lands, manner and terms of sale: State Constitution Art. 16 § 2.

Additional notes found at www.leg.wa.gov

79.11.130 Notice—Pamphlet—List of lands to be sold—Certain valuable materials exempt. (1) The department shall give notice of the sale by advertisement published not fewer than two times during a four-week period prior to the time of sale in at least one newspaper of general circulation in the county in which the whole, or any part of any lot, block, or tract of land to be sold is situated, and by posting a copy of the notice in a conspicuous place in the department's Olympia office, the region headquarters administering such sale, and in the office of the county auditor of such county. The notice shall specify the place, date, and time of sale, the appraised value of the land, describe with particularity each parcel of land to be sold, and specify that the terms of sale will be available in the region headquarters and the department's Olympia office.

(2) The advertisement is for informational purposes only, and under no circumstances does the information in the notice of sale constitute a warranty that the purchaser will receive the stated values, volumes, or acreage. All purchasers are expected to make their own measurements, evaluations, and appraisals.

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(3) The department shall print a list of all public lands and the appraised value thereof, that are to be sold. This list should be published in a pamphlet form to be issued at least four weeks prior to the date of any sale of the lands. The list should be organized by county and by alphabetical order, and provide sale information to prospective buyers. The department shall retain for free distribution in the Olympia office and the region offices sufficient copies of the pamphlet, to be kept in a conspicuous place, and, when requested so to do, shall mail copies of the pamphlet as issued to any requesting applicant. The department may seek additional means of publishing the information in the pamphlet, such as on the internet, to increase the number of prospective buyers.

(4) The sale of valuable materials appraised at an amount not exceeding two hundred fifty thousand dollars, as described in *RCW 79.01.200 and as authorized by the board of natural resources, are exempt from the requirements of subsection (3) of this section. [2003 c 381 § 4; 2003 c 334 § 346; 2001 c 250 § 7; 1982 1st ex.s. c 21 § 157; 1959 c 257 § 19; 1927 c 255 § 47; RRS § 7797-47. Prior: 1923 c 19 § 1; 1913 c 36 § 1; 1909 c 223 § 4; 1907 c 152 § 1; 1897 c 89 § 14; 1895 c 178 § 28. Formerly RCW 79.01.188, 79.12.310.]

Reviser's note: *(1) RCW 79.01.200 was recodified as RCW 79.11.090 pursuant to 2003 c 334 § 556.

(2) This section was amended by 2003 c 334 § 346 and by 2003 c 381 § 4, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Intent—2003 c 334: See note following RCW 79.02.010.

County auditor, transfer of duties: RCW 79.02.090.

Additional notes found at www.leg.wa.gov

79.11.135 Notification requirements. Actions under this chapter are subject to the notification requirements of RCW 43.17.400. [2007 c 62 § 3.]

Finding—Intent—Severability—2007 c 62: See notes following RCW 43.17.400.

79.11.140 Additional advertising. The department is authorized to expend any sum in additional advertising of such sale as it determines to be for the best interest of the state. [2003 c 334 § 348; 1927 c 255 § 48; RRS § 7797-48. Prior: 1923 c 19 § 1; 1897 c 89 § 14. Formerly codified as RCW 79.01.192, 79.12.320.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.11.150 Conduct of sales. Sales by public auction under this chapter shall be conducted under the direction of the department or its authorized representative. The department or department's representative are hereinafter referred to as auctioneers. On or before the time specified in the notice of sale each bidder shall deposit with the auctioneer, in cash or by certified check, cashier's check, money order payable to the order of the department of natural resources, or by bid guarantee in the form of bid bond acceptable to the department, an amount equal to the deposit specified in the notice of sale. The deposit shall include a specified amount of the appraised price for the land offered for sale, together with any fee required by law for the issuance of contracts, deeds, or bills of sale. The deposit may, when prescribed in notice of sale, be considered an opening bid of an amount not less than the minimum appraised price established in the notice of sale.

The successful bidder's deposit will be retained by the auctioneer and the difference, if any, between the deposit and the total amount due shall on the day of the sale be paid in cash, certified check, cashier's check, bank draft, or money order, made payable to the department. If a bid bond is used, the share of the total deposit due guaranteed by the bid bond shall, within ten days of the day of sale, be paid in cash, certified check, cashier's check, money order, or other acceptable payment method payable to the department. Other deposits, if any, shall be returned to the respective bidders at the conclusion of each sale. The auctioneer shall deliver to the purchaser a memorandum of his or her purchase containing a description of the land or materials purchased, the price bid, and the terms of the sale. The auctioneer shall at once send to the department the cash, certified check, cashier's check, bank draft, money order, bid guarantee, or other acceptable payment method received from the purchaser, and a copy of the memorandum delivered to the purchaser, together with such additional report of the proceedings with reference to such sales as may be required by the department. [2003 c 334 § 354; 2001 c 250 § 8; 1982 c 27 § 2; 1979 c 54 § 3; 1961 c 73 § 4; 1959 c 257 § 22; 1927 c 255 § 51; RRS § 7797-51. Prior: 1923 c 19 § 1; 1913 c 36 § 1; 1909 c 223 § 4; 1907 c 152 § 1; 1897 c 89 § 14; 1895 c 178 § 28. Formerly RCW 79.01.204, 79.12.350.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.11.160 Deposit by purchaser to cover value of improvements. A purchaser of state lands who is not the owner of the authorized improvements thereon shall deposit with the auctioneer making the sale, at the time of the sale, the appraised value of such improvements. The department shall pay to the owner of the improvements the sum deposited. However, when the improvements are owned by the state in accordance with the provisions of this chapter or have been acquired by the state by escheat or operation of law, the purchaser may pay for such improvements in equal annual installments at the same time, and with the same rate of interest, as the installments of the purchase price of the land are paid, and under such rules regarding use and care of the improvements as may be fixed by the department. [2003 c 334 § 338; 1979 ex.s. c 109 § 7; 1935 c 57 § 1; 1927 c 255 § 37; RRS § 7797-37. Prior: 1915 c 147 § 2; 1909 c 223 § 3; 1907 c 256 § 6; 1901 c 148 § 1; 1899 c 129 § 1; 1897 c 89 § 12; 1895 c 178 § 23. Formerly RCW 79.01.148, 79.12.160.]

Reviser's note: This section does not apply to state tidelands, shorelands, harbor areas, and the beds of navigable waters. See RCW 79.02.095.

Intent—2003 c 334: See note following RCW 79.02.010.

Additional notes found at www.leg.wa.gov

79.11.165 Reoffer. Any sale which has been offered, and for which there are no bids received shall not be reoffered until it has been readvertised as specified in RCW 79.11.130 and 79.11.140. If all sales cannot be offered within the specified time on the advertised date, the sale shall continue on the following day between 10:00 a.m. and 4:00 p.m. [2003 c 334 § 349; 1965 ex.s. c 23 § 3; 1959 c 257 § 20; 1927 c 255 § 49; RRS § 7797-49. Prior: 1923 c 19 § 1; 1913 c 36 § 1; 1909 c 223 § 4; 1907 c 152 § 1; 1897 c 89 § 14; 1895 c 178 § 28. Formerly RCW 79.01.196, 79.12.330.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.11.175 Confirmation of sale. The department shall enter upon its records a confirmation of sale and issue to the purchaser a contract of sale if the following conditions have been met:

(1) No fewer than ten days have passed since the auctioneer's report has been filed;

(2) No affidavit is filed with the department showing that the interests of the state in the sale was injuriously affected by fraud or collusion;

(3) It appears from the auctioneer's report that:

(a) The sale was fairly conducted; and

(b) The purchaser was the highest bidder and the bid was not less than the appraised value of the land sold;

(4) The department is satisfied that the land sold would not, upon being readvertised and offered for sale, sell for at least ten percent more than the price bid by the purchaser;

(5) The payment required by law to be made at the time of making the sale has been made;

(6) The department determines the best interests of the state will be served by confirming the sale. [2003 c 334 § 357; 1982 1st ex.s. c 21 § 158; 1959 c 257 § 23; 1927 c 255 § 53; RRS § 7797-53. Prior: 1907 c 256 § 7; 1903 c 79 § 2; 1897 c 89 § 15; 1895 c 178 § 29. Formerly RCW 79.01.212, 79.12.370.]

Intent—2003 c 334: See note following RCW 79.02.010.

County auditor, transfer of duties: RCW 79.02.090.

Additional notes found at www.leg.wa.gov

79.11.190 Readvertisement of lands not sold. If any land offered for sale is not sold, it may again be advertised for sale, as provided in this chapter, whenever in the opinion of the commissioner it shall be expedient to do so. Whenever any person applies to the department in writing to have such land offered for sale, agrees to pay at least the appraised value thereof and deposits with the department at the time of making such application a sufficient sum of money to pay the cost of advertising such sale, the land shall again be advertised and offered for sale as provided in this chapter. [2003 c 334 § 356; 1927 c 255 § 52; RRS § 7797-52. Prior: 1923 c 19 § 1; 1913 c 36 § 1; 1909 c 223 § 4; 1907 c 152 § 1; 1897 c 89 § 14; 1895 c 178 § 24. Formerly RCW 79.01.208, 79.12.360.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.11.200 Form of contract—Rate of interest. The purchaser of state lands under the provisions of this chapter, except in cases where the full purchase price is paid at the time of the purchase, shall enter into and sign a contract with the state, to be signed by the commissioner on behalf of the state, with the seal of the commissioner's office attached, and in a form to be prescribed by the attorney general, in which the purchaser shall covenant to make the payments of principal and interest, computed from the date the contract is issued, when due, and that the purchaser will pay all taxes and assessments that may be levied or assessed on such land, and that on failure to make the payments as prescribed in this chapter when due all rights of the purchaser under said contract may, at the election of the commissioner, acting for the state, be forfeited, and that when forfeited the state shall be released from all obligation to convey the land. The purchaser's rights under the real estate contract shall not be forfeited except as provided in chapter 61.30 RCW.

The contract provided for in this section shall be executed in duplicate, and one copy shall be retained by the purchaser and the other shall be filed in the department's Olympia office.

The commissioner may, as deemed advisable, extend the time for payment of principal and interest on contracts heretofore issued, and contracts to be issued under this chapter.

The department shall notify the purchaser of any state lands in each instance when payment on the purchaser's contract is overdue, and that the purchaser is liable to forfeiture if payment is not made when due. [2003 c 334 § 361; 1985 c 237 § 18; 1982 1st ex.s. c 21 § 162; 1959 c 257 § 26; 1927 c 255 § 57; RRS § 7797-57. Prior: 1897 c 89 §§ 17, 18, 27; 1895 c 178 §§ 30, 31. Formerly RCW 79.01.228, 79.12.400.]

Intent—2003 c 334: See note following RCW 79.02.010.

Additional notes found at www.leg.wa.gov

79.11.210 Reservation in contract. Each and every contract for the sale of, and each deed to, state lands shall contain the following reservation: "The party of the first part hereby expressly saves, excepts, and reserves out of the grant hereby made, unto itself and its successors and assigns forever, all oils, gases, coal, ores, minerals, and fossils of every name, kind, or description, and which may be in or upon said lands above described, or any part thereof, and the right to explore the same for such oils, gases, coal, ores, minerals, and fossils; and it also hereby expressly saves and reserves out of the grant hereby made, unto itself and its successors and assigns forever, the right to enter by itself or its agents, attorneys, and servants upon said lands, or any part or parts thereof, at any and all times, for the purpose of opening, developing, and working mines thereon, and taking out and removing therefrom all such oils, gases, coal, ores, minerals, and fossils, and to that end it further expressly reserves out of the grant hereby made, unto itself its successors and assigns, forever, the right by its or their agents, servants, and attorneys at any and all times to erect, construct, maintain, and use all such buildings, machinery, roads, and railroads, sink such shafts, remove such soil, and to remain on said lands or any part thereof for the business of mining and to occupy as much of said lands as may be necessary or convenient for the successful prosecution of such mining business, hereby expressly reserving to itself and its successors and assigns, as aforesaid, generally, all rights and powers in, to, and over said land, whether herein expressed or not, reasonably necessary or convenient to render beneficial and efficient the complete enjoyment of the property and the rights hereby expressly reserved.

No rights shall be exercised under the foregoing reservation, by the state or its successors or assigns, until provision has been made by the state or its successors or assigns, to pay to the owner of the land upon which the rights reserved under this section to the state or its successors or assigns, are sought to be exercised, full payment for all damages sustained by said owner, by reason of entering upon said land: PROVIDED, That if said owner from any cause whatever refuses or neglects to settle said damages, then the state or its successors or assigns, or any applicant for a lease or contract from the state for the purpose of prospecting for or mining valuable minerals, or option contract, or lease, for mining coal, or lease for extracting petroleum or natural gas, shall have the

right to institute such legal proceedings in the superior court of the county wherein the land is situate, as may be necessary to determine the damages which said owner of said land may suffer." [1982 1st ex.s. c 21 § 161; 1927 c 255 § 56; RRS § 7797-56. Prior: 1917 c 149 § 1; 1915 c 147 § 3; 1907 c 256 § 3; 1897 c 89 § 16; 1895 c 178 §§ 25, 29. Formerly RCW 79.01.224, 79.12.410.]

Additional notes found at www.leg.wa.gov

79.11.220 Relinquishment to United States, in certain cases of reserved mineral rights. Whenever the state shall have heretofore sold or may hereafter sell any state lands and issued a contract of purchase or executed a deed of conveyance therefor, in which there is a reservation of all oils, gases, coal, ores, minerals, and fossils of every kind and of rights in connection therewith, and the United States of America shall have acquired for governmental purposes and uses all right, title, claim, and interest of the purchaser, or grantee, or his or her successors in interest or assigns, in or to the contract or the land described therein, except such reserved rights, and no oils, gases, coal, ores, minerals, or fossils of any kind have been discovered or are known to exist in or upon such lands, the commissioner may, if it is advisable, cause to be prepared a deed of conveyance to the United States of America of such reserved rights, and certify the same to the governor in the manner provided by law for deeds to state lands, and the governor shall be, and hereby is authorized to execute, and the secretary of state to attest, a deed of conveyance for such reserved rights to the United States of America. [2003 c 334 § 449; 1931 c 105 § 1; RRS § 8124-1. Formerly RCW 79.08.110.]

Intent—2003 c 334: See note following RCW 79.02.010.

Certification of deed to governor: RCW 79.02.270.

PART 2 PLATTING

79.11.250 Lands subject to platting. The department shall cause all unplatted state lands, within the limits of any incorporated city or town, or within two miles of the boundary thereof, where the valuation of such lands is found by appraisal to exceed one hundred dollars per acre, to be platted into lots and blocks, of not more than five acres in a block, before the same are offered for sale, and not more than one block shall be offered for sale in one parcel. The department may designate or describe any such plat by name, or numeral, or as an addition to such city or town, and, upon the filing of any such plat, it shall be sufficient to describe the lands, or any portion thereof, embraced in such plat, according to the designation prescribed by the department. Such plats shall be made in duplicate, and when properly authenticated by the department, one copy thereof shall be filed in the office of the department and one copy in the office of the county auditor in which the lands are situated, and the auditor shall receive and file such plats without compensation or fees and make record thereof in the same manner as required by law for the filing and recording of other plats in the auditor's office.

In selling lands subject to the provisions of Article 16, section 4, of the state Constitution, the department will be permitted to sell the land within the required land subdivision

without being required to complete the construction of streets, utilities, and such similar things as may be required by any local government entity in the instance of the platting of private or other property within their area of jurisdiction. However, no construction will be permitted on lands so sold until the purchaser or purchasers collectively comply with all of the normal requirements for platting. [2003 c 334 § 324; 1967 ex.s. c 78 § 4; 1959 c 257 § 6; 1927 c 255 § 25; RRS § 7797-25. Prior: 1909 c 223 § 2; 1907 c 256 § 5; 1903 c 74 § 1; 1897 c 89 § 11; 1895 c 178 §§ 17, 18. Formerly RCW 79.01.100, 79.12.040.]

Intent—2003 c 334: See note following RCW 79.02.010.

Platting: State Constitution Art. 16 § 4.

Recording—Duties of county auditor: Chapter 65.04 RCW.

79.11.260 Vacation—Vested rights. When, in the judgment of the department the best interest of the state will be thereby promoted, the department may vacate any plat or plats covering state lands, and vacate any street, alley, or other public place therein situated. The vacation of any such plat shall not affect the vested rights of any person or persons theretofore acquired therein. In the exercise of this authority to vacate the department shall enter an order in the records of its office and at once forward a certified copy thereof to the county auditor of the county wherein the platted lands are located. The auditor shall cause the same to be recorded in the miscellaneous records of the auditor's office and noted on the plat by reference to the volume and page of the record. [2003 c 334 § 325; 1959 c 257 § 7; 1927 c 255 § 26; RRS § 7797-26. Prior: 1903 c 127 §§ 1, 2. Formerly RCW 79.01.104, 79.12.050.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.11.270 Vacation—Preference right to purchase. Whenever all the owners and other persons having a vested interest in the lands abutting on any street, alley, or other public place, or any portion thereof, in any plat of state lands, lying outside the limits of any incorporated city or town, petition the department, the department may vacate any such tract, alley, or public place or part thereof and in such case all such streets, alleys, or other public places or portions thereof so vacated shall be platted, appraised, and sold or leased in the manner provided for the platting, appraisal, and sale or lease of similar lands. However, where the area vacated can be determined from the plat already filed it shall not be necessary to survey such area before platting the same. The owner or owners, or other persons having a vested interest in the lands abutting on any of the lots, blocks, or other parcels platted upon the lands embraced within any area vacated as provided in this section, shall have a preference right for the period of sixty days from the date of filing with the department such plat and the appraisal of such lots, blocks, or other parcels of land, to purchase the same at the appraised value thereof. [2003 c 334 § 326; 1959 c 257 § 8; 1927 c 255 § 27; RRS § 7797-27. Prior: 1903 c 127 § 3. Formerly RCW 79.01.108, 79.12.060.]

Intent—2003 c 334: See note following RCW 79.02.010.

PART 3
OTHER SALE PROVISIONS

79.11.290 Leased lands reserved from sale. State lands held under lease as provided in RCW 79.13.370 shall not be offered for sale, or sold, during the life of the lease, except upon application of the lessee. [2003 c 334 § 380; 1927 c 255 § 75; RRS § 7797-75. Prior: 1897 c 89 § 23. Formerly RCW 79.01.300, 79.12.560.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.11.310 Sale of lands with low-income potential.

(1) The purpose of this section is to provide revenues to the state and its various taxing districts through the sale of public lands which are currently used primarily for grazing and similar low priority purposes, by enabling their development as irrigated agricultural lands.

(2) All applications for the purchase of lands of the foregoing character, when accompanied by a proposed plan of development of the lands for a higher priority use, shall be individually reviewed by the board. The board shall thereupon determine whether the sale of the lands is in the public interest and upon an affirmative finding shall offer such lands for sale. However, any such parcel of land shall be sold to the highest bidder but only at a bid equal to or higher than the last appraised valuation thereof as established by appraisers for the department for any such parcel of land. Further, any lands lying within United States reclamation areas, the sale price of which is limited or otherwise regulated pursuant to federal reclamation laws or regulations thereunder, need not be offered for sale so long as such limitations or regulations are applicable thereto.

(3) The department shall adopt appropriate rules defining properties of such irrigated agricultural potential and shall take into account the economic benefits to the locality in classifying such properties for sale. [2003 c 334 § 381; 1967 ex.s. c 78 § 5. Formerly RCW 79.01.301.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.11.320 Assessments added to purchase price. (1)

When any public land of the state is offered for sale and the state has paid assessments for local improvements, or benefits, to any municipal corporation authorized by law to assess the same, the amount of the assessments paid by the state shall be added to the appraised value of such land.

(2) The amount of assessments paid by the state shall be paid by the purchaser in addition to the amount due the state for the land.

(3) In case of sale by contract under RCW 79.11.220 the purchaser may pay the assessments in equal annual installments at the same time, and with the same rate of interest upon deferred payments, as the installments of the purchase price for the land are paid.

(4) No deed shall be executed until such assessments have been paid. [2003 c 334 § 430; 1927 c 255 § 192; RRS § 7797-192. Prior: 1925 ex.s. c 180 § 1; 1909 c 154 § 7; 1907 c 73 § 3; 1905 c 144 § 5. Formerly RCW 79.01.728, 79.44.110.]

Intent—2003 c 334: See note following RCW 79.02.010.

Assessments paid by state to be added to purchase price of land: RCW 79.44.095.

79.11.340 Sale of acquired lands. (1) Except as provided in RCW 79.10.030(2), the department shall manage and control all lands acquired by the state by escheat, deed of sale, gift, devise, or under RCW 79.19.010 through 79.19.110, except such lands that are conveyed or devised to the state for a particular purpose.

(2) When the department determines to sell the lands, they shall initially be offered for sale either at public auction or direct sale to public agencies as provided in this chapter.

(3) If the lands are not sold at public auction, the department may, with approval of the board, market the lands through persons licensed under chapter 18.85 RCW or through other commercially feasible means at a price not lower than the land's appraised value.

(4) Necessary marketing costs may be paid from the sale proceeds. For the purpose of this subsection, necessary marketing costs include reasonable costs associated with advertising the property and paying commissions.

(5) Proceeds of the sale shall be deposited into the appropriate fund in the state treasury unless the grantor in any deed or the testator in case of a devise specifies that the proceeds of the sale be devoted to a particular purpose. [2003 c 334 § 399.]

Intent—2003 c 334: See note following RCW 79.02.010.

Chapter 79.13 RCW LAND LEASES

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PART 1 GENERAL PROVISIONS

79.13.010 Lease of state lands—General. (1) Subject to other provisions of this chapter and subject to rules adopted by the board, the department may lease state lands for purposes it deems advisable, including, but not limited to, commercial, industrial, residential, agricultural, and recreational purposes in order to obtain a fair market rental return to the state or the appropriate constitutional or statutory trust, and if the lease is in the best interest of the state or affected trust.

(2) Notwithstanding any provision in this chapter to the contrary, in leases for residential purposes, the board may waive or modify any conditions of the lease if the waiver or modification is necessary to enable any federal agency or lending institution authorized to do business in this state or elsewhere in the United States to participate in any loan secured by a security interest in a leasehold interest.

(3) Any land granted to the state by the United States may be leased for any lawful purpose in such minimum acreage as may be fixed by the department.

(4) The department shall exercise general supervision and control over the lease of state lands for any lawful purpose.

(5) State lands leased or for which permits are issued or contracts are entered into for the prospecting and extraction of valuable materials, coal, oil, gas, or other hydrocarbons are subject to the provisions of chapter 79.14 RCW.

(6) The department may also lease or lease development rights on state lands held for the benefit of the common schools to public agencies, as defined in RCW 79.17.200. [2007 c 504 § 1; 2003 c 334 § 366; 1984 c 222 § 12; 1979 ex.s. c 109 § 10. Formerly RCW 79.01.242.]

Reviser's note: This section does not apply to state tidelands, shorelands, harbor areas, and the beds of navigable waters. See RCW 79.02.095.

Savings—2007 c 504: "This act does not affect any existing right acquired or liability or obligation incurred under the sections amended or under any rule or order adopted under those sections, nor does it affect any proceeding instituted under those sections." [2007 c 504 § 4.]

Severability—2007 c 504: "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." [2007 c 504 § 5.]

Intent—2003 c 334: See note following RCW 79.02.010.

Additional notes found at www.leg.wa.gov

79.13.020 Who may lease. Any person desiring to lease any state lands for any purpose not prohibited by law may make application to the department on forms provided

by the department and accompanied by the fee provided under RCW 79.02.250. [2003 c 334 § 370.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.13.030 Lease contents. Every lease issued by the department must contain:

- (1) The specific use or uses to which the land is to be employed;
- (2) The improvements required, if any;
- (3) Provisions providing that the rent is payable in advance in quarterly, semiannual, or annual payments as determined by the department, or as agreed upon by the lessee and the department;
- (4) Other terms and conditions as the department deems advisable, subject to review by the board, to achieve the purposes of the state Constitution and this chapter. [2003 c 334 § 367.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.13.040 Inspections—Surveys. (1) When in the judgment of the department there is sufficient interest for the lease of state lands, it must inspect each tract of land as to its topography, development potential, forestry, agricultural, and grazing qualities; the presence of coal, mineral, stone, gravel, or other valuable materials; the distance from any city or town, railroad, river, irrigation canal, ditch, or other waterway; and location of utilities.

(2) The department may survey any state lands to determine the area subject to lease.

(3) It is the duty of the department to prepare all reports, data, and information in its records pertaining to any proposed lease.

(4) The department may order that any particular application for a lease be held in abeyance pending further inspection and report by the department. Based on the further inspection and report, the department must determine whether or not, and the terms upon which, the proposed lease is consummated. [2003 c 334 § 316.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.13.050 Improvements. (1) Only improvements authorized in writing by the department or consistent with the approved plan of development may be placed on the state lands under lease. Improvements are subject to the following conditions:

(a) A minimum reasonable time must be allowed for completion of the improvements;

(b) Improvements become the property of the state at the expiration or termination of the lease unless otherwise agreed upon under the terms of the lease; and

(c) The department may require improvements to be removed at the end of the lease term at the lessee's expense.

(2) Any improvements placed upon any state lands without the written authority of the department become the property of the state and are considered part of the land, unless required to be removed by the lessee under subsection (1)(c) of this section. [2003 c 334 § 315.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.13.060 Lease terms. (1) State lands may be leased not to exceed ten years with the following exceptions:

(a) The lands may be leased for agricultural purposes not to exceed twenty-five years, except:

(i) Leases that authorize tree fruit or grape production may be for up to fifty-five years;

(ii) Share crop leases may not exceed ten years;

(b) The lands may be leased for commercial, industrial, business, or recreational purposes not to exceed fifty-five years;

(c) The lands may be leased for public school, college, or university purposes not to exceed seventy-five years;

(d) The lands may be leased for residential purposes not to exceed ninety-nine years; and

(e) The lands and development rights on state lands held for the benefit of the common schools may be leased to public agencies, as defined in RCW 79.17.200, not to exceed ninety-nine years. The leases may include provisions for renewal of lease terms.

(2) No lessee of state lands may remain in possession of the land after the termination or expiration of the lease without the written consent of the department.

(a) The department may authorize a lease extension for a specific period beyond the term of the lease for cropping improvements for the purpose of crop rotation. These improvements shall be deemed authorized improvements under RCW 79.13.030.

(b) Upon expiration of the lease term, the department may allow the lessee to continue to hold the land for a period not exceeding one year upon such rent, terms, and conditions as the department may prescribe, if the leased land is not otherwise utilized.

(c) Upon expiration of the one-year lease extension, the department may issue a temporary permit to the lessee upon terms and conditions it prescribes if the department has not yet determined the disposition of the land for other purposes.

(d) The temporary permit shall not extend beyond a five-year period.

(3) If during the term of the lease of any state lands for agricultural, grazing, commercial, residential, business, or recreational purposes, in the opinion of the department it is in the best interest of the state so to do, the department may, on the application of the lessee and in agreement with the lessee, alter and amend the terms and conditions of the lease. The sum total of the original lease term and any extension thereof shall not exceed the limits provided in this section.

(4) The department must include in the text of any grazing leases language that explains the right of access, and associated assumption of liability, created in RCW 76.04.021. [2016 c 109 § 3; 2007 c 504 § 2; 2003 c 334 § 323.]

Savings—Severability—2007 c 504: See notes following RCW 79.13.010.

Intent—2003 c 334: See note following RCW 79.02.010.

79.13.070 Forfeiture. If any rental is not paid on or before its due date according to the terms of the lease, the department must declare a forfeiture, cancel the lease, and eject the lessee from the land. The department may extend the time for payment of annual rental when in its judgment the interests of the state will not be prejudiced by the extension. [2003 c 334 § 375.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.13.080 Disposition of crops on forfeited land.

Whenever the state of Washington shall become the owner of any growing crop, or crop grown upon, any state lands, by reason of the forfeiture, cancellation, or termination of any contract or lease of state lands, or from any other cause, the department is authorized to arrange for the harvesting, sale, or other disposition of such crop in such manner as the department deems for the best interest of the state, and shall pay the proceeds of any such sale into the state treasury to be credited to the same fund as the rental of the lands upon which the crop was grown would be credited. [2003 c 334 § 342; 1927 c 255 § 43; RRS § 7797-43. Prior: 1915 c 89 §§ 1, 2. Formerly RCW 79.01.172, 79.12.240.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.13.090 Leases to United States for national defense. State lands may be leased to the United States for national defense purposes at the fair rental value thereof as determined by the department, for a period of five years or less. Such leases may be made without competitive bidding at public auction and without payment in advance by the United States government of the first year's rental. Such leases otherwise shall be negotiated and arranged in the same manner as other leases of state lands. [2003 c 334 § 450; 1941 c 66 § 1; Rem. Supp. 1941 § 8122-1. Formerly RCW 79.08.120.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.13.100 Battery charging, battery exchange, and rapid charging stations. (1) The state and any local government, including any housing authority, is authorized to lease land owned by such an entity to any person for purposes of installing, maintaining, and operating a battery charging station, a battery exchange station, or a rapid charging station, for a term not in excess of fifty years, for rent of not less than one dollar per year, and with such other terms as the public entity's governing body determines in its sole discretion.

(2) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Battery charging station" means an electrical component assembly or cluster of component assemblies designed specifically to charge batteries within electric vehicles, which meet or exceed any standards, codes, and regulations set forth by chapter 19.28 RCW and consistent with rules adopted under RCW 19.27.540.

(b) "Battery exchange station" means a fully automated facility that will enable an electric vehicle with a swappable battery to enter a drive lane and exchange the depleted battery with a fully charged battery through a fully automated process, which meets or exceeds any standards, codes, and regulations set forth by chapter 19.28 RCW and consistent with rules adopted under RCW 19.27.540.

(c) "Electric vehicle infrastructure" means structures, machinery, and equipment necessary and integral to support an electric vehicle, including battery charging stations, rapid charging stations, and battery exchange stations.

(d) "Rapid charging station" means an industrial grade electrical outlet that allows for faster recharging of electric vehicle batteries through higher power levels, which meets or exceeds any standards, codes, and regulations set forth by chapter 19.28 RCW and consistent with rules adopted under RCW 19.27.540. [2009 c 459 § 6.]

(2016 Ed.)

Finding—Purpose—2009 c 459: See note following RCW 47.80.090.

Regional transportation planning organizations—Electric vehicle infrastructure: RCW 47.80.090.

PART 2
LEASE PROCEDURE

79.13.110 Types of lease authorization. (1) The department may authorize the use of state land by lease at state auction for initial leases or by negotiation for existing leases.

(2) Leases that authorize commercial, industrial, or residential uses may be entered into by public auction or negotiations at the option of the department. Negotiations are subject to rules approved by the board.

(3) Leases to public agencies, as defined in RCW 79.17.200, may be entered into by negotiations. Property subject to lease agreements under this section must be appraised at fair market value. The leases may allow for a lump sum payment for the entire term of the lease at the beginning of the lease. The department shall calculate lump sum payments using professional appraisal standards. Renewal terms for the leases must include provisions for calculating appropriate payments upon renewal. [2007 c 504 § 3; 2003 c 334 § 368.]

Savings—Severability—2007 c 504: See notes following RCW 79.13.010.

Intent—2003 c 334: See note following RCW 79.02.010.

79.13.120 Notice of leasing. (1) The department must give thirty days' notice of leasing by public auction. The notice must:

(a) Specify the place and time of auction, bid deposit if any, the appraised value, describe each parcel to be leased, and the terms and conditions of the lease;

(b) Be posted in some conspicuous place in the county auditor's office and the department's regional headquarters administering the lease; and

(c) Be published in at least two newspapers of general circulation in the area where the state land subject to public auction leasing is located.

(2) Notice of intent to lease by negotiation must be published in at least two newspapers of general circulation in the area where the state land subject to lease negotiation is located. The notice must be published within the ninety days preceding commencement of negotiations.

(3) The department is authorized to conduct any additional advertising that it determines to be in the best interest of the state. [2003 c 334 § 369.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.13.130 Lease procedure—Scheduling auctions.

(1) When the department decides to lease any state lands at public auction it is the duty of the department to fix the date, place, and time when such lands shall be offered for lease.

(2) The auction must be conducted between the hours of 10:00 a.m. and 4:00 p.m.

(3) The auction must take place:

(a) At the department's regional office administering the lease; or

(b) When leases are auctioned by the county auditor, in the county where the state land to be leased is situated at such

place as specified in the notice. [2003 c 334 § 372; 1979 ex.s. c 109 § 11; 1927 c 255 § 62; RRS § 7797-62. Prior: 1897 c 89 § 20. Formerly RCW 79.01.248, 79.12.440.]

Reviser's note: This section does not apply to state tidelands, shorelands, harbor areas, and the beds of navigable waters. See RCW 79.02.095.

Intent—2003 c 334: See note following RCW 79.02.010.

Additional notes found at www.leg.wa.gov

79.13.140 Public auction procedure. (1) All leasing by public auction shall be by oral or by sealed bid. Leases will be awarded to the highest bidder on the terms prescribed by law and as specified in the notice of leasing described in RCW 79.13.120. No lease may be awarded for less than the appraised value.

(2) The public auction must be conducted under the direction of the department or by the auditor for the county in which the land to be leased is located. The person conducting the auction is called the auctioneer.

(3) The person to whom a lease of state lands is awarded shall pay the rental in accordance with that person's bid to the auctioneer in cash or by certified check or accepted draft on any bank in this state.

(4) The auctioneer shall send to the department such cash, certified check, draft, or money order received from the successful bidder, together with any additional report of the auction proceeding as may be required by the department.

(5) The department may reject any and all bids when the interests of the state justify it. If the department rejects a bid, it must refund any rental and bid deposit to the bidder upon return of the receipts issued.

(6) If the department approves any leasing made by the auctioneer, it must proceed to issue a lease to the successful bidder upon a form approved by the attorney general.

(a) All leases must be in duplicate and both copies signed by the lessee and the department.

(b) One signed copy must be forwarded to the lessee and one signed copy must be kept in the office of the department. [2003 c 334 § 373.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.13.150 Lease/rent of acquired lands. (1) Except as provided in RCW 79.10.030(2), the department shall manage and control all lands acquired by the state through escheat, deed of sale, gift, devise, or under RCW 79.19.010 through 79.19.110, except lands that are conveyed or devised to the state for a particular purpose.

(2) The department shall lease the lands in the same manner as school lands.

(3) The department may employ agents to rent any escheated, deeded, or devised lands, or lands acquired under RCW 79.19.010 through 79.19.110 for such rental, time, and manner as the department directs.

(a) The agent shall not rent the property for a period longer than one year.

(b) No tenant is entitled to compensation for any improvement that he or she makes on the property.

(c) The agent shall cause repairs to be made to the property as the department directs.

(d) Rental shall be transmitted monthly to the department. The agent shall deduct the cost of any repairs made

under (c) of this subsection, together with such compensation and commission as the department authorizes from the rental.

(4) Proceeds of any lease or rental shall be deposited into the appropriate fund in the state treasury. If the grantor in any deed or the testator in case of a devise specifies that the proceeds be devoted to a particular purpose, such proceeds shall be so applied. [2003 c 334 § 400.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.13.160 Appraisalment of improvement before lease. Before any state lands are offered for lease, or are assigned, the department may establish the fair market value of those authorized improvements not owned by the state. In the event that agreement cannot be reached between the state and the lessee on the fair market value, such valuation shall be submitted to a review board of appraisers. The board is comprised of the following members: One member to be selected by the lessee and that person's expenses shall be borne by the lessee; one member selected by the state and that person's expenses shall be borne by the state; these members so selected shall mutually select a third member and that person's expenses shall be shared equally by the lessee and the state. The majority decision of this appraisal review board shall be binding on both parties. For this purpose, "fair market value" is defined as: The highest price in terms of money that a property will bring in a competitive and open market under all conditions of a fair sale, the buyer and seller, each prudently knowledgeable and assuming the price is not affected by undue stimulus. All damages and wastes committed upon such lands and other obligations due from the lessee shall be deducted from the appraised value of the improvements. However, the department on behalf of the respective trust may purchase at fair market value those improvements if it appears to be in the best interest of the state from the resource management cost account created in RCW 79.64.020. [2003 c 334 § 337.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.13.170 Water right for irrigation as improvement. At any time during the existence of any lease of state lands, except lands leased for the purpose of mining of valuable minerals, or coal, or extraction of petroleum or gas, the lessee with the consent of the department, first obtained, by written application, showing the cost and benefits to be derived thereby, may purchase or acquire a water right appurtenant to and in order to irrigate the land leased. If such water right shall become a valuable and permanent improvement to the lands, then, in case of the sale or lease of such lands to other parties, the lessee acquiring such water right shall be entitled to receive the value thereof as in case of other improvements which have been placed upon the land by the lessee. [2003 c 334 § 376; 1959 c 257 § 32; 1927 c 255 § 71; RRS § 7797-71. Prior: 1903 c 79 § 7; 1897 c 89 § 31; 1895 c 178 § 41. Formerly RCW 79.01.284, 79.12.530.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.13.180 Record of leases. The department shall keep a full and complete record of all leases issued under the provisions of the preceding sections and the payments made thereon. [2003 c 334 § 374; 1979 ex.s. c 109 § 16; 1933 c 139 § 1; 1927 c 255 § 67; RRS § 7797-67. Prior: 1915 c 147 § 6;

1909 c 223 § 5; 1897 c 89 § 25. Formerly RCW 79.01.268, 79.12.490.]

Reviser's note: This section does not apply to state tidelands, shorelands, harbor areas, and the beds of navigable waters. See RCW 79.02.095.

Intent—2003 c 334: See note following RCW 79.02.010.

Additional notes found at www.leg.wa.gov

PART 3 AGRICULTURAL/GRAZING LEASES

79.13.320 Share crop leases authorized. The department may lease state lands on a share crop basis. Upon receipt of a written application to lease state lands, the department shall make such investigations as it deems necessary. If the department finds that such a lease would be advantageous to the state, it may proceed with the leasing of such lands on such terms and conditions as other state lands are leased. [2003 c 334 § 466; 1979 ex.s. c 109 § 20; 1961 c 73 § 10; 1949 c 203 § 1; Rem. Supp. 1949 § 7895-1. Formerly RCW 79.12.570.]

Reviser's note: This section does not apply to state tidelands, shorelands, harbor areas, and the beds of navigable waters. See RCW 79.02.095.

Intent—2003 c 334: See note following RCW 79.02.010.

Additional notes found at www.leg.wa.gov

79.13.330 Harvest, storage of crop—Notice—Warehouse receipt. When crops that are covered by a share crop lease are harvested, the lessee shall give written notice to the department that the crop is being harvested, and shall also give to the department the name and address of the warehouse or elevator to which such crops are sold or in which such crops will be stored. The lessee shall also serve on the owner of such warehouse or elevator a written copy of so much of the lease as shall show the percentage of division of the proceeds of such crop as between lessee and lessor. The owner of such warehouse or elevator shall make out a warehouse receipt, which receipt may be negotiable or nonnegotiable as directed by the state, showing the percentage of crops belonging to the state, and the respective gross and net amounts, grade, and location thereof, and shall deliver to the department the receipt for the state's percentage of such crops within ten days after the owner has received such instructions. [2003 c 334 § 467; 2000 c 18 § 1; 1949 c 203 § 4; Rem. Supp. 1949 § 7895-4. Formerly RCW 79.12.600.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.13.340 Sale, storage, or other disposition of crops. The department shall sell the crops covered by the warehouse receipt required in RCW 79.13.330 and may comply with the provisions of any federal act or the regulation of any federal agency with relation to the storage or disposition of the crop. [2003 c 334 § 468; 1977 c 20 § 1; 1949 c 203 § 5; Rem. Supp. 1949 § 7895-5. Formerly RCW 79.12.610.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.13.350 Insurance of crop—Division of cost. The lessee under any share crop lease issued by the department shall notify the department as soon as an estimated yield of the crop can be obtained. The estimate must be immediately submitted to the department, which is hereby authorized to insure the crop from loss by fire or hail. The cost of such

insurance shall be paid by the state and lessee on the same basis as the crop returns to which each is entitled. [2003 c 334 § 469; 1949 c 203 § 6; Rem. Supp. 1949 § 7895-6. Formerly RCW 79.12.620.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.13.360 Application of other provisions to share crop leases. RCW 79.13.320 through 79.13.360 shall not repeal the provisions of the general leasing statutes of the state of Washington and all of the general provisions of such statutes with reference to filing of applications, deposits required therewith, forfeiture of deposits, cancellation of leases for noncompliance and general procedures shall apply to all leases issued under the provisions of RCW 79.13.320 through 79.13.360. [2003 c 334 § 470; 1949 c 203 § 7; Rem. Supp. 1949 § 7895-7. Formerly RCW 79.12.630.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.13.370 Grazing leases—Restrictions. The lessee, or assignee of any lease leased for grazing purposes, shall not use the land for any other purpose than that expressed in the lease. However, the lessee, or assignee, may surrender the lease to the department and request the department to issue an agricultural lease in lieu of the original lease. The department is authorized to issue a new lieu lease for the unexpired portion of the term of the lease surrendered upon payment of the fixed rental based on an appraisal of the land for agricultural purposes. Under the lieu lease the lessee shall be permitted to clear, plow, and cultivate the lands as in the case of an original lease for agricultural purposes. [2003 c 334 § 379; 1959 c 257 § 34; 1927 c 255 § 74; RRS § 7797-74. Prior: 1903 c 79 § 8. Formerly RCW 79.01.296, 79.12.550.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.13.380 Livestock grazing on lieu lands. The department has the power, and it is its duty, to adopt, from time to time, reasonable rules for the grazing of livestock on such tracts and areas of the indemnity or lieu lands of the state contiguous to national forests and suitable for grazing purposes, as have been, or shall be, obtained from the United States under the provisions of RCW 79.02.120. [2004 c 199 § 212; 2003 c 334 § 491; 1923 c 85 § 1; RRS § 7826-1. Formerly RCW 79.28.040.]

Intent—2003 c 334: See note following RCW 79.02.010.

Additional notes found at www.leg.wa.gov

79.13.390 Grazing permits—United States government. The department may issue permits for the grazing of livestock on the lands described in RCW 79.13.380 in such manner and upon such terms, as near as may be, as permits are, or shall be, issued by the United States for the grazing of livestock on national forestlands. The department may charge such fees as it deems adequate and advisable. The department may cooperate with the United States for the protection and preservation of the grazing areas on the state lands contiguous to national forests and for the administration of the provisions of RCW 79.13.380 and 79.13.390. [2003 c 334 § 492; 1983 c 3 § 202; 1923 c 85 § 2; RRS § 7826-2. Formerly RCW 79.28.050.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.13.400 Improvement of grazing ranges—Agreements. The department is hereby authorized on behalf of the state of Washington to enter into cooperative agreements with any person as defined in RCW 1.16.080 for the improvement of the state's grazing ranges by the clearing of debris, maintenance of trails and water holes, and other requirements for the general improvement of the grazing ranges. [2003 c 334 § 493; 1963 c 99 § 1; 1955 c 324 § 1. Formerly RCW 79.28.070.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.13.410 Improvement of grazing ranges—Extension of permit. In order to encourage the improvement of grazing ranges by holders of grazing permits, the department shall consider (1) extension of grazing permit periods to a maximum of ten years; and (2) reduction of grazing fees, in situations where the permittee contributes or agrees to contribute to the improvement of the range, financially, by labor, or otherwise. [2003 c 334 § 494; 1985 c 197 § 3; 1979 ex.s. c 109 § 21; 1955 c 324 § 2. Formerly RCW 79.28.080.]

Reviser's note: This section does not apply to state tidelands, shorelands, harbor areas, and the beds of navigable waters. See RCW 79.02.095.

Intent—2003 c 334: See note following RCW 79.02.010.

Additional notes found at www.leg.wa.gov

PART 4 OTHER LEASES

79.13.500 Amateur radio repeater stations—Legislative intent. The department leases state lands and space on towers located on state lands to amateur radio operators for their repeater stations. These sites are necessary to maintain emergency communications for public safety and for use in disaster relief and search and rescue support.

The licensed amateur radio operators of the state provide thousands of hours of public communications service to the state every year. Their communication network spans the entire state, based in individual residences and linked across the state through a series of mountain-top repeater stations. The amateur radio operators install and maintain their radios and the electronic repeater stations at their own expense. The amateur radio operators who use their equipment to perform public services should not bear the sole responsibility for supporting the electronic repeater stations.

In recognition of the essential role performed by the amateur radio operators in emergency communications, the legislature intends to reduce the rental fee paid by the amateur radio operators while assuring the department full market rental for the use of state-owned property. [2003 c 334 § 461; 1988 c 209 § 1. Formerly RCW 79.12.015.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.13.510 Amateur radio electronic repeater sites and units—Reduced rental rates—Frequencies. The department shall determine the lease rate for amateur radio electronic repeater sites and units available for public service communication. For the amateur operator to qualify for a rent of one hundred dollars per year per site, the amateur operator shall do one of the following: (1) Register and remain in good standing with the state's radio amateur civil emergency services and amateur radio emergency services organizations, or

(2) if an amateur group, sign a statement of public service developed by the department.

The legislature's biennial appropriations shall account for the estimated difference between the one hundred dollar per year, per site, per lessee paid by the qualified amateur operators and the fair market amateur rent, as established by the department.

The amateur radio regulatory authority approved by the federal communication commission shall assign the radio frequencies used by amateur radio lessees. The department shall develop guidelines to determine which lessees are to receive reduced rental fees as moneys are available by legislative appropriation to pay a portion of the rent for electronic repeaters operated by amateur radio operators. [2003 c 334 § 462; 1995 c 105 § 1; 1988 c 209 § 2. Formerly RCW 79.12.025.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.13.520 Nonprofit television reception improvement districts—Rental of public lands—Intent. The department shall determine the fair market rental rate for leases to nonprofit television reception improvement districts. It is the intent of the legislature to appropriate general funds to pay a portion of the rent charged to nonprofit television reception improvement districts. It is the further intent of the legislature that such a lessee pay an annual lease rent of fifty percent of the fair market rental rate, as long as there is a general fund appropriation to compensate the trusts for the remainder of the fair market rental rate. [2003 c 334 § 464; 1994 c 294 § 1. Formerly RCW 79.12.055.]

Intent—2003 c 334: See note following RCW 79.02.010.

Additional notes found at www.leg.wa.gov

79.13.530 Geothermal resources—Guidelines for development. In an effort to increase potential revenue to the geothermal account, the department shall, by December 1, 1991, adopt rules providing guidelines and procedures for leasing state-owned land for the development of geothermal resources. [2003 c 334 § 465; 1991 c 76 § 3. Formerly RCW 79.12.095.]

Intent—2003 c 334: See note following RCW 79.02.010.

PART 5 ECOSYSTEM STANDARDS

79.13.600 Findings—Salmon stocks—Grazing lands—Coordinated resource management plans. The legislature finds that many wild stocks of salmonids in the state of Washington are in a state of decline. Stocks of salmon on the Columbia and Snake rivers have been listed under the federal endangered species act, and the bull trout has been petitioned for listing. Some scientists believe that numerous other stocks of salmonids in the Pacific Northwest are in decline or possibly extinct. The legislature declares that to lose wild stocks is detrimental to the genetic diversity of the fisheries resource and the economy, and will represent the loss of a vital component of Washington's aquatic ecosystems. The legislature further finds that there is a continuing loss of habitat for fish and wildlife. The legislature declares that steps must be taken in the areas of wildlife and fish habitat management, water conservation, wild salmonid stock

protection, and education to prevent further losses of Washington's fish and wildlife heritage from a number of causes including urban and rural subdivisions, shopping centers, industrial park, and other land use activities.

The legislature finds that the maintenance and restoration of Washington's rangelands and shrub-steppe vegetation is vital to the long-term benefit of the people of the state. The legislature finds that approximately one-fourth of the state is open range or open-canopied grazable woodland. The legislature finds that these lands provide forage for livestock, habitat for wildlife, and innumerable recreational opportunities including hunting, hiking, and fishing.

The legislature finds that the development of coordinated resource management plans, that take into consideration the needs of wildlife, fish, livestock, timber production, water quality protection, and rangeland conservation on all state-owned grazing lands will improve the stewardship of these lands and allow for the increased development and maintenance of fish and wildlife habitat and other multipurpose benefits the public derives from these lands.

The legislature finds that the state currently provides insufficient technical support for coordinated resource management plans to be developed for all state-owned lands and for many of the private lands desiring to develop such plans. As a consequence of this lack of technical assistance, our state grazing lands, including fish and wildlife habitat and other resources provided by these lands, are not achieving their potential. The legislature also finds that with many state lands being intermixed with private grazing lands, development of coordinated resource management plans on state-owned and managed lands provides an opportunity to improve the management and enhance the conditions of adjacent private lands.

A purpose of chapter 4, Laws of 1993 sp. sess. is to establish state grazing lands as the model in the state for the development and implementation of standards that can be used in coordinated resource management plans and to thereby assist the timely development of coordinated resource management plans for all state-owned grazing lands. Every lessee of state lands who wishes to participate in the development and implementation of a coordinated resource management plan shall have the opportunity to do so. [1996 c 163 § 2. Prior: 1993 sp.s. c 4 § 1. Formerly RCW 79.01.2951.]

79.13.610 Grazing lands—Fish and wildlife goals—Technical advisory committee—Implementation. (1) By December 31, 1993, the department of fish and wildlife shall develop goals for the wildlife and fish that this agency manages, to preserve, protect, and perpetuate wildlife and fish on shrub steppe habitat or on lands that are presently agricultural lands, rangelands, or grazable woodlands. These goals shall be consistent with the maintenance of a healthy ecosystem.

(2) By July 31, 1993, the conservation commission shall appoint a technical advisory committee to develop standards that achieve the goals developed in subsection (1) of this section. The committee members shall include but not be limited to technical experts representing the following interests: Agriculture, academia, range management, utilities, environmental groups, commercial and recreational fishing interests, the Washington rangelands committee, Indian tribes, the

department of fish and wildlife, the department of natural resources, the department of ecology, conservation districts, and the department of agriculture. A member of the conservation commission shall chair the committee.

(3) By December 31, 1994, the committee shall develop standards to meet the goals developed under subsection (1) of this section. These standards shall not conflict with the recovery of wildlife or fish species that are listed or proposed for listing under the federal endangered species act. These standards shall be utilized to the extent possible in development of coordinated resource management plans to provide a level of management that sustains and perpetuates renewable resources, including fish and wildlife, riparian areas, soil, water, timber, and forage for livestock and wildlife. Furthermore, the standards are recommended for application to model watersheds designated by the Northwest power planning council in conjunction with the conservation commission. The maintenance and restoration of sufficient habitat to preserve, protect, and perpetuate wildlife and fish shall be a major component included in the standards and coordinated resource management plans. Application of standards to privately owned lands is voluntary and may be dependent on funds to provide technical assistance through conservation districts.

(4) The conservation commission shall approve the standards and shall provide them to the departments of natural resources and fish and wildlife, each of the conservation districts, and Washington State University cooperative extension service. The conservation districts shall make these standards available to the public and for coordinated resource management planning. Application to private lands is voluntary.

(5) The department of natural resources shall implement practices necessary to meet the standards developed pursuant to this section on department managed agricultural and grazing lands, consistent with the trust mandate of the Washington state Constitution and Title 79 RCW. The standards may be modified on a site-specific basis as needed to achieve the fish and wildlife goals, and as determined by the department of fish and wildlife, and the department of natural resources. Existing lessees shall be provided an opportunity to participate in any site-specific field review. Department agricultural and grazing leases issued after December 31, 1994, shall be subject to practices to achieve the standards that meet those developed pursuant to this section. [1998 c 245 § 162; 1993 sp.s. c 4 § 5. Formerly RCW 79.01.295.]

Findings—Grazing lands—1993 sp.s. c 4: See RCW 79.13.600.

79.13.620 Purpose—Ecosystem standards. (1) It is the purpose of chapter 163, Laws of 1996 that all state agricultural lands, grazing lands, and grazeable woodlands shall be managed in keeping with the statutory and constitutional mandates under which each agency operates. Chapter 163, Laws of 1996 is consistent with section 1, chapter 4, Laws of 1993 sp. sess.

(2) The ecosystem standards developed under chapter 4, Laws of 1993 sp. sess. for state-owned agricultural and grazing lands are defined as desired ecological conditions. The standards are not intended to prescribe practices. For this reason, land managers are encouraged to use an adaptive management approach in selecting and implementing practices

that work towards meeting the standards based on the best available science and evaluation tools.

(3) For as long as the chapter 4, Laws of 1993 sp. sess. ecosystem standards remain in effect, they shall be applied through a collaborative process that incorporates the following principles:

(a) The land manager and lessee or permittee shall look at the land together and make every effort to reach agreement on management and resource objectives for the land under consideration;

(b) They will then discuss management options and make every effort to reach agreement on which of the available options will be used to achieve the agreed-upon objectives;

(c) No land manager or owner ever gives up his or her management prerogative;

(d) Efforts will be made to make land management plans economically feasible for landowners, managers, and lessees and to make the land management plan compatible with the lessee's entire operation;

(e) Coordinated resource management planning is encouraged where either multiple ownerships, or management practices, or both, are involved;

(f) The department of fish and wildlife shall consider multiple use, including grazing, on lands owned or managed by the department of fish and wildlife where it is compatible with the management objectives of the land; and

(g) The department shall allow multiple use on lands owned or managed by the department where multiple use can be demonstrated to be compatible with RCW 79.10.100, 79.10.110, and 79.10.120.

(4) The ecosystem standards are to be achieved by applying appropriate land management practices on riparian lands and on the uplands in order to reach the desired ecological conditions.

(5) The legislature urges that state agencies that manage grazing lands make planning and implementation of chapter 163, Laws of 1996, using the coordinated resource management and planning process, a high priority, especially where either multiple ownerships, or multiple use resources objectives, or both, are involved. In all cases, the choice of using the coordinated resource management planning process will be a voluntary decision by all concerned parties including agencies, private landowners, lessees, permittees, and other interests. [2003 c 334 § 378; 1996 c 163 § 1. Formerly RCW 79.01.2955.]

Intent—2003 c 334: See note following RCW 79.02.010.

Chapter 79.14 RCW

MINERAL, COAL, OIL, AND GAS LEASES

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PART 2 PROSPECTING AND MINING

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PART 3 COAL MINING

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Oil and gas conservation: Chapter 78.52 RCW.

PART 1 OIL AND GAS

79.14.010 Definitions. As used in this chapter, "public lands" means lands and areas belonging to or held in trust by the state, including tide and submerged lands of the Pacific Ocean or any arm thereof and lands of every kind and nature including mineral rights reserved to the state. [2003 c 334 § 471; 1967 c 163 § 6; 1955 c 131 § 1. Prior: 1937 c 161 § 1. Formerly RCW 78.28.280.]

Intent—2003 c 334: See note following RCW 79.02.010.

Additional notes found at www.leg.wa.gov

79.14.020 Leases authorized—Terms—Duration. The department is authorized to lease public lands for the purpose of prospecting for, developing, and producing oil,

gas, or other hydrocarbon substances. Each such lease is to be composed of not more than six hundred forty acres or an entire government surveyed section, except a lease on river bed, lake bed, tide and submerged lands which is to be composed of not more than one thousand nine hundred twenty acres. All leases shall contain such terms and conditions as may be prescribed by the rules adopted by the commissioner in accordance with the provisions of this chapter. Leases may be for an initial term of from five up to ten years and shall be extended for so long thereafter as lessee shall comply with one of the following conditions: (1) Prosecute development on the leased land with the due diligence of a prudent operator upon encountering oil, gas, or other hydrocarbon substances; (2) produce any of said substances from the leased lands; (3) engage in drilling, deepening, repairing, or re-drilling any well thereon; or (4) participate in a unit plan to which the commissioner has consented under RCW 78.52.450. [2003 c 334 § 472; 1986 c 34 § 1; 1985 c 459 § 2; 1955 c 131 § 2. Prior: 1937 c 161 §§ 2, 3; 1927 c 255 §§ 175, 176. Formerly RCW 78.28.290.]

Intent—2003 c 334: See note following RCW 79.02.010.
Additional notes found at www.leg.wa.gov

79.14.030 Rental fees—Minimum royalties. The department shall require as a prerequisite to the issuing of any lease a rental as set by the board but not less than one dollar and twenty-five cents per acre or such prorated share of the rental per acre as the state's mineral rights ownership for the first year of such lease, payable in advance to the department at the time the lease is awarded and a like rental annually in advance thereafter so long as such lease remains in force. However, the rental shall cease at such time as royalty accrues to the state from production from such lease. Commencing with the lease year beginning on or after oil, gas, or other hydrocarbon substances are first produced in quantities deemed paying quantities by lessee on the land subject to such lease, lessee shall pay a minimum royalty as set by the board but not less than five dollars per acre or fraction thereof or such prorated share of the rental per acre as the state's mineral rights ownership at the expiration of each year. Royalties payable by the lessee shall be the royalties from production as provided for in RCW 79.14.070 or the minimum royalty provided herein, whichever is greater. However, if such a lease is unitized, the minimum royalty shall be payable only on the leased acreage after production is obtained in such paying quantities from such lease. [2003 c 334 § 473; 1985 c 459 § 3; 1980 c 151 § 1; 1955 c 131 § 3. Prior: 1937 c 161 § 4; 1927 c 255 § 176. Formerly RCW 78.28.300.]

Intent—2003 c 334: See note following RCW 79.02.010.
Additional notes found at www.leg.wa.gov

79.14.040 Compensation to owners of private rights and to state for surface damage. No lessee shall commence any operation upon lands covered by the lease until such lessee has provided for compensation to owners of private rights therein according to law, or in lieu thereof, filed a surety bond with the department in an amount sufficient in the opinion of the commissioner to cover such compensation until the amount of compensation is determined by agreement, arbitration, or judicial decision and has provided for compensation to the state of Washington for damage to the surface rights of

the state in accordance with the rules adopted by the department. [2003 c 334 § 474; 1955 c 131 § 4. Prior: 1937 c 161 § 6; 1927 c 255 § 175. Formerly RCW 78.28.310.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.14.050 Drilling operations beyond lease term—Lease provisions. All leases shall provide that if oil, gas or other hydrocarbon substances are not encountered on or before the end of the initial term, the lease shall not terminate if the lessee is then prosecuting drilling operations on the leased lands with due diligence, in which event the same shall remain in force so long as lessee shall keep one string of tools in operation on the leased lands, allowing not to exceed ninety days between the completion of one well and the commencement of the next until such substances are encountered in quantities deemed paying quantities by lessee. All leases shall further provide that if oil, gas or other hydrocarbon substances in paying quantities shall have been discovered on the leased lands prior to the expiration of the initial term, then in the event at any time after the expiration of the initial term production on the leased land shall cease from any cause, the lease shall not terminate provided lessee resumes operations for the drilling of a well or the restoration of production within ninety days from such cessation. The lease shall remain in force during the prosecution of such operations, and if production results therefrom, then so long as production continues. [1985 c 459 § 4; 1955 c 131 § 5. Prior: 1937 c 161 § 7; 1927 c 255 § 180. Formerly RCW 78.28.320.]

Additional notes found at www.leg.wa.gov

79.14.060 Surrender of lease—Liability. Every lessee shall have the option of surrendering his or her lease as to all or any portion or portions of the land covered thereby at any time and shall be relieved of all liability thereunder with respect to the land so surrendered except for monetary payments theretofore accrued and except for physical damage to the premises embraced by his or her lease which have been occasioned by his or her operations. [2013 c 23 § 258; 1955 c 131 § 6. Prior: 1937 c 161 §§ 8, 10. Formerly RCW 78.28.330.]

79.14.070 Royalties. All oil and gas leases issued pursuant to this chapter shall be upon a royalty of not less than twelve and one-half percent of the gross production of all oil, gas or other hydrocarbons produced and saved from the lands covered by such lease. [1955 c 131 § 7. Prior: 1937 c 161 § 9; 1927 c 255 § 176. Formerly RCW 78.28.340.]

79.14.080 Leases of land within a geologic structure. Oil and gas leases shall not be issued on unleased lands which have been classified by the department as being within a known geologic structure of a producing oil or gas field, except as follows: Upon application of any person, the department shall lease in areas not exceeding six hundred forty acres, at public auction, any or all unleased lands within such geologic structure to the person offering the greatest cash bonus therefor at such auction. Notice of the offer of such lands for lease will be given by publication in a newspaper of general circulation in Olympia, Washington, and in such other publications as the department may authorize. The first publication shall be at least thirty days prior to the date

of sale. [2003 c 334 § 475; 1955 c 131 § 8. Prior: 1937 c 161 §§ 5, 11. Formerly RCW 78.28.350.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.14.090 Cancellation or forfeiture of leases—New leases. The department is authorized to cancel any lease issued as provided in this section for nonpayment of rentals or royalties or nonperformance by the lessee of any provision or requirement of the lease. However, before any such cancellation is made, the department shall mail to the lessee by registered mail, addressed to the post office address of such lessee shown by the records of the department, a notice of intention to cancel such lease specifying the default for which the lease is subject to cancellation. If lessee shall, within thirty days after the mailing of said notice to the lessee, commence and thereafter diligently and in good faith prosecute the remedying of the default specified in such notice, then no cancellation of the lease shall be entered by the department. Otherwise, the cancellation shall be made and all rights of the lessee under the lease shall automatically terminate, except that lessee shall retain the right to continue its possession and operation of any well or wells in regard to which lessee is not in default. Further, failure to pay rental and royalty required under leases within the time prescribed therein shall automatically and without notice work a forfeiture of such leases and of all rights thereunder. Upon the expiration, forfeiture, or surrender of any lease, no new lease covering the lands or any of them embraced by such expired, forfeited, or surrendered lease, shall be issued for a period of ten days following the date of such expiration, forfeiture, or surrender. If more than one application for a lease covering such lands or any of them shall be made during such ten-day period the department shall issue a lease to such lands or any of them to the person offering the greatest cash bonus for such lease at a public auction to be held at the time and place and in the manner as the department shall adopt by rule. [2003 c 334 § 476; 1955 c 131 § 9. Prior: 1937 c 161 § 12; 1927 c 255 § 179. Formerly RCW 78.28.360.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.14.100 Cooperative or unit plans—Communization or drilling agreements. For the purpose of more properly conserving the natural resources of any oil or gas pool, field, or like area, lessees thereon and their representatives may unite with each other, or jointly or separately with others, in collectively adopting and operating under a cooperative or unit plan of development or operation of such pool, field, or like area, or any part thereof, whenever determined and certified by the department to be necessary or advisable in the public interest. The department is authorized, in its discretion, with the consent of the holders of leases involved, in order to conform with the terms and conditions of any such cooperative or unit plan to establish, alter, change, or revoke exploration, drilling, producing, rental, and royalty requirements of such leases with like consent on the part of the lessees, in connection with the institution and operation of any such cooperative or unit plan as the department may deem necessary or proper to secure the proper protection of the public interest.

When separate tracts cannot be independently developed and operated in conformity with an established well spacing

or development program, any lease or any portion thereof may be pooled with other lands, whether or not owned by the state of Washington under a communization or drilling agreement providing for an apportionment of production or royalties among the separate tracts of land comprising the drilling or spacing unit when determined by the department to be in the public interest, and operations or production pursuant to such an agreement shall be deemed to be operations or production as to each such lease committed thereto.

The term of any lease that has become the subject of any cooperative or unit plan of development or operation of a pool, field, or like area, which plan has the approval of the department, shall continue in force until the termination of such plan, and in the event such plan is terminated prior to the expiration of any such lease, the original term of such lease shall continue. Any lease under this chapter hereinafter committed to any such plan embracing lands that are in part within and in part outside of the area covered by any such plan, shall be segregated in separate leases as to the lands committed and the land not committed as of the effective date of unitization. [2003 c 334 § 477; 1955 c 131 § 10. Prior: 1937 c 161 § 14. Formerly RCW 78.28.370.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.14.110 Customary provisions in leases. The department is authorized to insert in any lease issued under the provisions of this chapter such terms as are customary and proper for the protection of the rights of the state and of the lessee and of the owners of the surface of the leased lands not in conflict with the provisions of this chapter. [2003 c 334 § 478; 1955 c 131 § 11. Prior: 1937 c 161 § 15; 1927 c 255 § 178. Formerly RCW 78.28.380.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.14.120 Rules. The department is required to adopt and publish, for the information of the public, all reasonable rules necessary for carrying out the provisions of this chapter. The department may amend or rescind any rule adopted under the authority contained in this section. However, no rule or amendment of the same or any order rescinding any rule shall become effective until after thirty days from the adoption of the same by publication in a newspaper of general circulation published at the state capitol and shall take effect and be in force at times specified therein. All rules of the department and all amendments or revocations of existing rules shall be recorded in an appropriate book or books, shall be adequately indexed, and shall be kept in the office of the department and shall constitute a public record. Such rules of the department shall be printed in pamphlet form and furnished to the public free of cost. [2003 c 334 § 479; 1955 c 131 § 12. Prior: 1937 c 161 § 16; 1927 c 255 § 178. Formerly RCW 78.28.390.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.14.130 Wells to be located minimum distance from boundaries—Exception. Each lease issued under this chapter shall provide that without the approval of the department, no well shall be drilled on the lands demised thereby in such manner or at such location that the producing interval thereof shall be less than three hundred thirty feet from any of the outer boundaries of the demised lands, except that if the

right to oil, gas, or other hydrocarbons underlying adjoining lands be vested in private ownership, such approval shall not be required. [2003 c 334 § 480; 1955 c 131 § 13. Prior: 1937 c 161 § 17. Formerly RCW 78.28.400.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.14.140 Rights-of-way over public lands—Payment for timber. Any person granted a lease under the provisions of this chapter shall have a right-of-way over public lands, as provided by law, when necessary, for the drilling, recovering, saving, and marketing of oil, gas, or other hydrocarbons. Before any such right-of-way grant shall become effective, a written application for, and a plat showing the location of such a right-of-way and the land necessary for the well site and drilling operations, with reference to adjoining lands, shall be filed with the department. All timber on the right-of-way and the land necessary for the drilling operation, shall be appraised by the commissioner and paid for in money by the person to whom the lease is granted. [2003 c 334 § 481; 1955 c 131 § 14. Prior: 1937 c 161 § 18. Formerly RCW 78.28.410.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.14.150 Sales of timber—Rules. All sales of timber, as prescribed in this chapter, shall be made subject to the right, power, and authority of the department to adopt rules governing the manner of the removal of the merchantable timber upon any lands embraced within any lease with the view of protecting the same and other timber against destruction or injury by fire or from other causes. The rules shall be binding upon the lessee, his or her successors in interest, and shall be enforced by the department. [2003 c 334 § 482; 1955 c 131 § 15. Prior: 1937 c 161 § 19. Formerly RCW 78.28.420.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.14.160 Development after discovery. After the discovery of oil, gas or other hydrocarbons in paying quantities, lessee shall proceed to develop the oil, gas or other hydrocarbons in the lands covered thereby through the drilling of such wells as will efficiently extract the oil, gas or other hydrocarbons therefrom and such development shall take into account the productiveness of the producing horizon, the depth at which it occurs, the average cost of wells, the market requirements obtaining at any given time, and the maintenance of proper oil and gas ratios. [1955 c 131 § 16. Prior: 1937 c 161 § 20. Formerly RCW 78.28.430.]

79.14.170 Spacing and offsetting of wells. All leases shall contain such terms, conditions, and provisions as will protect the interests of the state with reference to spacing of wells for the purpose of offsetting any wells on privately owned lands. [1955 c 131 § 17. Prior: 1937 c 161 § 21. Formerly RCW 78.28.440.]

79.14.180 Lands may be withheld from leasing. Nothing contained in this chapter shall be construed as requiring the department to offer any tract or tracts of land for lease; but the department shall have power to withhold any tract or tracts from leasing for oil, gas, or other hydrocarbons, if, in its judgment, the best interest of the state will be served

by so doing. [2003 c 334 § 483; 1955 c 131 § 18. Prior: 1937 c 161 § 24. Formerly RCW 78.28.450.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.14.190 Payment of royalty share—Royalty in kind. The lessee shall pay to the department the market value at the well of the state's royalty share of oil and other hydrocarbons except gas produced and saved and delivered by lessee from the lease. In lieu of receiving payment for the market value of the state's royalty share of oil, the department may elect that such royalty share of oil be delivered in kind at the mouth of the wells into tanks provided by the department. Lessee shall pay to the department the state's royalty share of the sale price received by the lessee for gas produced and saved and sold from the lease. If such gas is not sold but is used by lessee for the manufacture of gasoline or other products, lessee shall pay to the department the market value of the state's royalty share of the residue gas and other products, less a proper allowance for extraction costs. [2003 c 334 § 484; 1955 c 131 § 19. Prior: 1937 c 161 § 25. Formerly RCW 78.28.460.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.14.200 Prior permits validated—Relinquishment for new leases. All exploration permits issued by the department prior to June 9, 1955, which have not expired or been legally canceled for nonperformance by the permittees, are hereby declared to be valid and existing contracts with the state of Washington, according to their terms and provisions. The obligation of the state to conform to the terms and provisions of such permits is hereby recognized, and the department is directed to accept and recognize all such permits according to their express terms and provisions. No repeal or amendment made by this chapter shall affect any right acquired under the law as it existed prior to such repeal or amendment, and such right shall be governed by the law in effect at time of its acquisition. Any permit recognized and confirmed by this section may be relinquished to the state by the permittee, and a new lease or, if such permit contains more than six hundred forty acres, new leases in the form provided for in this chapter, shall be issued in lieu of same and without bonus therefor; but the new lease or leases so issued shall be as provided for in this chapter and governed by the applicable provisions of this chapter instead of by the law in effect prior thereto. [2003 c 334 § 485; 1955 c 131 § 20. Prior: 1937 c 161 § 26. Formerly RCW 78.28.470.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.14.210 Assignments and subleases of leases. Any oil or gas lease issued under the authority of this chapter may be assigned or subleased as to all or part of the acreage included therein, subject to final approval by the department, and as to either a divided or undivided interest therein to any person. Any assignment or sublease shall take effect as of the first day of the lease month following the date of filing with the department. However, at the department's discretion, it may disapprove an assignment of a separate zone or deposit under any lease or of a part of a legal subdivision. Upon approval of any assignment or sublease, the assignee or sublessee shall be bound by the terms of the lease to the same extent as if such assignee or sublessee were the original les-

see, any conditions in the assignment or sublease to the contrary notwithstanding. Any partial assignment of any lease shall segregate the assigned and retained portions thereof, and upon approval of such assignment by the department, the assignor shall be released and discharged from all obligations thereafter accruing with respect to the assigned lands. [2003 c 334 § 486; 1955 c 131 § 21. Prior: 1937 c 161 § 27. Formerly RCW 78.28.480.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.14.220 Appeal from rulings of commissioner. Any applicant for a lease under this chapter, feeling aggrieved by any order, decision, or rule of the commissioner, concerning the same, may appeal therefrom to the superior court of the county wherein such lands are situated, as provided by RCW 79.02.030. [2003 c 334 § 487; 1955 c 131 § 22. Prior: 1937 c 161 § 28. Formerly RCW 78.28.490.]

Intent—2003 c 334: See note following RCW 79.02.010.

PART 2 PROSPECTING AND MINING

79.14.300 Prospecting and mining contracts—Authority. The department may issue permits and leases for prospecting, and contracts for the mining of valuable minerals and specified materials, except rock, gravel, sand, silt, coal, or hydrocarbons, upon and from any public lands belonging to or held in trust by the state, or which have been sold and the minerals thereon reserved by the state in tracts not to exceed six hundred forty acres or an entire government-surveyed section. [2003 c 334 § 401; 1987 c 20 § 1; 1965 c 56 § 2; 1927 c 255 § 155; RRS § 7797-155. Prior: 1917 c 148 § 1; 1915 c 152 § 1; 1897 c 102 § 1. Formerly RCW 79.01.616, 78.20.010, part, and 78.20.020.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.14.310 Prospecting and mining—Public auction of mining contracts. The department may offer nonrenewable placer mining contracts by public auction for the mining of gold under terms set by the department. In the case of lands known to contain valuable minerals or specified materials in commercially significant quantities, the department may offer mining contracts by public auction. [2003 c 334 § 402; 1987 c 20 § 2. Formerly RCW 79.01.617.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.14.315 Recreational prospecting permits. The department may issue permits for recreational mineral prospecting in designated areas containing noneconomic mineral deposits. The term of a permit shall not exceed one year. Designated areas, equipment allowed, methods of prospecting, as well as other appropriate permit conditions, shall be set in rules adopted by the department. Fees shall be set by the board of natural resources. [1987 c 20 § 15. Formerly RCW 79.01.651.]

79.14.320 Department may adopt rules. The department may adopt rules necessary for carrying out the mineral leasing, contracting, and permitting provisions of RCW 79.14.300 through 79.14.450. Such rules shall be enacted under chapter 34.05 RCW. The department may amend or

rescind any rules adopted under this section. The department shall publish these rules in pamphlet form for the information of the public. [2003 c 334 § 403; 1987 c 20 § 3; 1983 c 3 § 200; 1965 c 56 § 3. Formerly RCW 79.01.618.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.14.330 Prospecting lease—Application fee. Any person desiring to obtain a lease for mineral prospecting purposes upon any lands in which the mineral rights are owned or administered by the department, shall file in the proper office of the department an application or applications therefor, upon the prescribed form, together with application fees. The department may reject an application for a mineral prospecting lease when the department determines rejection to be in the best interests of the state, and in such case shall inform the applicant of the reason for rejection and refund the application fee. The department may also reject the application and declare the application fee forfeited should the applicant fail to execute the lease. [2003 c 334 § 404; 1987 c 20 § 4; 1965 c 56 § 4; 1927 c 255 § 156; RRS § 7797-156. Prior: 1917 c 148 § 2; 1901 c 151 §§ 1, 2; 1897 c 102 §§ 2, 5. Formerly RCW 79.01.620, 78.20.010, part, and RCW 78.20.030.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.14.340 Compensation for loss or damage to surface rights. Where the surface rights are held by a third party, the lessee shall not exercise the rights reserved by the state upon lands covered by the lessee's lease or contract until the lessee has provided the department with satisfactory evidence of compliance with the requirements of the state's mineral rights reservations. Where the surface rights are held by the state, the lessee shall not exercise its mineral rights upon lands covered by the lessee's lease or contract until the lessee has made satisfactory arrangements with the department to compensate the state for loss or damage to the state's surface rights. [1987 c 20 § 5; 1965 c 56 § 5; 1927 c 255 § 157; RRS § 7797-157. Prior: 1917 c 148 § 3; 1899 c 147 § 1; 1897 c 102 § 6. Formerly RCW 79.01.624, 78.20.040.]

79.14.350 Prospecting leases—Term—Rent—Conditions. Leases for prospecting purposes may be for a term of up to seven years from the date of the lease. The lessee shall pay an annual lease rental as set by the board of natural resources. The annual lease rental shall be paid in advance. The lessee shall not have the right to extract and remove for commercial sale or use from the leased premises any minerals or specified materials found on the premises except upon obtaining a mining contract. The lessee shall perform annual prospecting work in cost amounts as set by the board of natural resources. The lessee may make payment to the department in lieu of the performance of annual prospecting work for up to three years during the term of the lease. Prospecting work performed must contribute to the mineral evaluation of the leased premises.

The lessee may at any time give notice of intent to terminate the lease if all of the covenants of the lease including reclamation are met. The notice of termination of lease shall be made by giving written notice together with copies of all information obtained from the premises. The lease shall terminate sixty days thereafter if all arrears and sums which are

due under the lease up to the time of termination have been paid. [1987 c 20 § 6; 1965 c 56 § 6; 1945 c 103 § 1; 1927 c 255 § 158; RRS § 7797-158. Prior: 1897 c 102 §§ 4, 5. Formerly RCW 79.01.628, 78.20.050.]

79.14.360 Conversion to mining contract. The holder of any prospecting lease shall have a preference right to a mining contract on the premises described in the lease if application therefor is made to the department at least one hundred eighty days prior to the expiration of the prospecting lease.

A lessee applying for a mining contract shall furnish plans for development leading toward production. The plans shall address the reclamation of the property. A mining contract shall be for a term of twenty years.

The first year of the contract and each year thereafter, the lessee shall perform development work in cost amounts as set by the board. The lessee may make payment to the department in lieu of development work.

The lessee may at any time give notice of intent to terminate the contract if all of the covenants of the contract including reclamation are met. The notice of termination of contract shall be made by giving written notice together with copies of all information obtained from the premises. The contract shall terminate sixty days thereafter if all arrears and sums which are due under the contract up to the time of termination have been paid.

The lessee shall have sixty days from the termination date of the contract in which to remove improvements, except those necessary for the safety and maintenance of mine workings, from the premises without material damage to the land or subsurface covered by the contract. However, the lessee shall upon written request to the department be granted an extension where forces beyond the control of the lessee prevent removal of the improvements within sixty days.

Any lessee not converting a prospecting lease to a mining contract shall not be entitled to a new prospecting lease on the lease premises for one year from the expiration date of the prior lease. Such lands included in the prospecting lease shall be open to application by any person other than the prior lessee, and the lessee's agents or associates during the year period described above. [2003 c 334 § 405; 1987 c 20 § 7; 1965 c 56 § 7; 1927 c 255 § 159; RRS § 7797-159. Prior: 1901 c 151 § 4. Formerly RCW 79.01.632, 78.20.060.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.14.370 Prospecting and mining—Lessee's rights and duties. Where the surface rights have been sold and the minerals retained by the state, the state's right of entry to these lands is transferred and assigned to the lessee during the life of the lease or contract. No lessee shall commence any operation upon lands covered by his or her lease or contract until the lessee has complied with RCW 79.14.340. [2003 c 334 § 406; 1987 c 20 § 8; 1965 c 56 § 8. Formerly RCW 79.01.633.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.14.380 Prospecting and mining—Termination for default. The department shall terminate and cancel a prospecting lease or mining contract upon failure of the lessee to make payment of the annual rental or royalties or comply

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with the terms and conditions of the lease or contract upon the date such payments and compliances are due. The lessee shall be notified of such termination and cancellation, said notice to be mailed to the last known address of the lessee. Termination and cancellation shall become effective thirty days from the date of mailing the notice. However, the department may, upon written request from the lessee, grant an extension of time in which to make such payment or comply with the terms and conditions. [2003 c 334 § 407; 1987 c 20 § 9; 1965 c 56 § 9. Formerly RCW 79.01.634.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.14.390 Prospecting leases and mining contracts—Form, terms, conditions. Prospecting leases or mining contracts referred to in chapter 79.14 RCW shall be as prescribed by, and in accordance with rules adopted by the department.

The department may include in any mineral prospecting lease or mining contract to be issued under this chapter such terms and conditions as are customary and proper for the protection of the rights of the state and of the lessee not in conflict with this chapter, or rules adopted by the department.

Any lessee shall have the right to contract with others to work or operate the leased premises or any part thereof or to subcontract the same and the use of the land or any part thereof for the purpose of mining for valuable minerals or specified materials, with the same rights and privileges granted to the lessee. Notice of such contracting or subcontracting with others to work or operate the property shall be made in writing to the department. [2003 c 334 § 408; 1987 c 20 § 10; 1965 c 56 § 11; 1927 c 255 § 161; RRS § 7797-161. Prior: 1917 c 148 § 3; 1899 c 147 § 1; 1897 c 102 § 6. Formerly RCW 79.01.640, 78.20.080.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.14.400 Prospecting and mining—Reclamation of premises. At time of termination for any mineral prospecting lease, permit, mining contract, or placer mining contract, the premises shall be reclaimed in accordance with plans approved by the department. [1987 c 20 § 11. Formerly RCW 79.01.642.]

79.14.410 Prospecting and mining—Minimum royalty. Mining contracts entered into as provided in chapter 79.14 RCW shall provide for the payment to the state of production royalties as set by the board. A lessee shall pay in advance annually a minimum royalty which shall be set by the board. The minimum royalty shall be allowed as a credit against production royalties due during the contract year. [2003 c 334 § 409; 1987 c 20 § 12; 1965 c 56 § 12; 1959 c 257 § 38; 1945 c 103 § 2; 1927 c 255 § 162; Rem. Supp. 1945 § 7797-162. Prior: 1917 c 148 § 4; 1901 c 151 § 3; 1897 c 89 § 7. Formerly RCW 79.01.644, 78.20.090.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.14.420 Mining contracts—Renewal of contract. The lessee may apply for the renewal of a mining contract, except placer mining contracts issued pursuant to RCW 79.14.310, to the department within ninety days before the expiration of the contract. Upon receipt of the application, the department shall make the necessary investigation to determine whether the terms of the contract have been complied

with, and if the department finds they have been complied with in good faith, the department shall renew the contract. The terms and conditions of the renewal contract shall remain the same except for royalty rates, which shall be determined by reference to then existing law. [2003 c 334 § 410; 1987 c 20 § 13. Formerly RCW 79.01.645.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.14.430 Prospecting and mining—Consolidation.

The holders of two or more mining contracts may consolidate the contracts under a common management to permit proper operation of large scale developments. Notification of such consolidation shall be made to the department, together with a statement of plans of operation and proposed consolidation. The department may thereafter make examinations and investigations and if it finds that such consolidation is not in the best interest of the state, it shall disapprove such consolidated operation. [2003 c 334 § 411; 1965 c 56 § 13; 1945 c 103 § 3 (adding a new section to 1927 c 255, section 162-1); Rem. Supp. 1945 § 7797-162a. Formerly RCW 79.01.648, 78.20.100.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.14.440 Prospecting and mining—Disclosure of information.

Any person designated by the department shall have the right at any time to enter upon the lands and inspect and examine the structures, works, and mines situated thereon, and shall also have the right to examine such books, records, and accounts of the lessee as are directly connected with the determination of royalties on the property under lease from the state but it shall be unlawful for any person so appointed to disclose any information thus obtained to any person other than the departmental officials and employees, except the attorney general and prosecuting attorneys of the state. [2003 c 334 § 412; 1965 c 56 § 14. Formerly RCW 79.01.649.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.14.450 Prospecting and mining—Disposition of materials not covered by lease or contract.

The state shall have the right to sell or otherwise dispose of any surface resource, timber, rock, gravel, sand, silt, coal, or hydrocarbons, except minerals or materials specifically covered by a mineral prospecting lease or mining contract, found upon the land during the period covered by the lease or contract. The state shall also have the right to enter upon such land and remove same, and shall not be obliged to withhold from any sale any timber for prospecting or mining purposes. The lessee shall, upon payment to the department, have the right to cut and use timber found on the leased premises for mining purposes as provided in rules adopted by the department. [2003 c 334 § 413; 1987 c 20 § 14; 1965 c 56 § 15. Formerly RCW 79.01.650.]

Intent—2003 c 334: See note following RCW 79.02.010.

PART 3 COAL MINING

79.14.470 Leases and option contracts authorized.

The department is authorized to execute option contracts and leases for the mining and extraction of coal from any public

lands of the state, or to which it may hereafter acquire title, or from any lands sold or leased by the state the minerals of which have been reserved by the state. [2003 c 334 § 414; 1927 c 255 § 163; RRS § 7797-163. Prior: 1925 ex.s. c 155 § 1. Formerly RCW 79.01.652, 78.24.010.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.14.480 Application for option contract—Fee. Any citizen of the United States believing coal to exist upon any of the lands described in RCW 79.14.470 may apply to the department for an option contract for any amount not exceeding one section for prospecting purposes, such application to be made by legal subdivision according to the public land surveys. The applicant shall pay to the department, at the time of filing the application, the sum of one dollar an acre for the lands applied for, but in no case less than fifty dollars. In case of the refusal of the department to execute an option contract for the lands, any remainder of the sum so paid, after deducting the expense incurred by the department in investigating the character of the land, shall be returned to the applicant. [2003 c 334 § 415; 1927 c 255 § 164; RRS § 7797-164. Prior: 1925 ex.s. c 155 § 2. Formerly RCW 79.01.656, 78.24.020.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.14.490 Investigation and issue of option contract.

(1) Upon the filing of any such application, the department shall forthwith investigate the character of the lands applied for, and if, from such investigation, it deems it to be in the best interests of the state, it shall enter into an option contract with the applicant.

(2) The holder of any option contract shall be entitled, during the period of one year from the date thereof, to:

(a) Enter upon the lands and carry on such work of exploration, examination, and prospecting for coal as may be necessary to determine the presence of coal upon the lands and the feasibility of mining the same; and

(b) Use such timber found upon the lands and owned by the state as may be necessary for steam purposes and timbering in the examination and prospecting of such lands. However, this provision shall not be construed to require the state to withhold any such timber from sale.

(3) No coal shall be removed from such lands during the period of such option contract except for samples and testing.

(4) At the expiration of the option contract, the applicant shall fill or cover in a substantial manner all prospect holes and shafts, or surround the same with substantial fences, and shall file with the department a report showing in detail the result of the applicant's investigation and prospecting. [2003 c 334 § 416; 1927 c 255 § 165; RRS § 7797-165. Prior: 1925 ex.s. c 155 § 3. Formerly RCW 79.01.660, 78.24.030.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.14.500 Damage to surface owner or lessee. In the case of lands which the state may have sold or leased and reserved the mineral rights therein, if the holder of any option contract or lease is unable to agree with the owner or prior lessee of the lands, the holder shall have a right of action in the superior court of the county in which the land is situated to ascertain and determine the amount of damages which will accrue to such owner or lessee of the land by reason of the entry thereon and prospecting for or mining coal, as the case

may be. In the event of any such action, the term of the option contract or lease shall begin thirty days after the entry of the final judgment in such action. [2003 c 334 § 417; 1927 c 255 § 166; RRS § 7797-166. Prior: 1925 ex.s. c 155 § 4. Formerly RCW 79.01.664, 78.24.070.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.14.510 Lease—Application, terms, royalties. At any time during the life of the option contract, the holder thereof may apply to the department for a coal mining lease of the lands included therein, or such portion thereof as the holder may specify, for the purpose of mining and extraction of coal therefrom. Such coal mining lease shall be for such term, not more than twenty years, and in such form as may be prescribed by the department, shall entitle the lessee to mine and sell and dispose of all coal underlying said lands and to occupy and use so much of the surface thereof as may be necessary for bunkers and other outside works, and for railroads, buildings, appliances, and appurtenances in connection with the mining operations. Such lease shall provide for the payment to the state of a royalty, according to the grade of coal, for each ton of two thousand pounds of merchantable coal taken from the lands, as follows: For lignite coal of the class commonly found in Lewis and Thurston counties, not less than ten cents per ton; for subbituminous coal, not less than fifteen cents per ton; for high grade bituminous and coking coals, not less than twenty cents per ton; but such lease shall provide for the payment each year of a minimum royalty of not less than one nor more than ten dollars an acre for the lands covered thereby. However, the department may agree with the lessee that said minimum royalty shall be graduated for the different years of said lease so that a lower minimum royalty shall be paid during the earlier years of the term. The minimum royalty fixed in the lease shall be paid in advance each year, and the lessee, at stated periods during the term of the lease, fixed by the department, shall furnish to the department a written report under oath showing the amount of merchantable coal taken from the land during the period covered by such report and shall remit therewith such sum in excess of the minimum royalty theretofore paid for the current year as may be payable as royalty for the period covered by such report.

The department shall incorporate in every lease such provisions and conditions not inconsistent with the provisions of this chapter and not inconsistent with good coal mining practice as it deems necessary and proper for the protection of the state, and, in addition thereto, the department is empowered to adopt such rules, not inconsistent with this chapter and not inconsistent with good mining practice, governing the manner and methods of mining as in its judgment are necessary and proper. [2003 c 334 § 418; 1985 c 459 § 1; 1927 c 255 § 167; RRS § 7797-167. Prior: 1925 ex.s. c 155 § 5. Formerly RCW 79.01.668, 78.24.040.]

Intent—2003 c 334: See note following RCW 79.02.010.

Additional notes found at www.leg.wa.gov

79.14.520 Lease without option contract. In the case of lands known to contain workable coal, the department may, in its discretion, issue coal mining leases under the provisions of RCW 79.14.510 although no option contract has been theretofore issued for such lands. [2003 c 334 § 419;

1927 c 255 § 168; RRS § 7797-168. Prior: 1925 ex.s. c 155 § 6. Formerly RCW 79.01.672, 78.24.050.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.14.530 Confidential information. The commissioner or any person designated by the commissioner has the right at any time to enter upon the lands and inspect and examine the structures, works, and mines situated thereon, and also has the right to examine such books, records, and accounts of the lessee as are directly connected with the operation of the mine on the property under lease from the state; but it shall be unlawful for the commissioner or any person so appointed to disclose any information thus obtained to any person other than the commissioner or an employee of the department, except the attorney general and prosecuting attorneys of the state. [2003 c 334 § 420; 1927 c 255 § 169; RRS § 7797-169. Prior: 1925 ex.s. c 155 § 7. Formerly RCW 79.01.676, 78.24.060.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.14.540 Use and sale of materials from land. The state shall have the right to sell or otherwise dispose of any timber, stone, or other valuable materials, except coal, found upon the land during the period covered by any option contract, or lease issued under the foregoing provisions, with the right to enter upon such lands and cut and remove the same, and shall not be obliged to withhold from sale any timber for coal mining or prospecting purposes. However, the lessee shall be permitted to use in mining operations any timber found upon the land, first paying therefor to the department the value thereof as fixed by the department. Further, any bill of sale for the removal of timber, stone, or other material given subsequent to the coal lease shall contain provisions preventing any interference with the operations of the coal lease. [2003 c 334 § 421; 1927 c 255 § 170; RRS § 7797-170. Prior: 1925 ex.s. c 155 § 8. Formerly RCW 79.01.680, 78.24.080.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.14.550 Suspension of mining—Termination of lease. Should the lessee for any reason, except strikes or inability to mine or dispose of output without loss, suspend mining operations upon the lands included in a lease, or upon any contiguous lands operated by the lessee in connection therewith, for a period of six months, or should the lessee for any reason suspend mining operations upon the lands included in a lease or in such contiguous lands for a period of twelve months, the department may, at its option, cancel the lease, first giving thirty days' notice in writing to the lessee.

The lessee shall have the right to terminate the lease after thirty days' written notice to the department and the payment of all royalties and rentals then due. [2003 c 334 § 422; 1927 c 255 § 171; RRS § 7797-171. Prior: 1925 ex.s. c 155 § 9. Formerly RCW 79.01.684, 78.24.090.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.14.560 Condition of premises on termination. Upon the termination of any lease issued under the foregoing provisions, the lessee shall surrender the lands and premises and leave in good order and repair all shafts, slopes, airways, tunnels, and watercourses then in use. Unless the coal therein

is exhausted, the lessee shall also, as far as it is reasonably practicable so to do, leave open to the face all main entries then in use so that the work of further development and operation may not be unnecessarily hampered. The lessee shall also leave on the premises all buildings and other structures, but shall have the right to, without damage to such buildings and structures, remove all tracks, machinery, and other personal property. [2003 c 334 § 423; 1927 c 255 § 172; RRS § 7797-172. Prior: 1925 ex.s. c 155 § 10. Formerly RCW 79.01.688, 78.24.100.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.14.570 Re-lease—Procedure—Preference rights.

If at the expiration of any lease for the mining and extraction of coal or any renewal thereof the lessee desires to re-lease the lands covered thereby, the lessee may make application to the department for a re-lease. Such application shall be in writing and under oath, setting forth the extent, character, and value of all improvements, development work, and structures existing upon the land. The department may on the filing of such application cause the lands to be inspected, and if the department deems it for the best interests of the state to re-lease said lands, it shall fix the royalties for the ensuing term in accordance with the foregoing provisions relating to original leases, and issue to the applicant a renewal lease for a further term; such application for a release when received from the lessee, or successor of any lessee, who has in good faith developed and improved the property in a substantial manner during the original lease to be given preference on equal terms against the application of any new applicant. [2003 c 334 § 424; 1927 c 255 § 173; RRS § 7797-173. Prior: 1925 ex.s. c 155 § 11. Formerly RCW 79.01.692, 78.24.110.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.14.580 Waste prohibited. It shall be unlawful for the holder of any coal mining option contract, or any lessee, to commit any waste upon the lands embraced therein, except as may be incident to the work of prospecting or mining by the option contract holder or lessee. [2003 c 334 § 425; 1927 c 255 § 174; RRS § 7797-174. Prior: 1925 ex.s. c 155 § 12. Formerly RCW 79.01.696, 78.24.120.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.14.900 Severability—1955 c 131. If any provision or section of this chapter shall be adjudicated to be unconstitutional, such adjudication shall not affect the validity of this chapter as a whole or any part thereof not adjudicated unconstitutional. If any provision of this chapter, or the application of such provision to any person or circumstances is held unconstitutional, invalid or unenforceable, the remainder of this chapter or the application of such provision to persons or circumstances other than those as to which it is held unconstitutional, invalid or unenforceable, shall not be affected thereby. [1955 c 131 § 23. Formerly RCW 78.28.900.]

Chapter 79.15 RCW SALE OF VALUABLE MATERIALS

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PART 1 GENERAL PROVISIONS

79.15.010 Valuable materials sold separately. (1) Valuable materials situated upon state lands and state forestlands may be sold separate from the land, when in the judgment of the department, it is for the best interest of the state so to sell the same.

(2) Sales of valuable materials from any university lands require:

(a) The consent of the board of regents of the University of Washington; or

(b) Legislative directive.

(3) When application is made for the purchase of any valuable materials, the department shall appraise the value of the valuable materials if the department determines it is in the best interest of the state to sell. No valuable materials shall be

sold for less than the appraised value thereof. [2003 c 334 § 331; 2001 c 250 § 3; 1982 1st ex.s. c 21 § 154; 1959 c 257 § 12; 1929 c 220 § 1; 1927 c 255 § 31; RRS § 7797-31. Prior: 1915 c 147 § 2; 1909 c 223 § 3; 1907 c 256 § 6; 1901 c 148 § 1; 1899 c 129 § 1; 1897 c 89 § 12; 1895 c 178 § 23. Formerly RCW 79.01.124, 79.12.100.]

Intent—2003 c 334: See note following RCW 79.02.010.

Forests and forest products: Title 76 RCW.

Additional notes found at www.leg.wa.gov

79.15.020 Duties of department. (1) The department shall exercise general supervision and control over the sale of valuable materials.

(2) The department shall maintain all reports, data, and information in its records pertaining to a proposed sale.

(3) The department may hold a sale in abeyance pending further inspection and report and may cause such further inspection and report.

(4) The department shall determine, based on subsection (2) of this section, and if necessary the information provided under subsection (3) of this section, the terms upon which the proposed sales are consummated. [2003 c 334 § 319.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.15.030 Rules or procedures for removal of valuable materials sold. All sales of valuable materials shall be made subject to the right, power, and authority of the department to prescribe rules or procedures governing the manner of the sale and removal of the valuable materials. Such procedures shall be binding when contained within a purchaser's contract for valuable materials and apply to the purchaser's successors in interest and shall be enforced by the department. [2004 c 199 § 213; 2003 c 334 § 339; 2001 c 250 § 5; 1959 c 257 § 15; 1927 c 255 § 40; RRS § 7797-40. Prior: 1915 c 147 § 2; 1909 c 223 § 3; 1907 c 256 § 6; 1901 c 148 § 1; 1899 c 129 § 1; 1897 c 89 § 12; 1895 c 178 § 23. Formerly RCW 79.01.160, 79.12.190.]

Intent—2003 c 334: See note following RCW 79.02.010.

Forest protection: Chapter 76.04 RCW.

Additional notes found at www.leg.wa.gov

79.15.040 Sale of valuable materials without application or deposit. The department may cause valuable materials on state lands and state forestlands to be inspected and appraised and offered for sale when authorized by the board without an application having been filed, or deposit made, for the purchase of the same. [2003 c 334 § 341; 1961 c 73 § 2; 1959 c 257 § 17; 1927 c 255 § 42; RRS § 7797-42. Prior: 1915 c 147 § 2. Formerly RCW 79.01.168, 79.12.210.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.15.045 Who may purchase—Fee. A person desiring to purchase valuable materials may make application to the department on forms provided by the department and accompanied by the fee provided in RCW 79.02.250. [2003 c 334 § 312.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.15.050 Type of sale—Direct sales. (1) All sales of valuable materials exceeding twenty-five thousand dollars in (2016 Ed.)

appraised value must be at public auction or by sealed bid to the highest bidder, provided that on public lands granted to the state for educational purposes sealed bids may be accepted for sales of timber or stone only.

(2) A direct sale of valuable materials may be sold to the applicant for cash at full appraised value without notice or advertising. The board must, by resolution, establish the value amount of a direct sale not to exceed twenty-five thousand dollars in appraised sale value, and establish procedures to ensure that competitive market prices and accountability are guaranteed. [2006 c 42 § 1; 2003 c 334 § 353.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.15.055 Appraisal—Defined. For the purposes of this chapter, "appraisal" means an estimate of the market value of valuable materials. The estimate must reflect the value based on market conditions at the time of the sale or transfer offering. The appraisal must reflect the department's best effort to establish a reasonable market value for the purpose of setting a minimum bid at auction or transfer. A purchaser of valuable materials may not rely upon the appraisal prepared by the department for purposes of deciding whether to make a purchase from the department. All purchasers are required to make their own independent appraisals. [2004 c 199 § 214; 2003 c 334 § 309; 2001 c 250 § 10. Formerly RCW 79.01.082.]

Intent—2003 c 334: See note following RCW 79.02.010.

Additional notes found at www.leg.wa.gov

79.15.060 Date of sale limited by time of appraisal—Transfer of authority. (Effective until January 1, 2019.)

(1) For the sale of valuable materials under this chapter, if the board is required by law to appraise the sale, the board must establish a minimum appraisal value that is valid for a period of one hundred eighty days, or a longer period as may be established by resolution. The board may reestablish the minimum appraisal value at any time. For any valuable materials sales that the board is required by law to appraise, the board may by resolution transfer this authority to the department.

(2) Where the board has set a minimum appraisal value for a valuable materials sale, the department may set the final appraisal value of valuable materials for auction, which must be based on current market prices. The department may also appraise any valuable materials sale not required by law to be approved by the board. [2009 c 418 § 4; 2003 c 334 § 329.]

Findings—Intent—Expiration date—2009 c 418: See notes following RCW 79.15.510.

Intent—2003 c 334: See note following RCW 79.02.010.

79.15.060 Date of sale limited by time of appraisal—Transfer of authority. (Effective January 1, 2019.)

(1) For the sale of valuable materials under this chapter, if the board is required by law to appraise the sale, the board must establish a minimum appraisal value that is valid for a period of one hundred eighty days, or a longer period as may be established by resolution. The board may reestablish the minimum appraisal value at any time. For any valuable materials sales that the board is required by law to appraise, the board may by resolution transfer this authority to the department.

(2) Where the board has set a minimum appraisal value for a valuable materials sale, the department may set the final

appraisal value of valuable materials for auction, which must be equal to or greater than the board's minimum appraisal value. The department may also appraise any valuable materials sale not required by law to be approved by the board. [2003 c 334 § 329.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.15.070 Time and date of sale. It is the duty of the department to fix the date, time, and place of sale.

(1) All valuable materials shall have been appraised prior to the date fixed for sale as prescribed in RCW 79.15.060.

(2) No sale may be conducted on any day that is a legal holiday.

(3) Sales must be held between the hours of 10:00 a.m. and 4:00 p.m. If all sales cannot be offered within this time period, the sale must continue on the following day between the hours of 10:00 a.m. and 4:00 p.m.

(4) Sales must take place:

(a) At the department's regional office having jurisdiction over the respective sale; or

(b) On county property designated by the board of county commissioners or county legislative authority of the county in which the whole or majority of valuable materials are situated. [2003 c 334 § 350.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.15.080 Advertising sales of valuable materials. (1) Sales, other than direct sales, appraised at an amount not exceeding two hundred fifty thousand dollars, when authorized by the board for sale, shall be advertised by publishing not less than ten days prior to sale a notice of such sale in a newspaper of general circulation located nearest to the property from which the valuable material is to be sold.

(2) Except as provided in RCW 79.15.050, all other proposed sales of valuable materials must be advertised through individual notice of sale and publication of a statewide list of sales.

(a) The notice of sale:

(i) Must specify the place, date, and time of sale, the appraised value thereof, and describe with particularity each parcel of land from which valuable materials are to be sold. The estimated volume will be identified and the terms of sale will be available in the region headquarters and the department's Olympia office;

(ii) May prescribe that the bid deposit required in RCW 79.15.110 be considered an opening bid;

(iii) May be advertised by newspaper or by other means of publishing the information such as on the internet; and

(iv) Must be posted in a conspicuous place in the department's Olympia office and in the region headquarters administering the sale, and in the office of the county auditor of the county where the material is located.

(b) The department shall print a list of all valuable material on public lands that are to be sold. The list should be organized by county and by alphabetical order.

(i) The list should be published in a pamphlet form, issued at least four weeks prior to the date of any sale and provide sale information to prospective buyers.

(ii) The department must retain for free distribution in the Olympia office and the region offices sufficient copies of the pamphlet, to be kept in a conspicuous place, and, when

requested to do so, must mail copies of the pamphlet as issued to any requesting applicant.

(iii) The department may seek additional means of publishing the information in the pamphlet, such as on the internet, to increase the number of prospective buyers.

(3) The department is authorized to expend any sum in additional advertising of the sales as it deems necessary. [2006 c 42 § 2; 2003 c 334 § 347.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.15.090 Advertisement for informational purposes only. The advertisement of sales is for informational purposes only, and under no circumstances does the information in the notice of sale constitute a warranty that the purchaser will receive the stated values, volumes, or acreage. All purchasers are expected to make their own measurements, evaluations, and appraisals. [2003 c 334 § 345.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.15.100 Terms and conditions of sale—Exemption for forest biomass. (1) Valuable materials may be sold separately from the land as a "lump sum sale" or as a "scale sale."

(a) "Lump sum sale" means any sale offered with a single total price applying to all the material conveyed.

(b) "Scale sale" means any sale offered with per unit prices to be applied to the material conveyed.

(2) Payment for lump sum sales must be made as follows:

(a) Lump sum sales under five thousand dollars appraised value require full payment on the day of sale.

(b) Lump sum sales appraised at over five thousand dollars but under one hundred thousand dollars may require full payment on the day of sale.

(c) Lump sum sales requiring full payment on the day of sale may be paid in cash or by certified check, cashier's check, bank draft, or money order, all payable to the department.

(3) Except for sales paid in full on the day of sale or sales with adequate bid bonds, an initial deposit not to exceed twenty-five percent of the actual or projected purchase price shall be made on the day of sale.

(a) Sales with bid bonds are subject to the day of sale payment and replacement requirements prescribed by RCW 79.15.110.

(b) The initial deposit must be maintained until all contract obligations of the purchaser are satisfied. However, all or a portion of the initial deposit may be applied as the final payment for the valuable materials in the event the department determines that adequate security exists for the performance or fulfillment of any remaining obligations of the purchaser under the sale contract.

(4) Advance payments or other adequate security acceptable to the department is required for valuable materials sold on a scale sale basis or a lump sum sale not requiring full payment on the day of sale.

(a) The purchaser must notify the department before any operation takes place on the sale site.

(b) Upon notification as provided in (a) of this subsection, the department must require advanced payment or may allow purchasers to submit adequate security.

(c) The amount of advanced payments or security must be determined by the department and must at all times equal or exceed the value of timber cut and other valuable materials processed or removed until paid for.

(d) Security may be bank letters of credit, payment bonds, assignments of savings accounts, assignments of certificates of deposit, or other methods acceptable to the department as adequate security.

(5) All valuable material must be removed from the sale area within the period specified in the contract.

(a) The specified period may not exceed five years from date of purchase except for stone, sand, gravel, fill material, or building stone.

(b) The specified period for stone, sand, gravel, fill material, or building stone may not exceed thirty years.

(c) In all cases, any valuable material not removed from the land within the period specified in the contract reverts to the state. The department may utilize any remaining forest biomass in accordance with chapter 79.150 RCW.

(6) The department may extend a contract beyond the normal termination date specified in the sale contract as the time for removal of valuable materials when, in the department's judgment, the purchaser is acting in good faith and endeavoring to remove the materials. The extension is contingent upon payment of the fees specified below.

(a) The extended time for removal shall not exceed:

(i) Forty years from date of purchase for stone, sand, gravel, fill material, or building stone;

(ii) A total of ten years beyond the original termination date for all other valuable materials.

(b) An extension fee fixed by the department will be charged based on the estimated loss of income per acre to the state resulting from the granting of the extension plus interest on the unpaid portion of the contract. The board must periodically fix and adopt by rule the interest rate, which shall not be less than six percent per annum.

(c) The sale contract shall specify:

(i) The applicable rate of interest as fixed at the day of sale and the maximum extension payment; and

(ii) The method for calculating the unpaid portion of the contract upon which interest is paid.

(d) The minimum extension fee is fifty dollars per extension plus interest on the unpaid portion of the contract.

(e) Moneys received for any extension must be credited to the same fund in the state treasury as was credited the original purchase price of the valuable material sold.

(7) The department may, in addition to any other securities, require a performance security to guarantee compliance with all contract requirements. The security is limited to those types listed in subsection (4) of this section. The value of the performance security will, at all times, equal or exceed the value of work performed or to be performed by the purchaser.

(8) The department does not need to comply with the provisions of this chapter for forest biomass except as described in the provisions of chapter 79.150 RCW. Forest biomass may not be included in any sales contract authorized under this chapter unless the department has complied with the provisions of chapter 79.150 RCW.

(9) The provisions of this section apply unless otherwise provided by statute. [2010 c 126 § 9; 2004 c 177 § 5; 2003 c 334 § 334.]

Intent—2003 c 334: See note following RCW 79.02.010.

Additional notes found at www.leg.wa.gov

79.15.110 Conduct of sales. (1) Sales of valuable materials must be conducted under the direction of the department or its authorized representative.

(a) Sales of valuable materials, unless otherwise provided in this chapter, shall be at public auction or by sealed bid to the highest bidder, except that, on public lands granted to the state for educational purposes, sealed bids may be accepted for sales of timber or stone only.

(b) The person conducting the sale is called the auctioneer.

(2) On or before the time specified in the notice of sale each bidder shall deposit with the auctioneer a bid deposit equal to the amount specified in the notice of sale plus any fees required by law for the issuance of contracts or bill of sale.

(a) The bid deposit must meet the requirements of RCW 79.15.100(3).

(b) The deposit may be in cash, or by certified check, cashier's check, or money order, all payable to the department or by bid guarantee in the form of a bid bond acceptable to the department.

(3) The bid deposit, if prescribed in the notice of sale as authorized in RCW 79.15.100, may be considered an opening bid of an amount not less than the minimum appraised price established in the notice of sale.

(4) The successful bidder's deposit will be retained by the auctioneer.

(a) Any difference between the bid deposit and the total amount due including any fees required by law shall be paid on the day of sale. Payments may be by cash, certified check, cashier's check, bank draft, or money order payable to the department.

(b) Any amount of the deposit guaranteed by a bid bond must be paid to the department within ten days of the sale day in cash, certified check, cashier's check, money order, or other acceptable payment method.

(c) Other deposits must be returned to the respective bidders at the conclusion of each sale.

(5) The auctioneer must deliver to the purchaser a memorandum of his or her purchase containing a description of the materials purchased, the price bid, and the terms of the sale.

(6) The auctioneer must at once send to the department all payments or bid guarantees received from the purchaser and a copy of the memorandum delivered to the purchaser, together with additional reports of the proceedings as required by the department. [2003 c 334 § 355.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.15.120 Confirmation of sale. The department shall enter upon its records a confirmation of sale and issue to the purchaser a bill of sale for valuable materials if the following conditions have been met:

(1) No fewer than ten days have passed since the auctioneer's report has been filed;

(2) No affidavit is filed with the department showing that the interests of the state in the sale were injuriously affected by fraud or collusion;

(3) It appears from the auctioneer's report that:

(a) The sale was fairly conducted; and

(b) The purchaser was the highest bidder and the bid was not less than the appraised value of the material sold;

(4) The department is satisfied that the valuable material sold would not, upon being readvertised and offered for sale, sell for at least ten percent more than the price submitted by the apparent high bidder;

(5) The payment required by law to be made at the time of making the sale has been made; and

(6) The department determines the best interests of the state will be served by confirming the sale. [2003 c 334 § 358.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.15.130 Bill of sale. When valuable materials are sold separately from the land and the purchase price is paid in full, the department shall prepare a bill of sale. The bill of sale shall:

(1) State the time period for removing the material;

(2) Be signed by the commissioner and attested by the seal of the commissioner's office upon full payment of the purchase price and fees;

(3) Be issued to the purchaser upon payment of the fee for the bill of sale; and

(4) Be recorded in the department. [2003 c 334 § 362; 2001 c 250 § 9; 1927 c 255 § 58; RRS § 7797-58. Formerly RCW 79.01.232, 79.12.420.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.15.140 Valuable materials contract—Impracticable to perform/cancellation—Substitute valuable materials. (1) In the event that the department determines that regulatory requirements or some other circumstance beyond the control of both the department and the purchaser has made a valuable materials contract wholly or partially impracticable to perform, the department may cancel any portion of the contract which could not be performed. In the event of such a cancellation, the purchaser shall not be liable for the purchase price of any portions of the contract so canceled. Market price fluctuations shall not constitute an impracticable situation for valuable materials contracts.

(2) Alternatively, and notwithstanding any other provision in this title, the department may substitute valuable materials from another site in exchange for any valuable materials which the department determines have become impracticable to remove under the original contract. Any substituted valuable materials must belong to the identical trust involved in the original contract, and the substitute materials shall be determined by the department to have an appraised value that is not greater than the valuable materials remaining under the original contract. The substitute valuable materials and site shall remain subject to all applicable permitting requirements and the state environmental policy act, chapter 43.21C RCW, for the activities proposed at that site. In any such substitution, the value of the materials substituted shall be fixed at the purchase price of the original contract regardless of subsequent market changes. Consent of the purchaser

shall be required for any substitution under this section. [2003 c 334 § 364; 2001 c 250 § 18. Formerly RCW 79.01.238.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.15.150 Reoffer. A sale of valuable materials that has been offered, and for which there are no bids received, shall not be reoffered until it has been readvertised as prescribed in RCW 79.11.130. [2003 c 334 § 351.]

Intent—2003 c 334: See note following RCW 79.02.010.

PART 2 DAMAGED TIMBER

79.15.210 Findings—Damage to timber. From time to time timber on state land is damaged by events such as fire, windstorms, and flooding. After such events the timber becomes very susceptible to loss of value and quality due to rot and disease. To obtain maximum value for the state, it is important to sell any damaged timber as fast as possible while providing ample protection for the physical environment and recognizing the sensitivity of removing timber from certain locations. [1987 c 126 § 1. Formerly RCW 79.01.790.]

79.15.220 Sale of damaged valuable materials. When the department finds valuable materials on state land that are damaged by fire, wind, flood, or from any other cause, it shall determine if the salvage of the damaged valuable materials is in the best interest of the trust for which the land is held, which may include the salvage of forest biomass under chapter 79.150 RCW. If salvaging the valuable materials is in the best interest of the trust, the department shall proceed to offer the valuable materials for sale. The valuable materials, when offered for sale, must be sold in the most expeditious and efficient manner as determined by the department. In determining if the sale is in the best interest of the trust the department shall consider the net value of the valuable materials and relevant elements of the physical and social environment. [2010 c 126 § 10; 2001 c 250 § 14; 1987 c 126 § 2. Formerly RCW 79.01.795.]

PART 3 ROCK, GRAVEL, ETC., SALES

79.15.300 Contracts—Forfeiture—Royalties—Monthly reports. (1) The department, upon application by any person, may enter into a contract providing for the sale and removal of rock, gravel, sand, and silt located upon state lands or state forestlands, and providing for payment to be made on a royalty basis.

(2) The issuance of a contract shall be made after public auction and shall not be issued for less than the appraised value of the material.

(3) Each application made pursuant to this section shall:

(a) Set forth the estimated quantity and kind of materials desired to be removed; and

(b) Be accompanied by a map or plat showing the area from which the applicant wishes to remove such materials.

(4) The department may in its discretion include in any contract such terms and conditions required to protect the interests of the state.

(5) Every contract shall provide for a right of forfeiture by the state, upon a failure to operate under the contract or pay royalties for periods therein stipulated. The right of forfeiture is exercised by entry of a declaration of forfeiture in the records of the department.

(6) The department may require a bond with a surety company authorized to transact a surety business in this state, as surety, to secure the performance of the terms and conditions of such contract including the payment of royalties.

(7) The amount of rock, gravel, sand, or silt taken under the contract shall be reported monthly by the purchaser to the department and payment therefor made on the basis of the royalty provided in the contract.

(8) The department may inspect and audit books, contracts, and accounts of each person removing rock, gravel, sand, or silt pursuant to any such contract and make such other investigation and secure or receive any other evidence necessary to determine whether or not the state is being paid the full amount payable to it for the removal of such materials. [2003 c 334 § 335; 1985 c 197 § 1; 1961 c 73 § 11. Formerly RCW 79.01.134.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.15.320 Road material—Sale to public authorities—Disposition of proceeds. (1) Any county, city, or town may file with the department an application to purchase any stone, rock, gravel, or sand upon any state lands or state forestlands to be used in the construction, maintenance, or repair of any public street, road, or highway within such county, city, or town.

(2) Applications shall set forth the quantity and kind of material desired to be purchased, the location thereof, and the name, or other designation, and location of the street, road, or highway upon which the material is to be used.

(3) The department is authorized to appraise and sell the material in such a manner and upon such terms as the department deems advisable for not less than the fair market value thereof.

(4) The proceeds of any such sale shall be paid into the state treasury and credited to the fund to which the proceeds of the sale of the land upon which the material is situated would belong. [2003 c 334 § 343; 1982 1st ex.s. c 21 § 155; 1927 c 255 § 44; RRS § 7797-44. Prior: 1923 c 71 § 1; 1917 c 148 § 13. Formerly RCW 79.01.176, 79.12.250.]

Intent—2003 c 334: See note following RCW 79.02.010.

Additional notes found at www.leg.wa.gov

PART 4 FIREWOOD

79.15.400 License to remove firewood authorized. The department may issue licenses to residents of this state to enter upon lands under the administration or jurisdiction of the department for the purpose of removing therefrom, standing or downed timber which is unfit for any purpose except to be used as firewood. [2003 c 334 § 230; 1975 c 10 § 1; 1945 c 97 § 1; Rem. Supp. 1945 § 7797-40a. Formerly RCW 76.20.010.]

Intent—2003 c 334: See note following RCW 79.02.010.

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79.15.410 Removal only for personal use. In addition to other matters which may be required to be contained in the application for a license under this chapter the applicant must certify that the wood so removed is to be only for the applicant's own personal use and in his or her own home and that the applicant will not dispose of it to any other person. [2003 c 334 § 231; 1945 c 97 § 2; Rem. Supp. 1945 § 7797-40b. Formerly RCW 76.20.020.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.15.420 Issuance of license—Fee. The application may be made to the department, and if deemed proper, the license may be issued upon the payment of two dollars and fifty cents which shall be paid into the treasury of the state by the officer collecting the same and placed in the resource management cost account or forest development account, as applicable; the license shall be dated as of the date of issuance and authorize the holder thereof to remove between the dates so specified not more than six cords of wood not fit for any use but as firewood for the use of the applicant and his or her family from the premises described in the license under such rules as the department may adopt. [2003 c 334 § 232; 1975 c 10 § 2; 1945 c 97 § 3; Rem. Supp. 1945 § 7797-40c. Formerly RCW 76.20.030.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.15.430 Removal of firewood without charge. Whenever the department determines that it is in the best interest of the state and there will be a benefit to the lands involved or a state program affecting such lands it may designate specific areas and authorize the general public to enter upon lands under its jurisdiction for the purposes of cutting and removing standing or downed timber for use as firewood for the personal use of the person so cutting and removing without a charge under such terms and conditions as it may require. [2003 c 334 § 233; 1975 c 10 § 3. Formerly RCW 76.20.035.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.15.440 Penalty. Any false statement made in the application or any violation of the provisions of RCW 79.15.400 through 79.15.430 shall constitute a gross misdemeanor and be punishable as such. [2003 c 334 § 234; 1945 c 97 § 4; Rem. Supp. 1945 § 7797-40d. Formerly RCW 76.20.040.]

Intent—2003 c 334: See note following RCW 79.02.010.

PART 5 CONTRACT HARVESTING

79.15.500 Contract harvesting—Definitions. The definitions in this section apply throughout RCW 79.15.500 through 79.15.530 and 79.15.540 unless the context clearly requires otherwise.

(1) "Commissioner" means the commissioner of public lands.

(2) "Contract harvesting" means a timber operation occurring on state forestlands, in which the department contracts with a firm or individual to perform all the necessary harvesting work to process trees into logs sorted by depart-

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ment specifications. The department then sells the individual log sorts.

(3) "Department" means the department of natural resources.

(4) "Harvesting costs" are those expenses related to the production of log sorts from a stand of timber. These expenses typically involve road building, labor for felling, bucking, and yarding, as well as the transporting of sorted logs to the forest product purchasers.

(5) "Net proceeds" means gross proceeds from a contract harvesting sale less harvesting costs.

(6) "Silvicultural treatment" means any vegetative or other treatment applied to a managed forest to improve the conditions of the stand, and may include harvesting, thinning, prescribed burning, and pruning. [2004 c 218 § 8; 2003 c 313 § 2.]

Findings—2003 c 313: "The legislature finds that it is in the best interest of the trust beneficiaries to capture additional revenues while providing for additional environmental protection on timber sales. Further, the legislature finds that contract harvesting is one method to achieve these desired outcomes. Therefore, the legislature directs the department of natural resources to establish and implement contract harvesting where there exists the ability to increase revenues for the beneficiaries of the trusts while obtaining increases in environmental protection." [2003 c 313 § 1.]

Additional notes found at www.leg.wa.gov

79.15.510 Contract harvesting—Program established. (Effective until January 1, 2019.) (1) The department may establish a contract harvesting program for directly contracting for the removal of timber and other valuable materials from state lands and for conducting silvicultural treatments consistent with RCW 79.15.540.

(2) The contract requirements must be compatible with the office of financial management's guide to public service contracts.

(3) The department may not use contract harvesting for more than twenty percent of the total annual volume of timber offered for sale. However, volume removed primarily to address an identified forest health issue under RCW 79.15.540 may not be included in calculating the annual limit of contract harvesting sales. Forest biomass resulting from harvesting to address an identified forest health issue under RCW 79.15.540 may be utilized in accordance with chapter 79.150 RCW. [2010 c 126 § 11; 2009 c 418 § 2; 2004 c 218 § 6; 2003 c 313 § 3.]

Expiration date—2013 c 255; 2010 c 126 § 11: "Section 11 of this act expires January 1, 2019." [2013 c 255 § 2; 2010 c 126 § 15.]

Findings—Intent—2009 c 418: "The legislature finds that it is in the best interest of the trust beneficiaries to capture additional revenues while providing for additional environmental protection and improving forest health on state trust lands. Further, the legislature finds that contract harvesting is one method to achieve these desired outcomes while also providing the department of natural resources with the ability to offer opportunities to merchandise high value wood. The legislature intends that the department of natural resources should have the ability to expand their contract sales in areas where other sales do not generate as much revenue or provide resource management benefits. The legislature further intends that the department of natural resources distribute the increased contract harvest authority across all trusts and markets." [2009 c 418 § 1.]

Expiration date—2013 c 255; 2009 c 418: "This act expires January 1, 2019." [2013 c 255 § 1; 2009 c 418 § 7.]

Findings—Severability—2003 c 313: See notes following RCW 79.15.500.

Additional notes found at www.leg.wa.gov

79.15.510 Contract harvesting—Program established. (Effective January 1, 2019.) (1) The department may establish a contract harvesting program for directly contracting for the removal of timber and other valuable materials from state lands and for conducting silvicultural treatments consistent with RCW 79.15.540.

(2) The contract requirements must be compatible with the office of financial management's guide to public service contracts.

(3) The department may not use contract harvesting for more than ten percent of the total annual volume of timber offered for sale. However, volume removed primarily to address an identified forest health issue under RCW 79.15.540 may not be included in calculating the annual limit of contract harvesting sales. Forest biomass resulting from harvesting to address an identified forest health issue under RCW 79.15.540 may be utilized in accordance with chapter 79.150 RCW. [2010 c 126 § 12; 2004 c 218 § 6; 2003 c 313 § 3.]

Effective date—2013 c 255; 2010 c 126 § 12: "Section 12 of this act takes effect January 1, 2019." [2013 c 255 § 3; 2010 c 126 § 16.]

Findings—Severability—2003 c 313: See notes following RCW 79.15.500.

Additional notes found at www.leg.wa.gov

79.15.520 Contract harvesting revolving account. (Effective until January 1, 2019.) (1) The contract harvesting revolving account is created in the custody of the state treasurer. All receipts from the gross proceeds of the sale of logs from a contract harvesting sale must be deposited into the account. Expenditures from the account may be used only for the payment of harvesting costs incurred on contract harvesting sales and for payment of costs incurred from silvicultural treatments necessary to improve forest health conducted under RCW 79.15.540. Only the commissioner or the commissioner's designee may authorize expenditures from the account. The board of natural resources has oversight of the account, and the commissioner must periodically report to the board of natural resources as to the status of the account, its disbursement, and receipts. The account is subject to allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures.

(2) When the logs from a contract harvesting sale are sold, the gross proceeds must be deposited into the contract harvesting revolving account. Moneys equal to the harvesting costs must be retained in the account and be deducted from the gross proceeds to determine the net proceeds. The net proceeds from the sale of the logs must be distributed in accordance with RCW 43.30.325(1)(b). The final receipt of gross proceeds on a contract harvesting sale must be retained in the contract harvesting revolving account until all required costs for that sale have been paid. The contract harvesting revolving account is an interest-bearing account and the interest must be credited to the account. The account balance may not exceed five million dollars at the end of each calendar year. Moneys in excess of five million dollars must be disbursed according to RCW 79.22.040, 79.22.050, and 79.64.040. If the department permanently discontinues the use of contract harvesting sales, any sums remaining in the contract harvesting revolving account must be returned to the resource management cost account and the forest develop-

ment account in proportion to each account's contribution to the initial balance of the contract harvesting revolving account. [2009 c 418 § 3; 2004 c 218 § 7; 2003 c 313 § 4.]

Findings—Intent—Expiration date—2009 c 418: See notes following RCW 79.15.510.

Findings—Severability—2003 c 313: See notes following RCW 79.15.500.

Additional notes found at www.leg.wa.gov

79.15.520 Contract harvesting revolving account. (Effective January 1, 2019.) (1) The contract harvesting revolving account is created in the custody of the state treasurer. All receipts from the gross proceeds of the sale of logs from a contract harvesting sale must be deposited into the account. Expenditures from the account may be used only for the payment of harvesting costs incurred on contract harvesting sales and for payment of costs incurred from silvicultural treatments necessary to improve forest health conducted under RCW 79.15.540. Only the commissioner or the commissioner's designee may authorize expenditures from the account. The board of natural resources has oversight of the account, and the commissioner must periodically report to the board of natural resources as to the status of the account, its disbursement, and receipts. The account is subject to allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures.

(2) When the logs from a contract harvesting sale are sold, the gross proceeds must be deposited into the contract harvesting revolving account. Moneys equal to the harvesting costs must be retained in the account and be deducted from the gross proceeds to determine the net proceeds. The net proceeds from the sale of the logs must be distributed in accordance with RCW 43.30.325(1)(b). The final receipt of gross proceeds on a contract harvesting sale must be retained in the contract harvesting revolving account until all required costs for that sale have been paid. The contract harvesting revolving account is an interest-bearing account and the interest must be credited to the account. The account balance may not exceed one million dollars at the end of each fiscal year. Moneys in excess of one million dollars must be disbursed according to RCW 79.22.040, 79.22.050, and 79.64.040. If the department permanently discontinues the use of contract harvesting sales, any sums remaining in the contract harvesting revolving account must be returned to the resource management cost account and the forest development account in proportion to each account's contribution to the initial balance of the contract harvesting revolving account. [2004 c 218 § 7; 2003 c 313 § 4.]

Findings—Severability—2003 c 313: See notes following RCW 79.15.500.

Additional notes found at www.leg.wa.gov

79.15.530 Contract harvesting—Special appraisal practices. The board of natural resources must determine whether any special appraisal practices are necessary for logs sold by the contract harvesting processes, and if so, must adopt the special appraisal practices or procedures. In its consideration of special appraisal practices, the board of natural resources must consider and adopt procedures to rapidly market and sell any log sorts that failed to receive the required minimum bid at the original auction, which may include

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allowing the department to set a new appraised value for the unsold sort.

The board of natural resources must establish and adopt policy and procedures by which the department evaluates and selects certified contract harvesters. The procedures must include a method whereby a certified contract harvester may appeal a decision by the department or board of natural resources to not include the certified contract harvester on the list of approved contract harvesters. [2003 c 313 § 5.]

Findings—Severability—2003 c 313: See notes following RCW 79.15.500.

79.15.540 Intent—Contract harvesting—State trust forestland with identified forest health deficiencies. (1) The legislature intends to ensure, to the extent feasible given all applicable trust responsibilities, that trust beneficiaries receive long-term income from timberlands through improved forest conditions and by reducing the threat of forest fire to state trust forestlands.

(2) In order to implement the intent of RCW 76.06.140, the department may initiate contract harvesting timber sales, or other silvicultural treatments when appropriate, in specific areas of state trust forestland where the department has identified forest health deficiencies as enumerated in RCW 76.06.140. All harvesting or silvicultural treatments applied under this section must be tailored to improve the health of the specific stand, must be consistent with any applicable state forest plans and other management agreements, and must comply with all applicable state and federal laws and regulations regarding the harvest of timber by the department of natural resources.

(3) In utilizing contract harvesting to address forest health issues as outlined in this section, the department shall give priority to silvicultural treatments that assist the department in meeting forest health strategies included in any management or landscape plans that exist for state forests. If such plans are not in place, the department shall prioritize silvicultural treatments for forest health with higher priority given to the protection of public health and safety, public resources as defined in RCW 76.09.020, and the long-term asset value of the trust. [2007 c 109 § 2; 2004 c 218 § 5.]

Findings—2007 c 109: "The legislature finds that chapter 218, Laws of 2004 authorized the department of natural resources to utilize contract harvesting for silvicultural treatments to improve forest health on state trust lands, in accordance with RCW 76.06.140 and 79.15.540. The legislature further finds that the use of contract harvesting for silvicultural treatments has proven effective and that continued utilization is important to improve and maintain forest health. Therefore, the legislature finds that it is necessary to remove the expiration date for this authority, set for December 31, 2007, and to continue the use of contract harvesting for silvicultural treatments to improve forest health on state trust lands." [2007 c 109 § 1.]

Additional notes found at www.leg.wa.gov

79.15.550 Mitigation against the potential for contract default—Report to the legislature. (Expires January 1, 2019.) (1) The department is directed, to the extent possible under current law consistent with its responsibility to the trust beneficiaries, to consider requests from purchasers for timber sale extensions and to provide flexibility in timber sale contract administration to help mitigate against the potential for contract default.

(2) By December 1, 2009, the department shall report to the appropriate committees of the legislature on the status of

existing contracts, contract extensions, contract defaults, and shall provide a timber market forecast for 2010 and 2011. [2009 c 418 § 5.]

Findings—Intent—Expiration date—2009 c 418: See notes following RCW 79.15.510.

Chapter 79.17 RCW LAND TRANSFERS

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PART 1 EXCHANGES

79.17.010 Exchange of state lands—Purposes—Conditions. (1) The department, with the approval of the board, may exchange any state land and any timber thereon for any land of equal value in order to:

- (a) Facilitate the marketing of forest products of state lands;
- (b) Consolidate and block-up state lands;
- (c) Acquire lands having commercial recreational leasing potential;
- (d) Acquire county-owned lands;
- (e) Acquire urban property which has greater income potential or which could be more efficiently managed by the department in exchange for state urban lands as defined in RCW 79.19.100; or
- (f) Acquire any other lands when such exchange is determined by the board to be in the best interest of the trust for which the state land is held.

(2) Land exchanged under this section shall not be used to reduce the publicly owned forestland base.

(3) The board shall determine that each land exchange is in the best interest of the trust for which the land is held prior to authorizing the land exchange.

(4)(a) During the biennium ending June 30, 2013, for the purposes of maintaining working farm and forest landscapes or acquiring natural resource lands at risk of development, the department, with approval of the board of natural resources, may exchange any state land and any timber thereon for any land and proceeds of equal value, when it can be demonstrated that the trust fiduciary obligations can be better fulfilled after an exchange is completed. Proceeds may be in the form of cash or services in order to achieve the purposes established in this section. Any cash received as part of an exchange transaction shall be deposited in the resource management cost account to pay for administrative expenses incurred in carrying out an exchange transaction. These administrative expenses include road maintenance and abandonment expenses. The amount of proceeds received from the exchange partner may not exceed five percent of the total value of the exchange. The receipt of proceeds shall not change the character of the transaction from an exchange to a sale.

(b) During the biennium ending June 30, 2015, for the purposes of maintaining working farm and forest landscapes or acquiring natural resource lands at risk of development, the department, with approval of the board of natural resources, may exchange any state land and any timber thereon for any land and proceeds of equal value, when it can be demonstrated that the trust fiduciary obligations can be better fulfilled after an exchange is completed. Proceeds may be in the form of cash or services in order to achieve the purposes established in this section. Any cash received as part of an exchange transaction shall be deposited in the resource management cost account to pay for administrative expenses incurred in carrying out an exchange transaction. These administrative expenses include road maintenance and abandonment expenses. The amount of proceeds received from the exchange partner may not exceed five percent of the total value of the exchange. The receipt of proceeds shall not change the character of the transaction from an exchange to a sale.

(5) Prior to executing an exchange under this section, and in addition to the public notice requirements set forth in RCW 79.17.050, the department shall consult with legislative members, other state and federal agencies, local governments, tribes, local stakeholders, conservation groups, and any other interested parties to identify and address cultural resource issues and the potential of the state lands proposed for exchange to be used for open space, park, school, or critical habitat purposes. [2013 2nd sp.s. c 19 § 7034; 2012 2nd sp.s. c 2 § 6006; 2009 c 497 § 6024; 2008 c 328 § 6012. Prior: 2003 1st sp.s. c 25 § 939; 2003 c 334 § 452; 1987 c 113 § 1; 1983 c 261 § 1; 1973 1st ex.s. c 50 § 2; 1961 c 77 § 4; 1957 c 290 § 1. Formerly RCW 79.08.180.]

Effective date—2013 2nd sp.s. c 19: See note following RCW 43.34.080.

Effective date—2012 2nd sp.s. c 2: See note following RCW 43.155.050.

Effective date—2009 c 497: See note following RCW 28B.15.210.

Part headings not law—Severability—Effective date—2008 c 328: See notes following RCW 43.155.050.

Intent—2003 c 334: See note following RCW 79.02.010.

Exchange to block up holdings: RCW 79.17.020, 79.17.060.

Additional notes found at www.leg.wa.gov

79.17.020 Exchange of lands to consolidate and block up holdings or obtain lands having commercial recreational leasing potential—Consultation with interested parties. (1) The board of county commissioners of any county and/or the mayor and city council or city commission of any city or town and/or the board shall have authority to exchange, each with the other, or with the federal forest service, the federal government or any proper agency thereof and/or with any private landowner, county land of any character, land owned by municipalities of any character, and state forestland owned by the state under the jurisdiction of the department, for real property of equal value for the purpose of consolidating and blocking up the respective landholdings of any county, municipality, the federal government, or the state of Washington or for the purpose of obtaining lands having commercial recreational leasing potential.

(2)(a) During the biennium ending June 30, 2013, for the purposes of maintaining working farm and forest landscapes or acquiring natural resource lands at risk of development, the department, with approval of the board of natural resources, may exchange any state land and any timber thereon for any land and proceeds of equal value, when it can be demonstrated that the trust fiduciary obligations can be better fulfilled after an exchange is completed. Proceeds may be in the form of cash or services in order to achieve the purposes established in this section. Any cash received as part of an exchange transaction shall be deposited in the forest development account to pay for administrative expenses incurred in carrying out an exchange transaction. These administrative expenses include road maintenance and abandonment expenses. The amount of proceeds received from the exchange partner may not exceed five percent of the total value of the exchange. The receipt of proceeds shall not change the character of the transaction from an exchange to a sale.

(b) During the biennium ending June 30, 2015, for the purposes of maintaining working farm and forest landscapes or acquiring natural resource lands at risk of development, the department, with approval of the board of natural resources, may exchange any state land and any timber thereon for any land and proceeds of equal value, when it can be demonstrated that the trust fiduciary obligations can be better fulfilled after an exchange is completed. Proceeds may be in the form of cash or services in order to achieve the purposes established in this section. Any cash received as part of an exchange transaction shall be deposited in the forest development account to pay for administrative expenses incurred in carrying out an exchange transaction. These administrative expenses include road maintenance and abandonment expenses. The amount of proceeds received from the exchange partner may not exceed five percent of the total value of the exchange. The receipt of proceeds shall not change the character of the transaction from an exchange to a sale.

(3) Prior to executing an exchange under this section, and in addition to the public notice requirements set forth in RCW 79.17.050, the department shall consult with legislative

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members, other state and federal agencies, local governments, tribes, local stakeholders, conservation groups, and any other interested parties to identify and address cultural resource issues, and the potential of the state lands proposed for exchange to be used for open space, park, school, or critical habitat purposes. [2013 2nd sp.s. c 19 § 7035; 2012 2nd sp.s. c 2 § 6007; 2009 c 497 § 6025; 2008 c 328 § 6013. Prior: 2003 1st sp.s. c 25 § 937; 2003 c 334 § 209; 1973 1st ex.s. c 50 § 1; 1961 c 77 § 1; 1937 c 77 § 1; RRS § 5812-3e. Formerly RCW 76.12.050.]

Effective date—2013 2nd sp.s. c 19: See note following RCW 43.34.080.

Effective date—2012 2nd sp.s. c 2: See note following RCW 43.155.050.

Effective date—2009 c 497: See note following RCW 28B.15.210.

Part headings not law—Severability—Effective date—2008 c 328: See notes following RCW 43.155.050.

Intent—2003 c 334: See note following RCW 79.02.010.

Additional notes found at www.leg.wa.gov

79.17.030 University demonstration forest and experiment station. For the purpose of securing an area suitable for a demonstration forest and forest experiment station for the University of Washington authority is hereby granted the board of regents of the University of Washington and the department with the approval of the board, acting with the advice and approval of the attorney general, to exchange all or any portion of the granted lands of the University of Washington assigned for the support of said university by section 9 of chapter 122 of the act of March 14, 1893, enacted by the legislature of Washington, being entitled, "An act providing for the location, construction and maintenance of the University of Washington, and making an appropriation therefor, and declaring an emergency," for all or any portion of such lands as may be acquired by the state under and by virtue of chapter 102, Laws of 1913, being: "An act relating to lands granted to the state for common schools and for educational, penal, reformatory, charitable, capitol buildings and other purposes providing for the completion of such grants and the relinquishment of certain granted lands; and making an appropriation," approved March 18, 1913, by exchange with the United States in the Pilchuck-Sultan-Wallace watersheds included within the present boundaries of the Snoqualmie national forest. The board of regents and department with the advice and approval required by this section are hereby authorized to execute such agreements, writings, or relinquishments as are necessary or proper for the purpose of carrying said exchange into effect and such agreements or other writings to be executed in duplicate, one to be filed with the department and one to be delivered to the board of regents. The exchange shall be made upon the basis of equal values to be determined by careful valuation of the areas to be exchanged. [2003 c 334 § 446; 1917 c 66 § 1; RRS § 7848. Formerly RCW 79.08.070.]

Reviser's note: 1893 c 122 § 9 referred to herein reads as follows: "That 100,000 acres of the lands granted by section 17 of the enabling act, approved February 22, 1889, for state, charitable, educational, penal and reformatory institutions are hereby assigned for the support of the University of Washington."

Intent—2003 c 334: See note following RCW 79.02.010.

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79.17.040 Exchange of property acquired as administrative sites—Purposes. The department may exchange surplus real property previously acquired by the department as administrative sites. The property may be exchanged for any public or private real property of equal value, to preserve archeological sites on trust lands, to acquire land to be held in natural preserves, to maintain habitats for endangered species, or to acquire or enhance sites to be dedicated for recreational purposes. [2003 c 334 § 453; 1979 c 24 § 1. Formerly RCW 79.08.250.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.17.050 Public notice—News release—Hearing. Before a proposed exchange is presented to the board involving an exchange of any lands under the administrative control of the department, the department shall hold a public hearing on the proposal in the county where the state-owned land or the greatest proportion thereof is located. Ten days but not more than twenty-five days prior to such hearing, the department shall publish a paid public notice of reasonable size in display advertising form, setting forth the date, time, and place of the hearing, at least once in one or more daily newspapers of general circulation in the county and at least once in one or more weekly newspapers circulated in the area where the state-owned land is located. A news release pertaining to the hearing shall be disseminated among printed and electronic media in the area where the state-owned land is located. The public notice and news release also shall identify lands involved in the proposed exchange and describe the purposes of the exchange and proposed use of the lands involved. A summary of the testimony presented at the hearings shall be prepared for the board's consideration when reviewing the department's exchange proposal. If there is a failure to substantially comply with the procedures set forth in this section, then the exchange agreement shall be subject to being declared invalid by a court. Any such suit must be brought within one year from the date of the exchange agreement. [2003 c 334 § 445; 1979 c 54 § 1; 1975 1st ex.s. c 107 § 2. Formerly RCW 79.08.015.]

Intent—2003 c 334: See note following RCW 79.02.010.

Exchange of state land by parks and recreation commission, procedure: RCW 79A.05.180.

79.17.060 Exchange of lands to consolidate and block up holdings—Agreements and deeds by commissioner. The commissioner shall, with the advice and approval of the attorney general, execute such agreements, writings, or relinquishments and certify to the governor such deeds as are necessary or proper to complete an exchange. [2003 c 334 § 210; 1961 c 77 § 2; 1937 c 77 § 2; RRS § 5812-3f. Formerly RCW 76.12.060.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.17.070 Exchange of lands to consolidate and block up holdings—Lands acquired are subject to same laws and administered for same fund as lands exchanged. Lands acquired by the state of Washington as the result of any exchange shall be held and administered for the benefit of the same fund and subject to the same laws as were the lands exchanged therefor. [2003 c 334 § 211; 1961 c 77 § 3. Formerly RCW 76.12.065.]

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Intent—2003 c 334: See note following RCW 79.02.010.

PART 2
PURCHASE OR LEASE OF LAND
BY SCHOOL DISTRICTS AND
INSTITUTIONS OF HIGHER EDUCATION

79.17.100 Application by school district. Except as otherwise provided in RCW 79.17.110, upon the application of a school district or any institution of higher education for the purchase or lease of lands granted to the state by the United States, the department may offer such land for sale or lease to such school district or institution of higher education in such acreage as it may determine, consideration being given upon application of a school district to school site criteria established by the superintendent of public instruction. However, in the event the department thereafter proposes to offer such land for sale or lease at public auction, such school district or institution of higher education shall have a preference right for six months from notice of such proposal to purchase or lease such land at the appraised value determined by the board. [2006 c 263 § 333; 2003 c 334 § 322.]

Findings—Purpose—Part headings not law—2006 c 263: See notes following RCW 28A.150.230.

Intent—2003 c 334: See note following RCW 79.02.010.

79.17.110 School districts—Purchase of leased lands with improvements. Notwithstanding the provisions of RCW 79.11.010 or any other provision of law, any school district or institution of higher education leasing land granted to the state by the United States and on which land such district or institution has placed improvements as defined in RCW 79.02.010 shall be afforded the opportunity by the department at any time to purchase such land, excepting land over which the department retains management responsibilities, for the purposes of schoolhouse construction and/or necessary supporting facilities or structures at the appraised value thereof less the value that any improvements thereon added to the value of the land itself at the time of the sale thereof. [2003 c 334 § 437; 1985 c 200 § 1; 1982 1st ex.s. c 31 § 1; 1980 c 115 § 8; 1971 ex.s. c 200 § 2. Formerly RCW 79.01.770.]

Intent—2003 c 334: See note following RCW 79.02.010.

Additional notes found at www.leg.wa.gov

79.17.120 School districts—Purchases from school construction fund. The purchases authorized under RCW 79.17.110 shall be classified as for the construction of common *A.525.200school [common school] plant facilities under RCW 28A.525.010 through 28A.525.200 and shall be payable out of the common school construction fund as otherwise provided for in RCW 28A.515.320 if the school district involved was under emergency school construction classification as established by the superintendent of public instruction at any time during the period of its lease of state lands. [2015 1st sp.s. c 4 § 52; 2006 c 263 § 334; 2003 c 334 § 438; 1990 c 33 § 596; 1971 ex.s. c 200 § 3. Formerly RCW 79.01.774.]

***Reviser's note:** The added text "A.525.200" was a typographical error.

Findings—Purpose—Part headings not law—2006 c 263: See notes following RCW 28A.150.230.

Intent—2003 c 334: See note following RCW 79.02.010.

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

Additional notes found at www.leg.wa.gov

79.17.130 School districts—Extension of contract period. In those cases where the purchases, as authorized by RCW 79.17.110 and 79.17.120, have been made on a ten year contract, the board, if it deems it in the best interest of the state, may extend the term of any such contract to not to exceed an additional ten years under such terms and conditions as the board may determine. [2003 c 334 § 439; 1971 ex.s. c 200 § 4. Formerly RCW 79.01.778.]

Intent—2003 c 334: See note following RCW 79.02.010.

Additional notes found at www.leg.wa.gov

79.17.140 School districts—Reversion, when. Notwithstanding any other provisions of law, annually the board shall determine if lands purchased or leased by school districts or institutions of higher education under the provisions of RCW *79.11.010 and 79.17.110 are being used for school sites. If such land has not been used for school sites for a period of seven years the title to such land shall revert to the original trust for which it was held. [2003 c 334 § 440; 1971 ex.s. c 200 § 5. Formerly RCW 79.01.780.]

***Reviser's note:** The reference to RCW 79.11.010 appears to be erroneous. A reference to RCW 79.17.100 was apparently intended.

Intent—2003 c 334: See note following RCW 79.02.010.

Additional notes found at www.leg.wa.gov

PART 3 LAND TRANSFER

79.17.200 Real property—Transfer or disposal without public auction. (1) For the purposes of this section, "public agency" means any agency, political subdivision, or unit of local government of this state including, but not limited to, municipal corporations, quasi-municipal corporations, special purpose districts, and local service districts; any agency of the state government; any agency of the United States; and any Indian tribe recognized as such by the federal government.

(2) With the approval of the board of natural resources, the department of natural resources may directly transfer or dispose of real property, without public auction, in the following circumstances:

- (a) Transfers in lieu of condemnations;
- (b) Transfers to public agencies; and
- (c) Transfers to resolve trespass and property ownership disputes.

(3) Real property to be transferred or disposed of under this section shall be transferred or disposed of only after appraisal and for at least fair market value, and only if such transaction is in the best interest of the state or affected trust. [1992 c 167 § 2. Formerly RCW 79.01.009.]

79.17.210 Real property asset base—Natural resources real property replacement account. (1) The legislature finds that the department has a need to maintain the real property asset base it manages and needs an accounting

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mechanism to complete transactions without reducing the real property asset base.

(2) The natural resources real property replacement account is created in the state treasury. This account shall consist of funds transferred or paid for the disposal or transfer of real property by the department under RCW 79.17.200 and the transfer of state lands or state forestlands into community forest trust lands under RCW 79.155.040. The funds in this account shall be used solely for the acquisition of replacement real property and may be spent only when, and as, authorized by legislative appropriation. During the 2013-2015 fiscal biennium, funds in the account may also be appropriated for the land purchase in section 3245, chapter 19, Laws of 2013 2nd sp. sess. under the provisions of section 3245, chapter 19, Laws of 2013 2nd sp. sess. and chapter 11, Laws of 2013 2nd sp. sess. [2013 2nd sp.s. c 19 § 7041; 2011 c 216 § 13; 2003 c 334 § 118; 1992 c 167 § 1. Formerly RCW 43.30.265.]

Effective date—2013 2nd sp.s. c 19: See note following RCW 43.34.080.

Intent—2003 c 334: See note following RCW 79.02.010.

79.17.220 Notification requirements. Actions under this chapter are subject to the notification requirements of RCW 43.17.400. [2007 c 62 § 4.]

Finding—Intent—Severability—2007 c 62: See notes following RCW 43.17.400.

Chapter 79.19 RCW LAND BANK

Sections

79.19.010	Legislative finding.
79.19.020	Land bank—Created—Purchase of property authorized.
79.19.030	Exchange or sale of property held in land bank.
79.19.040	Management of property held in land bank.
79.19.050	Appropriation of funds from forest development account or resource management cost account—Use of income.
79.19.060	Reimbursement for costs and expenses.
79.19.080	Identification of trust lands expected to convert to commercial, residential, or industrial uses—Hearing—Notice—Designation as urban lands.
79.19.090	Exchange of urban land for land bank land—Notification of affected public agencies.
79.19.100	Urban lands—Cooperative planning, development.
79.19.110	Lands for commercial, industrial, or residential use—Payment of in-lieu of property tax—Distribution.
79.19.901	Effective date—1984 c 222.

79.19.010 Legislative finding. The legislature finds that from time to time it may be desirable for the department to sell state lands which have low potential for natural resource management or low income-generating potential or which, because of geographic location or other factors, are inefficient for the department to manage. However, it is also important to acquire lands for long-term management to replace those sold so that the publicly owned land base will not be depleted and the publicly owned forestland base will not be reduced. The purpose of this chapter is to provide a means to facilitate such sales and purchases so that the diversity of public uses on the trust lands will be maintained. In making the determinations, the department shall comply with local land use plans and applicable growth management principles. [2003 c 334 § 525; 1984 c 222 § 1; 1977 ex.s. c 109 § 1. Formerly RCW 79.66.010.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.19.020 Land bank—Created—Purchase of property authorized. The department, with the approval of the board, may purchase property at fair market value to be held in a land bank, which is hereby created within the department. Property so purchased shall be property which would be desirable for addition to the public lands of the state because of the potential for natural resource or income production of the property. The total acreage held in the land bank shall not exceed one thousand five hundred acres. [2003 c 334 § 526; 1984 c 222 § 2; 1977 ex.s. c 109 § 2. Formerly RCW 79.66.020.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.19.030 Exchange or sale of property held in land bank. The department, with the approval of the board, may:

(1) Exchange property held in the land bank for any other lands of equal value administered by the department, including any lands held in trust.

(2) Exchange property held in the land bank for property of equal or greater value which is owned publicly or privately, and which has greater potential for natural resource or income production or which could be more efficiently managed by the department, however, no power of eminent domain is hereby granted to the department; and

(3) Sell property held in the land bank in the manner provided by law for the sale of state lands without any requirement of platting and to use the proceeds to acquire property for the land bank which has greater potential for natural resource or income production or which would be more efficiently managed by the department. [2004 c 199 § 215; 2003 c 334 § 527; 1984 c 222 § 3; 1977 ex.s. c 109 § 3. Formerly RCW 79.66.030.]

Intent—2003 c 334: See note following RCW 79.02.010.

Additional notes found at www.leg.wa.gov

79.19.040 Management of property held in land bank. The department may manage the property held in the land bank as provided in RCW 79.10.030. However, the properties or interest in such properties shall not be withdrawn, exchanged, transferred, or sold without first obtaining payment of the fair market value of the property or interest therein or obtaining property of equal value in exchange. [2003 c 334 § 528; 1984 c 222 § 4; 1977 ex.s. c 109 § 4. Formerly RCW 79.66.040.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.19.050 Appropriation of funds from forest development account or resource management cost account—Use of income. The legislature may authorize appropriation of funds from the forest development account or the resource management cost account for the purposes of this chapter. Income from the sale or management of property in the land bank shall be returned as a recovered expense to the forest development account or the resource management cost account and may be used to acquire property under RCW 79.19.020. [2003 c 334 § 529; 1984 c 222 § 5; 1977 ex.s. c 109 § 5. Formerly RCW 79.66.050.]

Intent—2003 c 334: See note following RCW 79.02.010.

Forest development account: RCW 79.64.100.

Resource management cost account: RCW 79.64.020.

79.19.060 Reimbursement for costs and expenses. The department shall be reimbursed for actual costs and expenses incurred in managing and administering the land bank program under this chapter from the forest development account or the resource management cost account in an amount not to exceed the limits provided in RCW 79.64.040. Reimbursement from proceeds of sales shall be limited to marketing costs provided in RCW 79.10.030. [2003 c 334 § 530; 1984 c 222 § 6. Formerly RCW 79.66.060.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.19.080 Identification of trust lands expected to convert to commercial, residential, or industrial uses—Hearing—Notice—Designation as urban lands. Periodically, at intervals to be determined by the board, the department shall identify trust lands which are expected to convert to commercial, residential, or industrial uses within ten years. The department shall adhere to existing local comprehensive plans, zoning classifications, and duly adopted local policies when making this identification and determining the fair market value of the property.

The department shall hold a public hearing on the proposal in the county where the state land is located. At least fifteen days but not more than thirty days before the hearing, the department shall publish a public notice of reasonable size in display advertising form, setting forth the date, time, and place of the hearing, at least once in one or more daily newspapers of general circulation in the county and at least once in one or more weekly newspapers circulated in the area where the trust land is located. At the same time that the published notice is given, the department shall give written notice of the hearings to the departments of fish and wildlife and enterprise services, to the parks and recreation commission, and to the county, city, or town in which the property is situated. The department shall disseminate a news release pertaining to the hearing among printed and electronic media in the area where the trust land is located. The public notice and news release also shall identify trust lands in the area which are expected to convert to commercial, residential, or industrial uses within ten years.

A summary of the testimony presented at the hearings shall be prepared for the board's consideration. The board shall designate trust lands which are expected to convert to commercial, residential, or industrial uses as urban land. Descriptions of lands designated by the board shall be made available to the county and city or town in which the land is situated and for public inspection and copying at the department's administrative office in Olympia, Washington and at each area office.

The hearing and notice requirements of this section apply to those trust lands which have been identified by the department prior to July 1, 1984, as being expected to convert to commercial, residential, or industrial uses within the next ten years, and which have not been sold or exchanged prior to July 1, 1984. [2015 c 225 § 116; 2003 c 334 § 531; 1994 c 264 § 60; 1988 c 36 § 53; 1984 c 222 § 8. Formerly RCW 79.66.080.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.19.090 Exchange of urban land for land bank land—Notification of affected public agencies. If the department determines to exchange urban land for land bank land, public agencies defined in RCW 79.17.200 that may benefit from owning the property shall be notified in writing of the determination. The public agencies have sixty days from the date of notice by the department to submit an application to purchase the land and shall be afforded an opportunity of up to one year, as determined by the board, to purchase the land from the land bank at fair market value directly without public auction as authorized under RCW 79.17.200. The board, if it deems it in the best interest of the state, may extend the period under terms and conditions as the board determines. If competing applications are received from governmental entities, the board shall select the application which results in the highest monetary value. [2003 c 334 § 532; 1993 c 265 § 1; 1984 c 222 § 9. Formerly RCW 79.66.090.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.19.100 Urban lands—Cooperative planning, development. The purpose of this section is to foster cooperative planning among the state, the department, and local governments as to state-owned lands under the department's jurisdiction situated in urban areas.

At least once a year, prior to finalizing the department's urban land leasing action plan, the department and applicable local governments shall meet to review state and local plans and to coordinate planning in areas where urban lands are located. The department and local governments may enter into formal agreements for the purpose of planning the appropriate development of these state-owned urban lands.

The department shall contact those local governments which have planning, zoning, and land-use regulation authority over areas where urban lands under its jurisdiction are located so as to facilitate these annual or other meetings.

"Urban lands" as used in this section means those areas which within ten years are expected to be intensively used for locations of buildings or structures, and usually have urban governmental services.

"Local government" as used in this section means counties, cities, and towns having planning and land-use regulation authority. [2003 c 334 § 441; 1979 ex.s. c 56 § 1. Formerly RCW 79.01.784.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.19.110 Lands for commercial, industrial, or residential use—Payment of in-lieu of property tax—Distribution. Lands purchased by the department for commercial, industrial, or residential use shall be subject to payment of in-lieu of real property tax for the period in which they are held in the land bank. The in-lieu payment shall be equal to the property taxes which would otherwise be paid if the land remained subject to the tax. Payment shall be made at the end of the calendar year to the county in which the land is located. If a parcel is not held in the land bank for the entire year, the in-lieu payment shall be reduced proportionately to reflect only that period of time in which the land was held in the land bank. The county treasurer shall distribute the in-lieu payments proportionately in accordance with RCW 84.56.230 as though such moneys were receipts from ad valorem property

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taxes. [2003 c 334 § 533; 1984 c 222 § 10. Formerly RCW 79.66.100.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.19.901 Effective date—1984 c 222. 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, 1984. [1984 c 222 § 16. Formerly RCW 79.66.901.]

Chapter 79.22 RCW

ACQUISITION, MANAGEMENT, AND DISPOSITION OF STATE FORESTLANDS

Sections

PART 1 GENERAL PROVISIONS

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79.22.020	Acquisition of forestland—Requisites.
79.22.030	Record of proceedings, etc.
79.22.040	Deed of county land to department.
79.22.050	Sales and leases of timber, timberland, or products thereon.
79.22.060	Transfer, disposal of lands without public auction—Requirements.
79.22.070	Forest and land management—Rules—Penalty.
79.22.080	Utility bonds.
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79.22.100	Reacquisition of lands from federal government.
79.22.110	Reconveyance to county in certain cases.
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79.22.130	Notification requirements.
79.22.140	State forestland pool—Authorization—Participation.
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PART 2 TRANSFERS OF STATE FORESTLANDS FOR PUBLIC PARK PURPOSES

79.22.300	Procedure—Reconveyance back when use ceases.
79.22.310	Timber resource management.
79.22.320	Lands transferred by deed.
79.22.330	Provisions cumulative and nonexclusive.

PART 1 GENERAL PROVISIONS

79.22.010 Powers of department—Acquisition of land for reforestation—Taxes, cancellation. The department has the power to accept gifts and bequests of money or other property, made in its own name, or made in the name of the state, to promote generally the interests of reforestation or for a specific named purpose in connection with reforestation, and to acquire in the name of the state, by purchase or gift, any lands which by reason of their location, topography, or geological formation, are chiefly valuable for purpose of developing and growing timber, and to designate such lands and any lands of the same character belonging to the state as state forestlands; and may acquire by gift or purchase any lands of the same character. The department has the power to seed, plant, and develop forests on any lands, purchased, acquired, or designated by it as state forestlands, and shall furnish such care and fire protection for such lands as it shall deem advisable. Upon approval of the board of county commissioners of the county in which the land is located such gift or donation of land may be accepted subject to delinquent general taxes thereon, and upon such acceptance of such gift or donation subject to such taxes, the department shall record

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the deed of conveyance thereof and file with the assessor and treasurer of the county wherein such land is situated, written notice of acquisition of such land, and that all delinquent general taxes thereon, except state taxes, shall be canceled, and the county treasurer shall thereupon proceed to make such cancellation in the records of the county treasurer. Thereafter, such lands shall be held in trust, protected, managed, and administered upon, and the proceeds therefrom disposed of, under RCW 79.22.040. [2003 c 334 § 205; 1988 c 128 § 23; 1937 c 172 § 1; 1929 c 117 § 1; 1923 c 154 § 3; RRS § 5812-3. Prior: 1921 c 169 § 1, part. Formerly RCW 76.12.020.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.22.020 Acquisition of forestland—Requisites. The department shall take such steps as it deems advisable for locating and acquiring lands suitable for state forests and reforestation. Acquisitions made pursuant to this section shall be at no more than fair market value. No lands shall ever be acquired by the department except upon the approval of the title by the attorney general and on a conveyance being made to the state of Washington by good and sufficient deed. No forestlands shall be designated, purchased, or acquired by the department unless the area so designated or the area to be acquired shall, in the judgment of the department, be of sufficient acreage and so located that it can be economically administered for forest development purposes. [2000 c 148 § 1; 1988 c 128 § 28; 1923 c 154 § 4; RRS § 5812-4. Prior: 1921 c 169 § 1, part. Formerly RCW 76.12.080.]

79.22.030 Record of proceedings, etc. The department shall keep in its office in a permanent bound volume a record of all forestlands acquired by the state and any lands owned by the state and designated as such by the department. The record shall show the date and from whom said lands were acquired; amount and method of payment therefor; the forest within which said lands are embraced; the legal description of such lands; the amount of money expended, if any, and the date thereof, for seeding, planting, maintenance, or care for such lands; the amount, date, and source of any income derived from such land; and such other information and data as may be required by the department. [2003 c 334 § 223; 1988 c 128 § 34; 1923 c 154 § 9; RRS § 5812-9. Formerly RCW 76.12.155, 43.12.140.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.22.040 Deed of county land to department. If any land acquired by a county through foreclosure of tax liens, or otherwise, comes within the classification of land described in RCW 79.22.010 and can be used as state forestland and if the department deems such land necessary for the purposes of this chapter, the county shall, upon demand by the department, deed such land to the department and the land shall become a part of the state forestlands.

Such land shall be held in trust and administered and protected by the department in the same manner as other state forestlands.

In the event that the department sells logs using the contract harvesting process described in RCW 79.15.500 through 79.15.530, the moneys derived subject to this section are the net proceeds from the contract harvesting sale. [2003 c 334 § 206; 2003 c 313 § 6; 1997 c 370 § 1; 1991 c 363 § 151; 1988

c 128 § 24; 1981 2nd ex.s. c 4 § 4; 1971 ex.s. c 224 § 1; 1969 c 110 § 1; 1957 c 167 § 1; 1951 c 91 § 1; 1935 c 126 § 1; 1927 c 288 § 3, part (adding a new section to 1923 c 154 § 3b); RRS § 5812-36. Formerly RCW 76.12.030.]

Reviser's note: This section was amended by 2003 c 313 § 6 and by 2003 c 334 § 206, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Intent—2003 c 334: See note following RCW 79.02.010.

Findings—Severability—2003 c 313: See notes following RCW 79.15.500.

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

Additional notes found at www.leg.wa.gov

79.22.050 Sales and leases of timber, timberland, or products thereon. Except as provided in RCW 79.22.060, all land, acquired or designated by the department as state forestland, shall be forever reserved from sale, but the valuable materials thereon may be sold or the land may be leased in the same manner and for the same purposes as is authorized for state lands if the department finds such sale or lease to be in the best interests of the state and approves the terms and conditions thereof.

In the event that the department sells logs using the contract harvesting process described in RCW 79.15.500 through 79.15.530, the moneys received subject to this section are the net proceeds from the contract harvesting sale. [2003 c 334 § 220; 2003 c 313 § 7; 2000 c 148 § 2; 1998 c 71 § 2. Prior: 1988 c 128 § 32; 1988 c 70 § 1; 1980 c 154 § 11; 1971 ex.s. c 123 § 4; 1955 c 116 § 1; 1953 c 21 § 1; 1923 c 154 § 7; RRS § 5812-7. Formerly RCW 76.12.120.]

Reviser's note: This section was amended by 2003 c 313 § 7 and by 2003 c 334 § 220, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Intent—2003 c 334: See note following RCW 79.02.010.

Findings—Severability—2003 c 313: See notes following RCW 79.15.500.

Purpose—Effective dates—Savings—Disposition of certain funds—Severability—1980 c 154: See notes following chapter 82.45 RCW digest.

79.22.060 Transfer, disposal of lands without public auction—Requirements. (1) With the approval of the board, the department may directly transfer or dispose of state forestlands without public auction, if the lands:

- (a) Consist of ten contiguous acres or less;
- (b) Have a value of twenty-five thousand dollars or less;

or

(c) Are located in a county with a population of twenty-five thousand or less and are encumbered with timber harvest deferrals, associated with wildlife species listed under the federal endangered species act, greater than thirty years in length.

(2) Disposal under this section may only occur in the following circumstances:

- (a) Transfers in lieu of condemnation;
- (b) Transfers to resolve trespass and property ownership disputes; or
- (c) In counties with a population of twenty-five thousand or less, transfers to public agencies.

(3) Real property to be transferred or disposed of under this section shall be transferred or disposed of only after appraisal and for at least fair market value, and only if the transaction is in the best interest of the state or affected trust. Valuable materials attached to lands transferred to public agencies under subsection (2)(c) of this section must be appraised at the fair market value without consideration of management or regulatory encumbrances associated with wildlife species listed under the federal endangered species act.

(4)(a) Except as provided in (b) of this subsection, the proceeds from real property transferred or disposed of under this section shall be deposited into the parkland trust revolving fund and be solely used to buy replacement land within the same county as the property transferred or disposed.

(b) The proceeds from real property transferred or disposed of under subsections (1)(c) and (2)(c) of this section for the purpose of participating in the state forestland pool created under RCW 79.22.140 must be deposited into the parkland trust revolving fund and used to buy replacement forestland for the benefit of that county as provided in RCW 79.64.110 and located within any county participating in the land pool.

(c) Except as otherwise provided in this subsection, in counties with a population of twenty-five thousand or less, the portion of the proceeds associated with valuable materials on state forestland transferred under subsections (1)(c) and (2)(c) of this section must be distributed as provided in RCW 79.64.110. If requested in writing by the legislative authority of a county participating in the state forestland pool created under RCW 79.22.140, the portion of the proceeds associated with valuable materials on state forestland transferred under subsections (1)(c) and (2)(c) of this section must be deposited in the parkland trust revolving fund and used to buy replacement forestland for the benefit of that county as provided in RCW 79.64.110 and located within any county participating in the land pool. [2012 c 166 § 7; 2009 c 354 § 7; 2003 c 334 § 221; 2000 c 148 § 3. Formerly RCW 76.12.125.]

Findings—Intent—2012 c 166: See note following RCW 79.02.010.

Finding—Intent—2009 c 354: See note following RCW 84.33.140.

Intent—2003 c 334: See note following RCW 79.02.010.

79.22.070 Forest and land management—Rules—

Penalty. (1) State forestlands shall be logged, protected, and cared for in such manner as to ensure natural reforestation of such lands, and to that end the department shall have power, and it shall be its duty to adopt rules, and amendments thereto, governing logging operations on such areas, and to embody in any contract for the sale of timber on such areas, such conditions as it shall deem advisable, with respect to methods of logging, disposition of slashings, and debris, and protection and promotion of new forests. All such rules, or amendments thereto, shall be adopted by the department under chapter 34.05 RCW.

(2)(a) Except as provided in (b) of this subsection, any violation of any rule adopted by the department under the authority of this section is a gross misdemeanor.

(b) The department may specify by rule, when not inconsistent with applicable statutes, that violation of a specific rule is an infraction under chapter 7.84 RCW. [2003 c 334 § 222; 2003 c 53 § 369; 2000 c 11 § 10; 1988 c 128 § 33; 1987

(2016 Ed.)

c 380 § 17; 1927 c 288 § 3, part (adding a new section to 1923 c 154 § 3a); RRS § 5812-3a. Prior: 1921 c 169 § 2. Formerly RCW 76.12.140.]

Reviser's note: This section was amended by 2003 c 53 § 369 and by 2003 c 334 § 222, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Intent—2003 c 334: See note following RCW 79.02.010.

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Additional notes found at www.leg.wa.gov

79.22.080 Utility bonds. For the purpose of acquiring and paying for lands for state forests and reforestation as herein provided the department may issue utility bonds of the state of Washington as may hereafter be authorized by the legislature. The bonds shall be known as state forest utility bonds. The principal or interest of the bonds shall not be a general obligation of the state, but shall be payable only from the forest development account. The department may issue the bonds in exchange for lands selected by it in accordance with RCW 79.64.100 and this chapter, or may sell the bonds in such a manner as it deems advisable, and with the proceeds purchase and acquire such lands. Any of the bonds issued in exchange and payment for any particular tract of lands may be made a first and prior lien against the particular land for which they are exchanged, and upon failure to pay the bonds and interest thereon according to their terms, the lien of the bonds may be foreclosed by appropriate court action. [2003 c 334 § 217; 2000 c 11 § 8; 1988 c 128 § 29; 1937 c 104 § 1; 1923 c 154 § 5; RRS § 5812-5. Formerly RCW 76.12.090.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.22.090 Bonds—Purchase price of land limited—Retirement of bonds. For the purpose of acquiring, seeding, reforestation, and administering land for forests and of carrying out RCW 79.64.100 and the provisions of this chapter, the department is authorized to issue and dispose of utility bonds of the state of Washington in an amount not to exceed one hundred thousand dollars in principal during the biennium expiring March 31, 1951. However, no sum in excess of one dollar per acre shall ever be paid or allowed either in cash, bonds, or otherwise, for any lands suitable for forest growth, but devoid of such, nor shall any sum in excess of three dollars per acre be paid or allowed either in cash, bonds, or otherwise, for any lands adequately restocked with young growth.

Any utility bonds issued under the provisions of this section may be retired from time to time, whenever there is sufficient money in the forest development account, said bonds to be retired at the discretion of the department either in the order of issuance, or by first retiring bonds with the highest rate of interest. [2003 c 334 § 218; 2000 c 11 § 9; 1988 c 128 § 30; 1949 c 80 § 1; 1947 c 66 § 1; 1945 c 13 § 1; 1943 c 123 § 1; 1941 c 43 § 1; 1939 c 106 § 1; 1937 c 104 § 2; 1935 c 126 § 2; 1933 c 117 § 1; Rem. Supp. 1949 § 5812-11. Formerly RCW 76.12.100.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.22.100 Reacquisition of lands from federal government. Whenever any forestland which shall have been

acquired by any county through the foreclosure of tax liens, or otherwise, and which shall have been acquired by the federal government either from said county or from the state holding said lands in trust, and shall be available for reacquisition, the board and the board of county commissioners of any such county are authorized to enter into an agreement for the reacquisition of such lands as state forestlands in trust for such county. Such agreement shall provide for the price and manner of such reacquisition. The board is authorized to provide in such agreement for the advance of funds available to it for such purpose from the forest development account, all or any part of the price for such reacquisition so agreed upon, which advance shall be repaid at such time and in such manner as provided in the agreement, solely from any distribution to be made to said county under the provisions of RCW 79.22.040; that the title to said lands shall be retained by the state free from any trust until the state shall have been fully reimbursed for all funds advanced in connection with such reacquisition; and that in the event of the failure of the county to repay such advance in the manner provided, the said forestlands shall be retained by the state to be administered and/or disposed of in the same manner as other state forestlands free and clear of any trust interest therein by said county. Such county shall make provisions for the reimbursement of the various funds from any moneys derived from such lands so acquired, or any other county trust forest board lands which are distributable in a like manner, for any sums withheld from funds for other areas which would have been distributed thereto from time to time but for such agreement. [2003 c 334 § 208; 1959 c 87 § 1. Formerly RCW 76.12.035.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.22.110 Reconveyance to county in certain cases.

Whenever any county shall have acquired by tax foreclosure, or otherwise, lands within the classification of RCW 79.22.010 and shall have thereafter contracted to sell such lands to bona fide purchasers before the same may have been selected as forestlands by the department, and has heretofore deeded or shall hereafter deed because of inadvertence or oversight such lands to the state or to the department to be held under RCW 79.22.040 or any amendment thereof; the department upon being furnished with a certified copy of such contract of sale on file in such county and a certificate of the county treasurer showing said contract to be in good standing in every particular and that all due payments and taxes have been made thereon, and upon receipt of a certified copy of a resolution of the board of county commissioners of such county requesting the reconveyance to the county of such lands, is hereby authorized to reconvey such lands to such county by quitclaim deed executed by the department. Such reconveyance of lands hereafter so acquired shall be made within one year from the conveyance thereof to the state or department. [2003 c 334 § 212; 1988 c 128 § 27; 1941 c 84 § 1; Rem. Supp. 1941 § 5812-3g. Formerly RCW 76.12.070.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.22.120 Reconveyance to county of certain leased lands. If the board of natural resources determines that any forestlands deeded to the board or the state pursuant to this chapter, which are leased to any county for uses which have

as one permitted use a sanitary landfill and/or transfer station, are no longer appropriate for management by the board, the board may reconvey all of the lands included within any such lease to that county. Reconveyance shall be by quitclaim deed executed by the chair of the board. Upon execution of such deed, full legal and equitable title to such lands shall be vested in that county, and any leases on such lands shall terminate. A county that receives any such reconveyed lands shall indemnify and hold the state of Washington harmless from any liability or expense arising out of the reconveyed lands. [2013 c 23 § 259; 1991 c 10 § 1. Formerly RCW 76.12.067.]

79.22.130 Notification requirements. Actions under this chapter are subject to the notification requirements of RCW 43.17.400. [2007 c 62 § 5.]

Finding—Intent—Severability—2007 c 62: See notes following RCW 43.17.400.

79.22.140 State forestland pool—Authorization—Participation. (1) The board may create a state forestland pool, to be managed in accordance with this section, if the board determines that creation of a land pool is in the best interest of the state or affected trust, based on an analysis prepared by the department under RCW 79.22.150. The land pool may not contain more than ten thousand acres of state forestland at any one time.

(2) A county is eligible to participate in a land pool if the board determines it:

(a) Has a population of twenty-five thousand or less; and
 (b) Has existing state forestlands encumbered with timber harvest deferrals, associated with wildlife species listed under the federal endangered species act, more than thirty years in length.

(3) All lands in the land pool are state forestlands and must be managed in the same manner and with the same responsibilities as other state forestlands. Proceeds from the state forestland pool must, except as provided in RCW 79.64.110, be distributed under RCW 79.22.010 and 79.22.040.

(4)(a) A county may participate in the land pool only if it is eligible, as determined under subsection (2) of this section, and the board receives a written request to do so by the legislative authority of that county.

(b) The board shall end any further participation of a county in the land pool if it receives a written request to do so by the legislative authority of that county. If the board receives such a request, that county's interest in the land pool as a beneficiary remains, but no new contributions of asset value may be made to the land pool on behalf of the county and no new lands may be purchased in that county for the land pool.

(5)(a) If a land pool is created by the board, the department and the participating counties must develop a funding strategy for acquiring land to include in the land pool.

(b) The department and participating counties may pursue funding for the transfer of state forestland encumbered by long-term wildlife-related harvest deferrals within the participating counties into status as a natural resources conservation area under chapter 79.71 RCW, and use the value of the

transferred land to acquire working forestlands to include in the land pool.

(c) The department and participating counties may pursue other land acquisition funding strategies. [2012 c 166 § 3.]

Findings—Intent—2012 c 166: See note following RCW 79.02.010.

79.22.150 State forestland pool—Analysis. (1) Upon the request of the board in its consideration of creating a state forestland pool under RCW 79.22.140, the department must conduct an analysis that includes, at a minimum, the following elements:

(a) An evaluation of how the proposed land pool would benefit the requesting counties, including revenue predictability and long-term revenue projections;

(b) The development and proposal of a set of policy, administrative, and financial structures necessary for the department to establish the land pool, including a method to determine the percentage of revenue to be distributed to each county participating in the land pool that is based on each county's proportionate contribution of asset value to the land pool;

(c) An estimation of the administrative costs of creating and maintaining the land pool; and

(d) Any additional information requested by the board.

(2) The department may coordinate its analysis with affected counties or an association representing the affected counties. [2012 c 166 § 4.]

Findings—Intent—2012 c 166: See note following RCW 79.02.010.

PART 2
TRANSFERS OF STATE FORESTLANDS
FOR PUBLIC PARK PURPOSES

79.22.300 Procedure—Reconveyance back when use ceases. Whenever the board of county commissioners of any county shall determine that state forestlands, that were acquired from such county by the state pursuant to RCW 79.22.040 and that are under the administration of the department, are needed by the county for public park use in accordance with the county and the state outdoor recreation plans, the board of county commissioners may file an application with the board for the transfer of such state forestlands.

Upon the filing of an application by the board of county commissioners, the department shall cause notice of the impending transfer to be given in the manner provided by RCW 42.30.060. If the department determines that the proposed use is in accordance with the state outdoor recreation plan, it shall reconvey said state forestlands to the requesting county to have and to hold for so long as the state forestlands are developed, maintained, and used for the proposed public park purpose. This reconveyance may contain conditions to allow the department to coordinate the management of any adjacent public lands with the proposed park activity to encourage maximum multiple use management and may reserve rights-of-way needed to manage other public lands in the area. The application shall be denied if the department finds that the proposed use is not in accord with the state outdoor recreation plan. If the land is not, or ceases to be, used for public park purposes the land shall be conveyed back to the department upon request of the department. [2004 c 199

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§ 216; 2003 c 334 § 213; 1983 c 3 § 195; 1969 ex.s. c 47 § 1. Formerly RCW 76.12.072.]

Intent—2003 c 334: See note following RCW 79.02.010.

Additional notes found at www.leg.wa.gov

79.22.310 Timber resource management. The timber resources on any such state forestland transferred to the counties under RCW 79.22.300 shall be managed by the department to the extent that this is consistent with park purposes and meets with the approval of the board of county commissioners. Whenever the department does manage the timber resources of such lands, it will do so in accordance with the general statutes relative to the management of all other state forestlands. [2003 c 334 § 214; 1969 ex.s. c 47 § 2. Formerly RCW 76.12.073.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.22.320 Lands transferred by deed. Under provisions mutually agreeable to the board of county commissioners and the board, lands approved for transfer to a county for public park purposes under the provisions of RCW 79.22.300 shall be transferred to the county by deed. [2003 c 334 § 215; 1969 ex.s. c 47 § 3. Formerly RCW 76.12.074.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.22.330 Provisions cumulative and nonexclusive. The provisions of RCW 79.22.300 through 79.22.330 shall be cumulative and nonexclusive and shall not repeal any other related statutory procedure established by law. [2003 c 334 § 216; 1969 ex.s. c 47 § 4. Formerly RCW 76.12.075.]

Intent—2003 c 334: See note following RCW 79.02.010.

**Chapter 79.24 RCW
CAPITOL BUILDING LANDS**

Sections

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SYLVESTER PARK

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State capitol committee: Chapter 43.34 RCW.

GENERAL

79.24.010 Designation of lands—Sale, manner, consent of board. All lands granted to the state by the federal government for the purpose of erecting public buildings at the state capitol shall be known and designated as "Capitol Building Lands". None of such lands, nor the timber or other materials thereon, shall hereafter be sold without the consent of the board of natural resources and only in the manner as provided for public lands and materials thereon. [1959 c 257 § 42; 1909 c 69 § 2; RRS § 7898.]

79.24.020 Use of funds restricted. All funds arising from the sale of lands granted to the state of Washington for the purpose of erecting public buildings at the state capital shall be held intact for the purpose for which they were granted. Lands when selected and assigned to said grant shall not be transferred to any other grant, nor shall the moneys derived from said lands be applied to any other purpose than for the erection of buildings at the state capital. [1893 c 83 § 1; RRS § 7896.]

79.24.030 Employment of assistants—Payment of expenses. The board of natural resources and the department of natural resources may employ such cruisers, drafters, engineers, architects, or other assistants as may be necessary for the best interests of the state in carrying out the provisions of RCW 79.24.010 through 79.24.085, and all expenses incurred by the board and department, and all claims against the capitol building construction account shall be audited by the department and presented in vouchers to the state treasurer, who shall draw a warrant therefor against the capitol building construction account as herein provided or out of any appropriation made for such purpose. [2013 c 23 § 260; 1988 c 128 § 62; 1985 c 57 § 76; 1973 c 106 § 37; 1959 c 257 § 43; 1911 c 59 § 12; 1909 c 69 § 7; RRS § 7903.]

Additional notes found at www.leg.wa.gov

79.24.060 Disposition of proceeds of sale—Publication of notice of proposals or bids. The proceeds of such sale of capitol building lands, or the timber or other materials shall be paid into the capitol building construction account which is hereby established in the state treasury to be used as

in *this act provided. All contracts for the construction of capitol buildings shall be let after notice for proposals or bids have been advertised for at least four consecutive weeks in at least three newspapers of general circulation throughout the state. [1985 c 57 § 77; 1959 c 257 § 44; 1911 c 59 § 10; 1909 c 69 § 5; RRS § 7901.]

*Reviser's note: "This act" first appears in 1909 c 69 codified as RCW 79.24.010 and 79.24.030 through 79.24.085.

Additional notes found at www.leg.wa.gov

79.24.085 Disposition of money from sales. All sums of money received from sales shall be paid into the capitol building construction account in the state treasury, and are hereby appropriated for the purposes of *this act. [1985 c 57 § 78; 1959 c 257 § 46; 1909 c 69 § 8; RRS § 7904.]

*Reviser's note: For "this act," see note following RCW 79.24.060.

Additional notes found at www.leg.wa.gov

79.24.087 Capitol grant revenue to capitol building construction account. All revenues received from leases and sales of lands, timber and other products on the surface or beneath the surface of the lands granted to the state of Washington by the United States pursuant to an act of Congress approved February 22, 1889, for capitol building purposes, shall be paid into the "capitol building construction account". Available revenues in this account shall first be pledged to state capitol public and historic facilities as defined under RCW 79.24.710. [2005 c 330 § 7; 1923 c 12 § 1; RRS § 7921-1. Formerly RCW 43.34.060.]

PARKING FACILITIES

79.24.300 Parking facilities authorized—Rental. The state capitol committee may construct parking facilities for the state capitol adequate to provide parking space for automobiles, said parking facilities to be either of a single level, multiple level, or both, and to be either on one site or more than one site and located either on or in close proximity to the capitol grounds, though not necessarily contiguous thereto. The state capitol committee may select such lands as are necessary therefor and acquire them by purchase or condemnation. As an aid to such selection the committee may cause location, topographical, economic, traffic, and other surveys to be conducted, and for this purpose may utilize the services of existing state agencies, may employ personnel, or may contract for the services of any person, firm or corporation. In selecting the location and plans for the construction of the parking facilities the committee shall consider recommendations of the director of enterprise services.

Space in parking facilities may be rented to the officers and employees of the state on a monthly basis at a rental to be determined by the director of enterprise services. The state shall not sell gasoline, oil, or any other commodities or perform any services for any vehicles or equipment other than state equipment. [2015 c 225 § 117; 1977 c 75 § 90; 1965 c 129 § 1; 1955 c 293 § 1.]

79.24.310 Number and location of facilities. The state capitol committee may construct any two of the following three facilities: (1) A two story parking facility south of the transportation and public lands building in the existing park-

ing area; (2) multiple level but not to exceed three story parking facility adjacent to the new office building; (3) multiple level but not to exceed three story parking facility adjacent to the new office building. [1955 c 293 § 2.]

79.24.320 Appropriations—Parking facilities, laboratories. There is appropriated to the state capitol committee from the *capitol building construction fund for the fiscal biennium ending June 30, 1957, the sum of seven hundred thousand dollars for the purposes of RCW 79.24.300, 79.24.310 and 79.24.320. Of this sum five hundred thousand dollars is to be used for parking purposes as outlined above and the remaining two hundred thousand dollars of this sum are to be used to complete the fisheries and health laboratories in the new office building on the contingency that it is necessary for the fisheries and health departments to move to Olympia. [1955 c 293 § 3.]

*Reviser's note: Capitol building construction fund abolished and monies transferred to capitol building construction account: RCW 43.79.330 through 43.79.334.

79.24.330 Purchase of land for parking facilities authorized. For use in the construction thereon of parking facilities in close proximity to the capitol grounds, the state capitol committee is authorized to purchase, at a price not in excess of one hundred thousand dollars, the following real estate situated in the city of Olympia, Thurston county, state of Washington, and more particularly described as: Lots two, three, six, and seven, block eight, P.D. Moore's addition to the town of Olympia, according to the plat thereof recorded in volume 1 of plats, page 32, records of said county. [1957 c 257 § 1.]

79.24.340 Purchase of land for parking facilities authorized—Construction of one-level facility. After purchase of the said real estate the state capitol committee shall construct thereon one-level parking facilities suitable for as large a number of automobiles as may reasonably be accommodated thereon. [1957 c 257 § 2.]

SYLVESTER PARK

79.24.400 Sylvester Park—Grant authorized. The city of Olympia may grant to the state of Washington its right, title and interest in that public square situated therein and bounded by Capitol Way, Legion Way, Washington Street and East Seventh Street, and commonly known as Sylvester Park, and such conveyance shall in all respects supersede the terms and effect of any prior conveyance or agreement concerning this property. [1955 c 216 § 1.]

79.24.410 Sylvester Park—Subsurface parking facility. The state capitol committee may accept such grant on behalf of the state. Upon receipt from the city of Olympia of the conveyance authorized by RCW 79.24.400, the state capitol committee may lease the premises thereby conveyed, to any person, firm, or corporation for the purpose of constructing, operating and maintaining a garage and parking facility underneath the surface of said property.

The lease shall be for a term of not to exceed twenty-five years and by its terms shall require the lessee to restore and

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maintain the condition of the surface of the property so as to be available and suitable for use as a public park. The lease shall further provide that all improvements to the property shall become the property of the state upon termination of the lease, and may provide such further terms as the capitol committee may deem to be advantageous. [1955 c 216 § 2.]

ACCESS TO CAPITOL GROUNDS

79.24.450 Access to capitol grounds on described route authorized. The state capitol committee may construct a suitable access to the capitol grounds by way of fourteenth and fifteenth streets in the city of Olympia, and for the purpose may acquire, by purchase or condemnation, such lands along the said streets and between Capitol Way and Cherry Street in the city of Olympia, and construct thereon such improvements as the state capitol committee may deem proper for the purposes of such access. [1957 c 258 § 1.]

EAST CAPITOL SITE

79.24.500 Property described. The state capitol committee shall proceed as rapidly as their resources permit to acquire title to the following described property for development as state capitol grounds:

That area bounded as follows: Commencing at a point beginning at the southwest corner of Capitol Way and 15th Avenue and proceeding westerly to the present easterly boundary of the capitol grounds on the west; thence proceeding northerly along said easterly boundary of the capitol grounds; thence proceeding easterly along the boundary of the present capitol grounds to a point at the corner of Capitol Way and 14th Avenue; thence proceeding southerly to the point of beginning; also that area bounded by Capitol Way on the west, 11th Avenue on the north, Jefferson Street on the east, and 16th Avenue (Maple Park) on the south; also that area bounded by Jefferson Street on the west, 14th Avenue on the north, Cherry Street on the east and 14th Avenue (Interstate No. 5 access) on the south; also that area bounded by 14th Avenue (Interstate No. 5 access) on the north, the westerly boundary of the Oregon-Washington Railroad & Navigation Co. right-of-way on the east, 16th Avenue on the south, and Jefferson Street on the west; also that area bounded by 15th Avenue on the north, the westerly boundary of the Oregon-Washington Railroad & Navigation Co. right-of-way on the east, and 14th Avenue (Interstate No. 5 access) on the south and west; all in the city of Olympia, county of Thurston, state of Washington, or any such portion or portions of the above described areas as may be required for present or future expansion of the facilities of the state capitol. [1967 ex.s. c 43 § 1; 1961 c 167 § 1.]

79.24.510 Area designated as the east capitol site. The area described in RCW 79.24.500 shall be known as the east capitol site, and upon acquisition shall become part of the state capitol grounds. [1961 c 167 § 2.]

79.24.520 Acquisition of property authorized—Means—Other state agencies to assist committee in executing chapter. The state capitol committee may acquire such property by gift, exchange, purchase, option to purchase

chase, condemnation, or any other means of acquisition not expressly prohibited by law. All other state agencies shall aid and assist the state capitol committee in carrying out the provisions of RCW 79.24.500 through 79.24.600. [1961 c 167 § 3.]

79.24.530 Department of enterprise services to design and develop site and buildings—Approval of state capitol committee. The department of enterprise services shall develop, amend and modify an overall plan for the design and establishment of state capitol buildings and grounds on the east capitol site in accordance with current and prospective requisites of a state capitol befitting the state of Washington. The overall plan, amendments and modifications thereto shall be subject to the approval of the state capitol committee. [2015 c 225 § 118; 1961 c 167 § 4.]

79.24.540 State agencies may buy land and construct buildings thereon—Requirements. State agencies which are authorized by law to acquire land and construct buildings, whether from appropriated funds or from funds not subject to appropriation by the legislature, may buy land in the east capitol site and construct buildings thereon so long as the location, design and construction meet the requirements established by the department of enterprise services and approved by the state capitol committee. [2015 c 225 § 119; 1961 c 167 § 5.]

79.24.550 State buildings to be constructed only on capitol grounds—Exception. No state agency shall undertake construction of buildings in Thurston county except upon the state capitol grounds: PROVIDED, That the state capitol committee may authorize exceptions upon a finding by the state capitol committee that appropriate locations on the capitol grounds or east capitol site are unavailable. [1961 c 167 § 6.]

79.24.560 Department of enterprise services to rent, lease, or use properties. The department of enterprise services shall have the power to rent, lease, or otherwise use any of the properties acquired in the east capitol site. [2015 c 225 § 120; 1961 c 167 § 7.]

79.24.570 Use of proceeds from site. All moneys received by the department of enterprise services from the management of the east capitol site, excepting (1) funds otherwise dedicated prior to April 28, 1967, (2) parking and rental charges and fines which are required to be deposited in other accounts, and (3) reimbursements of service and other utility charges made to the department of enterprise services, shall be deposited in the capitol purchase and development account of the state general fund. [2015 c 225 § 121; 2000 c 11 § 24; 1969 ex.s. c 273 § 11; 1963 c 157 § 1; 1961 c 167 § 8.]

79.24.590 Use of private real estate and rights in site declared public use. The use of the private real estate, rights, and interests in the east capitol site is hereby declared to be a public use. [1961 c 167 § 10.]

79.24.600 Severability—1961 c 167. If any provision of RCW 79.24.500 through 79.24.590, or its application to any person or circumstance is held invalid, the remainder of RCW 79.24.500 through 79.24.590, or the application of the provision to other persons or circumstances is not affected. [1961 c 167 § 11.]

STATE BUILDINGS AND PARKING FACILITIES— 1969 ACT

79.24.650 Committee duties enumerated. The state capitol committee shall provide for the construction, remodeling, and furnishing of capitol office buildings, parking facilities, governor's mansion, and such other buildings and facilities as are determined by the state capitol committee to be necessary to provide space for the legislature by way of offices, committee rooms, hearing rooms, and work rooms, and to provide executive office space and housing for the governor, and to provide executive office space for other elective officials and such other state agencies as may be necessary, and to pay for all costs and expenses in issuing the bonds and to pay interest thereon during construction of the facilities for which the bonds were issued and six months thereafter. [1969 ex.s. c 272 § 1.]

STATE CAPITOL PUBLIC AND HISTORIC FACILITIES

79.24.700 Findings. The legislature finds that the historic facilities of the Washington state capitol are the most important public facilities in the state. They are a source of beauty and pride, a resource for celebrating our heritage and democratic ideals, and an exceptional educational resource. The public and historic facilities of the state capitol campus should be managed and maintained to the highest standards of excellence, model the best of historic preservation practice, and maximize opportunities for public access and enjoyment. The purpose of chapter 330, Laws of 2005 is to provide authority and direction for the care and stewardship of the public and historic facilities of the state capitol, to facilitate public access, use, and enjoyment of these assets, and to carefully preserve them for the benefit of future generations. [2005 c 330 § 1.]

79.24.710 Properties identified as "state capitol public and historic facilities." For the purposes of RCW 79.24.720, 79.24.730, 43.01.090, 43.19.500, and 79.24.087, "state capitol public and historic facilities" includes:

(1) The east, west and north capitol campus grounds, Sylvester park, Heritage park, Marathon park, Centennial park, the Deschutes river basin commonly known as Capitol lake, the interpretive center, Deschutes parkway, and the landscape, memorials, artwork, fountains, streets, sidewalks, lighting, and infrastructure in each of these areas not including state-owned aquatic lands in these areas managed by the department of natural resources under RCW 79.105.010;

(2) The public spaces and the historic interior and exterior elements of the following buildings: The visitor center, the Governor's mansion, the legislative building, the John L. O'Brien building, the Cherberg building, the Newhouse building, the Pritchard building, the temple of justice, the insurance building, the Dolliver building, capitol court, and

the old capitol buildings, including the historic state-owned furnishings and works of art commissioned for or original to these buildings; and

(3) Other facilities or elements of facilities as determined by the state capitol committee, in consultation with the department of enterprise services. [2015 c 225 § 123; 2005 c 330 § 2.]

79.24.720 Department of enterprise services' responsibilities. The department of enterprise services is responsible for the stewardship, preservation, operation, and maintenance of the public and historic facilities of the state capitol, subject to the policy direction of the state capitol committee and the guidance of the capitol campus design advisory committee. In administering this responsibility, the department shall:

(1) Apply the United States secretary of the interior's standards for the treatment of historic properties;

(2) Seek to balance the functional requirements of state government operations with public access and the long-term preservation needs of the properties themselves; and

(3) Consult with the capitol furnishings preservation committee, the state historic preservation officer, the state arts commission, and the state facilities accessibility advisory committee in fulfilling the responsibilities provided for in this section. [2015 c 225 § 124; 2005 c 330 § 3.]

79.24.730 Funding/grants for stewardship of state capitol public and historic facilities. (1) To provide for responsible stewardship of the state capitol public and historic facilities, funding for:

(a) Maintenance and operational needs shall be authorized in the state's omnibus appropriations act and funded by the enterprise services account as provided under RCW 43.19.500;

(b) Development and preservation needs shall be authorized in the state's capital budget. To the extent revenue is available, the capitol building construction account under RCW 79.24.087 shall fund capital budget needs. If capitol building construction account funds are not available, the state building construction account funds may be authorized for this purpose.

(2) The department of enterprise services may seek grants, gifts, or donations to support the stewardship of state capitol public and historic facilities. The department may: (a) Purchase historic state capitol furnishings or artifacts; or (b) sell historic state capitol furnishings and artifacts that have been designated as state surplus by the capitol furnishings preservation committee under RCW 27.48.040(6). Funds generated from grants, gifts, donations, or sales for omnibus appropriations act needs shall be deposited into the enterprise services account. Funds generated for capital budget needs shall be deposited into the capitol building construction account. [2015 c 225 § 125; 2005 c 330 § 4.]

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Chapter 79.36 RCW EASEMENTS OVER PUBLIC LANDS

Sections

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Diking district right-of-way: RCW 85.05.080.

Flood control district right-of-way: Chapter 86.09 RCW.

Reclamation district right-of-way: RCW 89.30.223.

PART 1 ACQUISITION

79.36.310 Acquisition of property interests for access authorized. Whenever the department finds that it is in the best interests of the state of Washington to acquire any property or use of a road in private ownership to afford access to state timber and other valuable material for the purpose of developing, caring for, or selling the same, the acquisition of such property, or use thereof, is hereby declared to be necessary for the public use of the state of Washington, and the department is authorized to acquire such property or the use of such roads by gift, purchase, exchange, or condemnation, and subject to all of the terms and conditions of such gift, purchase, exchange, or decree of condemnation to maintain such property or roads as part of the department's land management road system. [2003 c 334 § 226; 1963 c 140 § 1; 1945 c 239 § 1; Rem. Supp. 1945 § 5823-30. Formerly RCW 76.16.010.]

Intent—2003 c 334: See note following RCW 79.02.010.

Eminent domain: State Constitution Art. 1 § 16; chapter 8.04 RCW.

State lands subject to easements for removal of materials: RCW 79.36.370 and 79.36.590.

79.36.320 Condemnation—Duty of attorney general.

The attorney general of the state of Washington is hereby required and authorized to condemn said property interests found to be necessary for the public purposes of the state of Washington, as provided in RCW 79.36.310, and upon being furnished with a certified copy of the resolution of the department, describing said property interests found to be necessary for the purposes set forth in RCW 79.36.310, the attorney general shall immediately take steps to acquire said property interests by exercising the state's right of eminent domain under the provisions of chapter 8.04 RCW, and in any condemnation action herein authorized, the resolution so describing the property interests found to be necessary for the purposes set forth above shall, in the absence of a showing of bad faith, arbitrary, capricious, or fraudulent action, be conclusive as to the public use and real necessity for the acquisition of said property interests for a public purpose, and said property interests shall be awarded to the state without the necessity of either pleading or proving that the department was unable to agree with the owner or owners of said private property interest for its purchase. Any condemnation action herein authorized shall have precedence over all actions, except criminal actions, and shall be summarily tried and disposed of. [2003 c 334 § 227; 1963 c 140 § 2; 1945 c 239 § 2; Rem. Supp. 1945 § 5823-31. Formerly RCW 76.16.020.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.36.330 Disposal of property interests acquired.

In the event the department should determine that the property interests acquired under the authority of this chapter are no longer necessary for the purposes for which they were acquired, the department shall dispose of the same in the following manner, when in the discretion of the department it is to the best interests of the state of Washington to do so, except that property purchased with educational funds or held in trust for educational purposes shall be sold only in the same manner as are state lands:

(1) Where the state property necessitating the acquisition of private property interests for access purposes under authority of this chapter is sold or exchanged, the acquired property interests may be sold or exchanged as an appurtenance of the state property when it is determined by the department that sale or exchange of the state property and acquired property interests as one parcel is in the best interests of the state.

(2) If the acquired property interests are not sold or exchanged as provided in subsection (1) of this section, the department shall notify the person or persons from whom the property interest was acquired, stating that the property interests are to be sold, and that the person or persons shall have the right to purchase the same at the appraised price. The notice shall be given by registered letter or certified mail, return receipt requested, mailed to the last known address of the person or persons. If the address of the person or persons is unknown, the notice shall be published twice in an official newspaper of general circulation in the county where the lands or a portion thereof is located. The second notice shall

be published not less than ten nor more than thirty days after the notice is first published. The person or persons shall have thirty days after receipt of the registered letter or five days after the last date of publication, as the case may be, to notify the department, in writing, of their intent to purchase the offered property interest. The purchaser shall include with his or her notice of intention to purchase, cash payment, certified check, or money order in an amount not less than one-third of the appraised price. No instrument conveying property interests shall issue from the department until the full price of the property is received by the department. All costs of publication required under this section shall be added to the appraised price and collected by the department upon sale of the property interests.

(3) If the property interests are not sold or exchanged as provided in subsections (1) and (2) of this section, the department shall notify the owners of land abutting the property interests in the same manner as provided in subsection (2) of this section and their notice of intent to purchase shall be given in the manner and in accordance with the same time limits as are set forth in subsection (2) of this section. However, if more than one abutting owner gives notice of intent to purchase the property interests, the department shall apportion them in relation to the lineal footage bordering each side of the property interests to be sold, and apportion the costs to the interested purchasers in relation thereto. Further, no sale is authorized by this section unless the department is satisfied that the amounts to be received from the several purchasers will equal or exceed the appraised price of the entire parcel plus any costs of publishing notices.

(4) If no sale or exchange is consummated as provided in subsections (1) through (3) of this section, the department shall sell the properties in the same manner as state lands are sold.

(5) Any disposal of property interests authorized by this chapter shall be subject to any existing rights previously granted by the department. [2004 c 199 § 217; 2003 c 334 § 228; 1963 c 140 § 3; 1945 c 239 § 3; Rem. Supp. 1945 § 5823-32. Formerly RCW 76.16.030.]

Intent—2003 c 334: See note following RCW 79.02.010.

Additional notes found at www.leg.wa.gov

79.36.340 Acquisition—Payment. The department in acquiring any property interests under the provisions of this chapter, either by purchase or condemnation, is hereby authorized to pay for the same out of any moneys available to the department for this purpose. [2003 c 334 § 229; 1963 c 140 § 4; 1945 c 239 § 4; Rem. Supp. 1945 § 5823-33. Formerly RCW 76.16.040.]

Intent—2003 c 334: See note following RCW 79.02.010.

PART 2 GRANTING

79.36.350 Application for right-of-way. Any person, firm, or corporation engaged in the business of logging or lumbering, quarrying, mining or removing sand, gravel, or other valuable materials from land, and desirous of obtaining a right—of way for the purpose of transporting or moving timber, minerals, stone, sand, gravel, or other valuable materials from other lands, over and across any state lands, or tide

or shore lands belonging to the state, or any such lands sold or leased by the state since the fifteenth day of June, 1911, shall file with the department upon a form to be furnished for that purpose, a written application for such right-of-way, accompanied by a plat showing the location of the right-of-way applied for with references to the boundaries of the government section in which the lands over and across which such right-of-way is desired are located. Upon the filing of such application and plat, the department shall cause the lands embraced within the right-of-way applied for, to be inspected, and all timber thereon, and all damages to the lands affected which may be caused by the use of such right-of-way, to be appraised, and shall notify the applicant of the appraised value of such timber and such appraisal of damages. Upon the payment to the department of the amount of the appraised value of timber and damages, the department shall issue in duplicate a right-of-way certificate setting forth the terms and conditions upon which such right-of-way is granted, as provided in the preceding sections, and providing that whenever such right-of-way shall cease to be used for the purpose for which it was granted, or shall not be used in accordance with such terms and conditions, it shall be deemed forfeited. One copy of such certificate shall be filed in the office of the department and one copy delivered to the applicant. [2003 c 334 § 383; 1927 c 255 § 83; RRS § 7797-83. Prior: 1921 c 55 § 1; 1915 c 147 § 12; 1897 c 89 § 34; 1895 c 178 § 45. Formerly RCW 79.01.332, 79.36.060.]

Intent—2003 c 334: See note following RCW 79.02.010.

Similar enactment: RCW 79.36.650.

79.36.355 Grant of easements and rights in public land. The department may grant to any person such easements and rights in public lands, not otherwise provided in law, as the applicant applying therefor may acquire in privately owned lands. No grant shall be made under this section until such time as the full market value of the estate or interest granted together with damages to all remaining property of the state of Washington has been ascertained and safely secured to the state. [2004 c 199 § 218; 2003 c 334 § 396; 1982 1st ex.s. c 21 § 175; 1961 c 73 § 12. Formerly RCW 79.01.414.]

Intent—2003 c 334: See note following RCW 79.02.010.

Additional notes found at www.leg.wa.gov

79.36.370 Lands subject to easements for removal of valuable materials. All state lands granted, sold or leased since the fifteenth day of June, 1911, or hereafter granted, sold or leased, containing timber, minerals, stone, sand, gravel, or other valuable materials, or when other state lands contiguous or in proximity thereto contain any such valuable materials, shall be subject to the right of the state, or any grantee or lessee thereof who has acquired such other lands, or any such valuable materials thereon, since the fifteenth day of June, 1911, or hereafter acquiring such other lands or valuable materials thereon, to acquire the right-of-way over such lands so granted, sold or leased, for private railroads, skid roads, flumes, canals, watercourses or other easements for the purpose of, and to be used in, transporting and moving such valuable materials from such other lands, over and across the lands so granted or leased, upon the state, or its grantee or lessee, paying to the owner of lands so granted or sold, or the

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lessee of the lands so leased, reasonable compensation therefor. In case the parties interested cannot agree upon the damages incurred, the same shall be ascertained and assessed in the same manner as damages are ascertained and assessed against a railroad company seeking to condemn private property. [1982 1st ex.s. c 21 § 167; 1927 c 255 § 78; RRS § 7797-78. Prior: 1911 c 109 § 1. Formerly RCW 79.01.312, 79.36.010.]

Railroads, eminent domain: RCW 81.36.010 and 81.53.180.

Similar enactment: RCW 79.36.590.

State lands, eminent domain: RCW 8.28.010.

Additional notes found at www.leg.wa.gov

79.36.380 Private easement subject to common user.

Every grant, deed, conveyance, contract to purchase or lease made since June 15, 1911, or hereafter made to any person, firm, or corporation, for a right-of-way for a private railroad, skid road, canal, flume, watercourse, or other easement, over or across any public lands for the purpose of, and to be used in, transporting and moving timber, minerals, stone, sand, gravel, or other valuable materials of the land, shall be subject to the right of the state, or any grantee or lessee thereof, or other person who has acquired since June 15, 1911, or shall hereafter acquire, any lands containing valuable materials contiguous to, or in proximity to, such right-of-way, or who has so acquired or shall hereafter acquire such valuable materials situated upon public lands or contiguous to, or in proximity to, such right-of-way, of having such valuable materials transported or moved over such private railroad, skid road, flume, canal, watercourse, or other easement, after the same is or has been put in operation, upon paying therefor just and reasonable rates for transportation, or for the use of such private railroad, skid road, flume, canal, watercourse, or other easement, and upon complying with just, reasonable and proper rules and regulations relating to such transportation or use, which rates, rules, and regulations, shall be under the supervision and control of the utilities and transportation commission. [2004 c 199 § 219; 1982 1st ex.s. c 21 § 168; 1927 c 255 § 79; RRS § 7797-79. Prior: 1911 c 109 § 2. Formerly RCW 79.01.316, 79.36.020.]

Similar enactment: RCW 79.36.600.

Washington utilities and transportation commission: Chapter 80.01 RCW.

Additional notes found at www.leg.wa.gov

79.36.390 Reasonable facilities and service for transportation must be furnished. Any person, firm, or corporation, having acquired such right-of-way or easement since June 15, 1911, or hereafter acquiring such right-of-way or easement over any public lands for the purpose of transporting or moving timber, mineral, stone, sand, gravel, or other valuable materials, and engaged in such business thereon, shall accord to the state, or any grantee or lessee thereof, having since June 15, 1911, acquired, or hereafter acquiring, from the state, any public lands containing timber, mineral, stone, sand, gravel, or other valuable materials, contiguous to or in proximity to such right-of-way or easement, or any person, firm, or corporation, having since June 15, 1911, acquired, or hereafter acquiring, the timber, mineral, stone, sand, gravel, or other valuable materials upon any public lands contiguous to or in proximity to the lands over which

such right-of-way or easement is operated, proper and reasonable facilities and service for transporting and moving such valuable materials, under reasonable rules and regulations and upon payment of just and reasonable charges therefor, or, if such right-of-way or other easement is not then in use, shall accord the use of such right-of-way or easement for transporting and moving such valuable materials, under reasonable rules and regulations and upon the payment of just and reasonable charges therefor. [2004 c 199 § 220; 1982 1st ex.s. c 21 § 169; 1927 c 255 § 80; RRS § 7797-80. Prior: 1911 c 109 § 3. Formerly RCW 79.01.320, 79.36.030.]

Similar enactment: RCW 79.36.610.

Additional notes found at www.leg.wa.gov

79.36.400 Duty of utilities and transportation commission. Should the owner or operator of any private railroad, skid road, flume, canal, watercourse or other easement operating over lands acquired since the fifteenth day of June, 1911, or hereafter acquired, from the state, as in the previous sections provided, fail to agree with the state, or any grantee thereof, as to the reasonable and proper rules, regulations and charges, concerning the transportation of timber, mineral, stone, sand, gravel or other valuable materials, from lands contiguous to, or in proximity to, the lands over which such private railroad, skid road, flume, canal, watercourse or other easement, is operated, for transporting or moving such valuable materials, the state, or such person, firm or corporation, owning and desiring to have such valuable materials transported or moved, may apply to the state utilities and transportation commission and have the reasonableness of the rules and regulations and charges inquired into, and it shall be the duty of the utilities and transportation commission to inquire into the same and it is hereby given the same power and authority to investigate the same as it is now authorized to investigate or inquire into the reasonableness of rules, regulations and charges made by railroad companies, and it is authorized and empowered to make any such order as it would make in an inquiry against a railroad company, and in case such private railroad, skid road, flume, canal, watercourse or easement, is not then in use, may make such reasonable, proper and just rules and regulations concerning the use thereof for the purposes aforesaid as may be just and proper, and such order shall have the same force and effect, and be binding upon the parties to such hearing, as though such hearing and order was made affecting a common carrier railroad. [1983 c 4 § 6; 1927 c 255 § 81; RRS § 7797-81. Prior: 1911 c 109 § 4. Formerly RCW 79.01.324, 79.36.040.]

Similar enactment: RCW 79.36.630.

Transportation, general regulations: Chapter 81.04 RCW.

79.36.410 Penalty for violation of orders. In case any person, firm or corporation, owning or operating any private railroad, skid road, flume, canal, watercourse or other easement, over and across any state lands, or any lands acquired since the fifteenth day of June, 1911, or hereafter acquired, from the state, subject to the provisions of the preceding sections, shall violate or fail to comply with any rule, regulation or order made by the utilities and transportation commission, after an inquiry and hearing as provided in the preceding section, such person, firm or corporation, shall be subject to a penalty of not to exceed one thousand dollars for each and

every violation thereof, and in addition thereto such right-of-way, private road, skid road, flume, canal, watercourse or other easement and all improvements and structures on such right-of-way, and connected therewith, shall revert to the state or to the owner of the land over which such right-of-way is located, and may be recovered in an action instituted in any court of competent jurisdiction. [1982 1st ex.s. c 21 § 170; 1927 c 255 § 82; RRS § 7797-82. Prior: 1911 c 109 § 5. Formerly RCW 79.01.328, 79.36.050.]

Similar enactment: RCW 79.36.640.

Additional notes found at www.leg.wa.gov

79.36.430 Forfeiture for nonuse. Any such right-of-way heretofore granted which has never been used, or has ceased to be used for the purpose for which it was granted, for a period of two years, shall be deemed forfeited. The forfeiture of any such right-of-way heretofore granted, or granted under the provisions of the preceding sections, shall be rendered effective by the mailing of a notice of such forfeiture to the grantee thereof at his or her last known post office address and by stamping a copy of such certificate, or other record of the grant, in the office of the department with the word "canceled", and the date of such cancellation. [2003 c 334 § 384; 1927 c 255 § 84; RRS § 7797-84. Prior: 1921 c 55 § 1; 1915 c 147 § 12; 1897 c 89 § 34; 1895 c 178 § 45. Formerly RCW 79.01.336, 79.36.070.]

Intent—2003 c 334: See note following RCW 79.02.010.

Similar enactment: RCW 79.36.650.

79.36.440 Right-of-way for public roads. Any county or city or the United States of America or state agency desiring to locate, establish, and construct a road or street over and across any state lands of the state of Washington shall by resolution of the board of county commissioners of such county, or city council or other governing body of such city, or proper agency of the United States of America, or state agency, cause to be filed in the office of the department a petition for a right-of-way for such road or street, setting forth the reasons for the establishment thereof, accompanied by a duly attested copy of a plat made by the county or city engineer or proper agency of the United States of America, or state agency, showing the location of the proposed road or street with reference to the legal subdivisions, or lots and blocks of the official plat, or the lands, over and across which such right-of-way is desired, the amount of land to be taken and the amount of land remaining in each portion of each legal subdivision or lot or block bisected by such proposed road or street.

Upon the filing of such petition and plat the department, if deemed for the best interest of the state to grant the petition, shall cause the land proposed to be taken to be inspected and shall appraise the value of the land and valuable materials thereon and notify the petitioner of such appraised value.

If there are no valuable materials on the proposed right-of-way, or upon the payment of the appraised value of the land and valuable materials thereon, to the department in cash, or by certified check drawn upon any bank in this state, or money order, except for all rights-of-way granted to the department on which the valuable materials, if any, shall be sold at public auction or by sealed bid, the department may approve the plat filed with the petition and file and enter the

same in the records of its office, and such approval and record shall constitute a grant of such right-of-way from the state. [2003 c 334 § 385; 2001 c 250 § 12; 1982 1st ex.s. c 21 § 171; 1961 c 73 § 5; 1945 c 145 § 1; 1927 c 255 § 85; Rem. Supp. 1945 § 7797-85. Prior: 1917 c 148 § 9; 1903 c 20 § 1; 1897 c 89 § 35; 1895 c 178 § 46. Formerly RCW 79.01.340, 79.36.080.]

Intent—2003 c 334: See note following RCW 79.02.010.

Additional notes found at www.leg.wa.gov

79.36.450 Railroad right-of-way. A right-of-way through, over and across any state lands not held under a contract of sale, is hereby granted to any railroad company organized under the laws of this state, or any state or territory of the United States, or under any act of congress of the United States, to any extent not exceeding fifty feet on either side of the center line of any railroad now constructed, or hereafter to be constructed, and for such greater width as is required for excavations, embankments, depots, station grounds, passing tracks or borrow pits, which extra width shall not in any case exceed two hundred feet on either side of said right-of-way. [1927 c 255 § 86; RRS § 7797-86. Prior: 1907 c 104 § 1; 1901 c 173 § 1. Formerly RCW 79.01.344, 79.36.090.]

Railroad rights-of-way: Chapter 81.52 RCW.

79.36.460 Railroad right-of-way—Procedure to acquire. In order to obtain the benefits of RCW 79.36.450, any railroad company hereafter constructing, or proposing to construct, a railroad, shall file with the department a copy of its articles of incorporation, due proof of organization thereunder, a map or maps, accompanied by the field notes of the survey, showing the location of the line of said railroad, the width of the right-of-way and extra widths, if any, and shall pay to the department as hereinafter provided the amount of the appraised value of the lands included within the right-of-way, and extra widths if any are required, and the damages to any lands affected by the right-of-way or extra widths. [2003 c 334 § 386; 1927 c 255 § 87; RRS § 7797-87. Prior: 1907 c 104 § 1; 1901 c 173 § 1. Formerly RCW 79.01.348, 79.36.100.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.36.470 Railroad right-of-way—Appraisal. All state lands over which a right-of-way of any railroad to be hereafter constructed, shall be located, shall be appraised in the same manner as in the case of applications for the purchase of state lands, fixing the appraised value per acre for each lot or block, quarter section or subdivision thereof, less the improvements, if any, and the damages to any state lands affected by such right-of-way, shall be appraised in like manner, and the appraisal shall be recorded and the evidence or report upon which the same is based shall be preserved of record, in the office of the department, and the department shall send notice to the railroad company applying for the right-of-way that such appraisal has been made. [2003 c 334 § 387; 1927 c 255 § 88; RRS § 7797-88. Prior: 1901 c 173 § 2, 5. Formerly RCW 79.01.352, 79.36.110.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.36.480 Railroad right-of-way—Improvements—Appraisal. Should any improvements, made by anyone not

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holding adversely to the state at the time of making such improvements or made in good faith by a lessee of the state whose lease had not been canceled or was not subject to cancellation for any cause, or made upon the land by mistake, be upon any of such lands at the time of the appraisal, the same shall be separately appraised, together with the damage and waste done to said lands, or to adjacent lands, by the use and occupancy of the same, and after deducting from the amount of the appraisal for improvements the amount of such damage and waste, the balance shall be regarded as the value of said improvements, and the railroad company, if not the owner of such improvements, shall deposit with the department the value of the same, as shown by the appraisal, within thirty days next following the date thereof. The department shall hold such moneys for a period of three months, and unless a demand and proof of ownership of such improvements shall be made upon the department within said period of three months, the same shall be deemed forfeited to the state and deposited with the state treasurer and paid into the general fund. If two or more persons shall file claims of ownership of said improvements, within said period of three months, with the department, the department shall hold such moneys until the claimants agree or a certified copy of the judgment decreeing the ownership of said improvements shall be filed with the department. When notice of agreement or a certified copy of a judgment has been so filed, the department shall pay over to the owner of the improvements the money so deposited. [2003 c 334 § 388; 1927 c 255 § 89; RRS § 7797-89. Prior: 1915 c 147 § 13; 1901 c 173 § 4. Formerly RCW 79.01.356, 79.36.120.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.36.490 Railroad right-of-way—Release or payment of damages. When the construction or proposed construction of said railroad affects the value of improvements on state lands not situated on the right-of-way or extra widths, the applicant for said right-of-way shall file with the department a valid release of damages duly executed by the owner or owners of such improvements, or a certified copy of a judgment of a court of competent jurisdiction, showing that compensation for the damages resulting to such owner or owners, as ascertained in accordance with existing law, has been made or paid into the registry of such court. [2003 c 334 § 389; 1927 c 255 § 90; RRS § 7797-90. Prior: 1915 c 147 § 13; 1901 c 173 § 4. Formerly RCW 79.01.360, 79.36.130.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.36.500 Railroad right-of-way—Certificate. Upon full payment of the appraised value of any right-of-way for a railroad and of damages to state lands affected, the department shall issue to the railroad company applying for such right-of-way a certificate in such form as the department may prescribe, in which the terms and conditions of said easement shall be set forth and the lands covered thereby described, and any future grant, or lease, by the state, of the lands crossed or affected by such right-of-way shall be subject to the easement described in the certificate. [2003 c 334 § 390; 1927 c 255 § 91; RRS § 7797-91. Prior: 1915 c 147 § 14; 1901 c 173 § 7. Formerly RCW 79.01.364, 79.36.140.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.36.510 Utility pipe lines, transmission lines, etc. A right-of-way through, over, and across any state lands or state forestlands, may be granted to any municipal or private corporation, company, association, individual, or the United States of America, constructing or proposing to construct, or which has heretofore constructed, any telephone line, ditch, flume, or pipe line for the domestic water supply of any municipal corporation or transmission line for the purpose of generating or transmitting electricity for light, heat, or power. [1982 1st ex.s. c 21 § 172; 1961 c 73 § 6; 1945 c 147 § 1; 1927 c 255 § 96; Rem. Supp. 1945 § 7797-96. Prior: 1925 c 6 § 1; 1921 c 148 § 1; 1919 c 97 § 1; 1909 c 188 § 1. Formerly RCW 79.01.384, 79.36.150.]

Additional notes found at www.leg.wa.gov

79.36.520 Utility pipe lines, transmission lines, etc.—Procedure to acquire. In order to obtain the benefits of the grant made in RCW 79.36.510, the municipal or private corporation or company, association, individual, or the United States of America, constructing or proposing to construct, or which has heretofore constructed, such telephone line, ditch, flume, pipe line, or transmission line, shall file, with the department, a map, accompanied by the field notes of the survey and location of such telephone line, ditch, flume, pipe line, or transmission line, and shall make payment therefor as provided in RCW 79.36.530. The land within the right-of-way shall be limited to an amount necessary for the construction of said telephone line, ditch, flume, pipe line, or transmission line sufficient for the purposes required, together with sufficient land on either side thereof for ingress and egress to maintain and repair the same, and the grant shall include the right to cut all standing timber, and/or reproduction within said right-of-way. The grant shall also include the right to cut trees marked as danger trees by the applicant outside of the right-of-way, which shall be dangerous to the operation and maintenance of the telephone line, ditch, flume, pipe line, or transmission line upon full payment of the appraised value thereof. [2003 c 334 § 391; 1961 c 73 § 7; 1959 c 257 § 35; 1945 c 147 § 2; 1927 c 255 § 97; Rem. Supp. 1945 § 7797-97. Prior: 1921 c 148 § 2; 1919 c 97 § 2; 1909 c 188 § 2. Formerly RCW 79.01.388, 79.36.160.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.36.530 Utility pipe lines—Appraisal—Certificate—Reversion. Upon the filing of the plat and field notes, as provided in RCW 79.36.520, the land applied for and the valuable materials on the right-of-way applied for, and the marked danger trees to be felled off the right-of-way, if any, and the improvements included in the right-of-way applied for, if any, shall be appraised as in the case of an application to purchase state lands. Upon full payment of the appraised value of the land applied for, or upon payment of an annual rental when the department deems a rental to be in the best interests of the state, and upon full payment of the appraised value of the valuable materials and improvements, if any, the department shall issue to the applicant a certificate of the grant of such right-of-way stating the terms and conditions thereof and shall enter the same in the abstracts and records in its office, and thereafter any sale or lease of the lands affected by such right-of-way shall be subject to the easement of such right-of-way. Should the corporation, company, association,

individual, state agency, political subdivision of the state, or the United States of America, securing such right-of-way ever abandon the use of the same for a period of sixty months or longer for the purposes for which it was granted, the right-of-way shall revert to the state, or the state's grantee. [2003 c 334 § 392; 2001 c 250 § 13; 1961 c 73 § 8; 1959 c 257 § 36; 1945 c 147 § 3; 1927 c 255 § 98; Rem. Supp. 1945 § 7797-98. Prior: 1909 c 188 § 3. Formerly RCW 79.01.392, 79.36.170.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.36.540 Right-of-way for irrigation, diking, and drainage purposes. A right-of-way through, over and across any state lands is hereby granted to any irrigation district, or irrigation company duly organized under the laws of this state, and to any association, individual, or the United States of America, constructing or proposing to construct an irrigation ditch or pipe line for irrigation, or to any diking and drainage district or any diking and drainage improvement district proposing to construct a dike or drainage ditch. [1982 1st ex.s. c 21 § 173; 1945 c 147 § 4; 1927 c 255 § 99; Rem. Supp. 1945 § 7797-99. Prior: 1917 c 148 § 6; 1907 c 161 § 1. Formerly RCW 79.01.396, 79.36.180.]

Additional notes found at www.leg.wa.gov

79.36.550 Right-of-way for irrigation, diking, and drainage purposes—Procedure to acquire. In order to obtain the benefits of the grant provided for in RCW 79.36.540, the irrigation district, irrigation company, association, individual, or the United States of America, constructing or proposing to construct such irrigation ditch or pipe line for irrigation, or the diking and drainage district or diking and drainage improvement district constructing or proposing to construct any dike or drainage ditch, shall file with the department a map accompanied by the field notes of the survey and location of the proposed irrigation ditch, pipe line, dike, or drainage ditch, and shall pay to the state as hereinafter provided, the amount of the appraised value of the said lands used for or included within such right-of-way. The land within said right-of-way shall be limited to an amount necessary for the construction of the irrigation ditch, pipe line, dike, or drainage ditch for the purposes required, together with sufficient land on either side thereof for ingress and egress to maintain and repair the same. [2003 c 334 § 393; 1945 c 147 § 5; 1927 c 255 § 100; Rem. Supp. 1945 § 7797-100. Prior: 1917 c 148 § 7; 1907 c 161 § 2. Formerly RCW 79.01.400, 79.36.190.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.36.560 Right-of-way for irrigation, diking, and drainage purposes—Appraisal—Certificate. Upon the filing of the plat and field notes as provided in RCW 79.36.550, the lands included within the right-of-way applied for shall be appraised as in the case of an application to purchase such lands, at the full market value thereof. Upon full payment of the appraised value of the lands the department shall issue to the applicant a certificate of right-of-way, and enter the same in the records in its office and thereafter any sale or lease by the state of the lands affected by such right-of-way shall be subject thereto. [2003 c 334 § 394; 1927 c 255 § 101; RRS § 7797-101. Prior: 1907 c 161 § 3. Formerly RCW 79.01.404, 79.36.200.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.36.570 Grant of overflow rights. The department shall have the power to grant to any person or corporation the right, privilege, and authority to perpetually back and hold water upon or over any state lands, and overflow such lands and inundate the same, whenever the department shall deem it necessary for the purpose of erecting, constructing, maintaining, or operating any water power plant, reservoir, or works for impounding water for power purposes, irrigation, mining, or other public use, but no such rights shall be granted until the value of the lands to be overflowed and any damages to adjoining lands of the state, appraised as in the case of an application to purchase such lands, shall have been paid by the person or corporation seeking the grant, and if the construction or erection of any such water power plant, reservoir, or works for impounding water for the purposes heretofore specified, shall not be commenced and diligently prosecuted and completed within such time as the department may prescribe at the time of the grant, the same may be forfeited by the department by serving written notice of such forfeiture upon the person or corporation to whom the grant was made, but the department, for good cause shown to its satisfaction, may extend the time within which such work shall be completed. [2003 c 334 § 395; 1982 1st ex.s. c 21 § 174; 1927 c 255 § 102; RRS § 7797-102. Prior: 1915 c 147 §§ 10, 11; 1907 c 125 §§ 1, 2. Formerly RCW 79.01.408, 79.36.210.]

Intent—2003 c 334: See note following RCW 79.02.010.

Operating agencies: Chapter 43.52 RCW.

Additional notes found at www.leg.wa.gov

79.36.580 Construction of foregoing sections. The foregoing sections relating to the acquiring of rights-of-way and overflow rights through, over and across lands belonging to the state, shall not be construed as exclusive or as affecting the right of municipal and public service corporations to acquire lands belonging to or under control of the state, or rights-of-way or other rights thereover, by condemnation proceedings. [1927 c 255 § 103; RRS § 7797-103. Formerly RCW 79.01.412, 79.36.220.]

Railroad rights-of-way: Chapter 81.52 RCW.

79.36.590 Easement reserved in later grants. All state lands hereafter granted, sold or leased shall be subject to the right of the state, or any grantee or lessee or successor in interest thereof hereafter acquiring other state lands, or acquiring the timber, stone, mineral or other natural products thereon, or the manufactured products thereof to acquire the right-of-way over such lands so granted, for logging and/or lumbering railroads, private railroads, skid roads, flumes, canals, watercourses, or other easements for the purpose of and to be used in the transporting and moving of such timber, stone, mineral or other natural products thereon, and the manufactured products thereof from such state land, and all necessary machinery, supplies or materials to be used in transporting, cutting, manufacturing, mining or quarrying any or all of such products over and across the lands so granted or leased, upon the state or its grantee or successor in interest thereof, paying to the owner of the lands so granted, sold, or leased reasonable compensation therefor. In case the parties interested cannot agree upon the damages incurred, the same

shall be ascertained and assessed in the same manner as damages are ascertained and assessed against a railroad seeking to condemn private property. [1927 c 312 § 1; RRS § 8107-1. Prior: 1911 c 109 § 1. Formerly RCW 79.36.230.]

Railroads, eminent domain: RCW 81.36.010 and 81.53.180.

Similar enactment: RCW 79.36.370.

Additional notes found at www.leg.wa.gov

79.36.600 Private easement over state lands. Every grant, deed, conveyance, lease or contract hereafter made to any person, firm or corporation over and across any state lands for the purpose of right-of-way for any logging and/or lumbering railroad, private railroad, skid road, flume, canal, watercourse or other easement to be used in the hauling of timber, stone, mineral or other natural products of the land and the manufactured products thereof and all necessary machinery, supplies or materials to be used in transporting, cutting, manufacturing, mining or quarrying any or all of such products, shall be subject to the right of the state, or any grantee or successor in interest thereof, owning or hereafter acquiring from the state any timber, stone, mineral, or other natural products, or any state lands containing valuable timber, stone, mineral or other natural products of the land, or having such timber, stone, mineral or other natural products, and the manufactured products thereof and all necessary machinery, supplies or materials to be used in transporting, cutting, manufacturing, mining or quarrying any or all of such products transported or moved over such railroad, skid road, flume, canal, watercourse or other easement, after the same is or has been put in operation, upon paying therefor just and reasonable rates for transportation or for the use of such railroad, skid road, flume, canal, watercourse or other easement, and upon complying with just, reasonable and proper rules affecting such transportation, which rates, rules and regulations shall be under the supervision and control of the utilities and transportation commission of the state of Washington. [1983 c 4 § 7; 1927 c 312 § 2; RRS § 8107-2. Prior: 1911 c 109 § 2. Formerly RCW 79.36.240.]

Similar enactment: RCW 79.36.380.

79.36.610 Easement over public lands subject to common user. Any person, firm or corporation hereafter acquiring the right-of-way or other easement over state lands or over any tide or shore lands belonging to the state, or over and across any navigable water or stream for the purpose of transporting or moving timber, stone, mineral, or other natural products of the lands, and the manufactured products thereof and engaged in such business thereon, shall accord to the state or any grantee or successor in interest thereof hereafter acquiring state lands containing valuable timber, stone, mineral or other natural products of the land, or any person, firm or corporation hereafter acquiring the timber, stone, mineral or other natural products situate upon state lands, or the manufactured products thereof proper and reasonable facilities and service, including physical connection therewith, for the transportation and moving of such timber, stone, mineral and other natural products of the land, and the manufactured products thereof and all necessary machinery, supplies or materials to be used in transporting, cutting, manufacturing, mining or quarrying any or all of such products under reasonable rules and regulations upon payment of just

and reasonable charges therefor, or, if such right-of-way or other easement is not then in use to have the right to use such right-of-way or easement for transporting and moving such products under such reasonable rules and regulations and upon payment of just and reasonable charges therefor. [1927 c 312 § 3; RRS § 8107-3. Prior: 1911 c 109 § 3. Formerly RCW 79.36.250.]

Similar enactment: RCW 79.36.390.

79.36.620 Reservations in grants and leases. Whenever any person, firm, or corporation shall hereafter purchase, lease, or acquire any state lands, or any easement or interest therein, or any timber, stone, mineral, or other natural products thereon, or the manufactured products thereof the purchase, lease, or grant shall be subject to the condition or reservation that such person, firm, or corporation, or their successors in interest, shall, whenever any of the timber, stone, mineral, or other natural products on said lands or the manufactured products thereof are removed, by any logging and/or lumbering railroad, private railroad, skid road, flume, canal, watercourse, or other easement, owned, leased, or operated by such person, firm, or corporation, or their successors in interest, accord to any other person, firm, or corporation, or their successors in interest, having the right to remove any timber, stone, mineral, or other natural products or the manufactured products thereof from any other lands, owned or formerly owned by the state, proper and reasonable facilities and service, including physical connection therewith, for the transportation and moving of such other timber, stone, mineral, and other natural products, and the manufactured products thereof and all necessary machinery, supplies, or materials to be used in transporting, cutting, manufacturing, mining, or quarrying any or all of such products under reasonable rules and upon payment of just and reasonable charges therefor; and that any conveyance, lease, or mortgage of such logging and/or lumbering railroad, private railroad, skid road, flume, canal, watercourse, or other easement, shall be subject to the right of the person, firm, or corporation, or their successors in interest, having the right to remove timber, stone, mineral, or other natural products or the manufactured products thereof from such other state lands, to be accorded such proper and reasonable facilities and service, including physical connection therewith, for the transportation and moving of such other timber, stone, mineral, and other natural products and the manufactured products thereof and all necessary machinery, supplies, or materials to be used in transporting, cutting, manufacturing, mining, or quarrying any or all of such products under reasonable rules and upon payment of just and reasonable charges therefor; and such purchase, lease, or grant from the state shall also be subject to the condition or reservation that whenever any of the timber, stone, mineral, or other natural products on such lands or the manufactured products thereof are about to be removed, by means of any logging and/or lumbering railroad, private railroad, skid road, flume, canal, watercourse, or other easement, not owned, controlled, or operated by the person, firm, or corporation owning or having the right to remove, and about to remove such timber, stone, mineral, or other natural products or the manufactured products thereof shall exact and require from the owners and operators of such logging and/or lumbering railroad, private railroad, skid road, flume, canal,

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watercourse, or other easement, which shall be binding upon the successors in interest of such owners and operators, an agreement and promise, as a part of the contract for removal, and by virtue of RCW 79.36.590 through 79.36.650 there shall be deemed to be a part of any such express or implied contract for removal, an agreement, and promise that such owners and operators, and their successors in interest, shall accord to any person, firm, or corporation and their successors in interest, having the right to remove any timber, stone, mineral, or other natural products or the manufactured products thereof from any lands, owned, or formerly owned by the state, proper and reasonable facilities and service, including physical connection therewith, for the transportation and moving of such timber, stone, mineral, and other natural products and the manufactured products thereof and all necessary machinery, supplies, or materials to be used in transporting, cutting, manufacturing, mining, or quarrying any or all of such products and under reasonable rules and upon payment of just and reasonable charges therefor. [2003 c 334 § 495; 1927 c 312 § 4; RRS § 8107-4. Formerly RCW 79.36.260.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.36.630 Duty of utilities and transportation commission. Should the owner or operator of any logging and/or lumbering railroad, private railroad, skid road, flume, canal, watercourse, or other easement operating over lands hereafter acquired from the state, as in RCW 79.36.590 through 79.36.650 set out, fail to agree with the state or with any subsequent grantee or successor in interest thereof as to the reasonable and proper rules and charges concerning the transportation of timber, stone, mineral, or other natural products of the land, or the manufactured products thereof and all necessary machinery, supplies, or materials to be used in transporting, cutting, manufacturing, mining, or quarrying any or all of such products for carrying and transporting such products or for the use of the railroad, skid road, flume, canal, watercourse, or other easement in transporting such products, the state or such person, firm, or corporation owning and desiring to ship such products may apply to the utilities and transportation commission and have the reasonableness of the rules and charges inquired into and it shall be the duty of the utilities and transportation commission to inquire into the same in the same manner, and it is hereby given the same power and authority to investigate the same as it is now authorized to investigate and inquire into the rules and charges made by railroads and is authorized and empowered to make such order as it would make in an inquiry against a railroad, and in case such logging and/or lumbering railroad, private railroad, skid road, flume, canal, watercourse, or other easement is not then in use, may adopt such reasonable, proper, and just rules concerning the use thereof for the purposes aforesaid as may be just and proper and such order shall have the same force and effect and shall be binding upon the parties to such hearing as though such hearing and order was made affecting a railroad. [2003 c 334 § 496; 1983 c 4 § 8; 1927 c 312 § 5; RRS § 8107-5. Prior: 1911 c 109 § 4. Formerly RCW 79.36.270.]

Intent—2003 c 334: See note following RCW 79.02.010.

Similar enactment: RCW 79.36.400.

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79.36.640 Penalty for violating utilities and transportation commission's order. In case any person, firm, or corporation owning and/or operating any logging and/or lumbering railroad, private railroad, skid road, flume, canal, watercourse, or other easement subject to the provisions of RCW 79.36.590 through 79.36.650 shall fail to comply with any rule or order made by the utilities and transportation commission, after an inquiry as provided for in RCW 79.36.630, each person, firm, or corporation shall be subject to a penalty not exceeding one thousand dollars, and in addition thereto, the right-of-way over state lands theretofore granted to such person, firm, or corporation, and all improvements and structures on such right-of-way and connected therewith, shall revert to the state of Washington, and may be recovered by it in an action instituted in any court of competent jurisdiction, unless such state lands have been sold. [2003 c 334 § 497; 1983 c 4 § 9; 1927 c 312 § 7; RRS § 8107-7. Prior: 1911 c 109 § 5. Formerly RCW 79.36.280.]

Intent—2003 c 334: See note following RCW 79.02.010.

Similar enactment: RCW 79.36.410.

79.36.650 Applications—Appraisal—Certificate—Forfeiture—Fee. Any person, firm, or corporation shall have a right-of-way over public lands, subject to the provisions of RCW 79.36.590 through 79.36.650, when necessary, for the purpose of hauling or removing timber, stone, mineral, or other natural products or the manufactured products thereof of the land. Before, however, any such right-of-way grant shall become effective, a written application for and a plat showing the location of such right-of-way, with reference to the adjoining lands, shall be filed with the department, and all timber on the right-of-way, together with the damages to the land, shall be appraised and paid for in cash by the person, firm, or corporation applying for such right-of-way. The department shall then cause to be issued in duplicate to such person, firm, or corporation a right-of-way certificate setting forth the conditions and terms upon which the right-of-way is granted. Whenever the right-of-way shall cease to be used, for a period of two years, for the purpose for which it was granted, it shall be deemed forfeited, and the right-of-way certificate shall contain such a provision. However, any right-of-way for logging purposes heretofore issued which has never been used, or has ceased to be used, for a period of two years, for the purpose of which it was granted, shall be deemed forfeited and shall be canceled upon the records of the department. One copy of each certificate shall be filed with the department and one copy delivered to the applicant. The forfeiture of the right-of-way, as herein provided, shall be rendered effective by the mailing of notice of such a forfeiture to the grantee thereof to his or her last known post office address and by stamping the copy of the certificate in the department canceled and the date of such cancellation. For the issuance of such a certificate the same fee shall be charged as provided in the case of certificates for railroad rights-of-way. [2003 c 334 § 498; 1988 c 128 § 65; 1927 c 312 § 6; RRS § 8107-6. Prior: 1921 c 55 § 1; 1915 c 147 § 12; 1897 c 89 § 34; 1895 c 178 § 45. Formerly RCW 79.36.290.]

Intent—2003 c 334: See note following RCW 79.02.010.

Certificates for railroad rights-of-way: RCW 79.36.500.

Fees, generally: RCW 79.02.240.

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Similar enactment: RCW 79.36.350 and 79.36.430.

Chapter 79.38 RCW ACCESS ROADS

Sections

79.38.010	Acquisition of property for access to public lands.
79.38.020	Exchange of easement rights.
79.38.030	Use of roads by purchasers of valuable materials.
79.38.040	Permits for use of roads.
79.38.050	Access road revolving fund.
79.38.060	Use of moneys not deposited in revolving fund.
79.38.070	Department-county agreements for improvement of access roads.

79.38.010 Acquisition of property for access to public lands. In addition to any authority otherwise granted by law, the department shall have the authority to acquire lands, interests in lands, and other property for the purpose of affording access by road to public lands from any public highway. [2004 c 199 § 221; 2003 c 334 § 499; 1961 c 44 § 1.]

Intent—2003 c 334: See note following RCW 79.02.010.

Additional notes found at www.leg.wa.gov

79.38.020 Exchange of easement rights. To facilitate the carrying out of the purpose of this chapter, the department may:

(1) Grant easements, rights-of-way, and permits to cross public lands to any person in exchange for similar rights over lands not under its jurisdiction;

(2) Enter into agreements with any person or agency relating to purchase, construction, reconstruction, maintenance, repair, regulation, and use of access roads or public roads used to provide access to public lands;

(3) Dispose, by sale, exchange, or otherwise, of any interest in an access road in the event it determines such interest is no longer necessary for the purposes of this chapter. [2004 c 199 § 222; 1981 c 204 § 1; 1961 c 44 § 2.]

Additional notes found at www.leg.wa.gov

79.38.030 Use of roads by purchasers of valuable materials. Purchasers of valuable materials from public lands may use access roads or public roads for the removal of such materials where the rights acquired by the state will permit, but use shall be subject to the right of the department:

(1) To impose reasonable terms for the use, construction, reconstruction, maintenance, and repair of such access roads; and

(2) To impose reasonable charges for the use of such access roads or public roads which have been constructed or reconstructed through funding by the department. [2004 c 199 § 223; 2003 c 334 § 500; 1981 c 204 § 2; 1961 c 44 § 3.]

Intent—2003 c 334: See note following RCW 79.02.010.

Additional notes found at www.leg.wa.gov

79.38.040 Permits for use of roads. Whenever the department finds that it is for the best interest of the state and where the rights acquired by the state will permit, the department may grant permits for the use of access roads to any person. Any permit issued under the authority of this section shall be subject to reasonable regulation by the department.

Such regulation shall include, but is not limited to, the following matters:

- (1) Requirements for construction, reconstruction, maintenance, and repair;
- (2) Limitations as to extent and time of use;
- (3) Provision for revocation at the discretion of the department; and
- (4) Charges for use. [2003 c 334 § 501; 1961 c 44 § 4.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.38.050 Access road revolving fund. The department shall create, maintain, and administer a revolving fund, to be known as the access road revolving fund in which shall be deposited all moneys received by it from users of access roads as payment for costs incurred or to be incurred in maintaining, repairing, and reconstructing access roads, or public roads used to provide access to public lands. The department may use moneys in the fund for the purposes for which they were obtained without appropriation by the legislature. [2004 c 199 § 224; 2003 c 334 § 502; 1981 c 204 § 3; 1961 c 44 § 5.]

Intent—2003 c 334: See note following RCW 79.02.010.

Additional notes found at www.leg.wa.gov

79.38.060 Use of moneys not deposited in revolving fund. All moneys received by the department from users of access roads that are not deposited in the access road revolving fund shall be paid as follows:

(1) To reimburse the state fund or account from which expenditures have been made for the acquisition, construction, or improvement of the access road or public road, and upon full reimbursement, then

(2) To the funds or accounts for which the public lands, to which access is provided, are pledged by law or constitutional provision, in which case the department shall make an equitable apportionment between funds and accounts so that no fund or account shall benefit at the expense of another. [2004 c 199 § 225; 2003 c 334 § 503; 1981 c 204 § 4; 1961 c 44 § 6.]

Intent—2003 c 334: See note following RCW 79.02.010.

Additional notes found at www.leg.wa.gov

79.38.070 Department-county agreements for improvement of access roads. The department may enter into agreements with the county to:

(1) Identify public roads used to provide access to state forestlands in need of improvement;

(2) Establish a time schedule for the improvements;

(3) Advance payments to the county to fund the road improvements. However, no more than fifty percent of the access road revolving fund shall be eligible for use as advance payments to counties. The department shall assess the fund on January 1st and July 1st of each year to determine the amount that may be used as advance payments to counties for road improvements; and

(4) Determine the equitable distribution, if any, of costs of such improvements between the county and the state through negotiation of terms and conditions of any resulting repayment to the fund or funds financing the improvements.

[2003 c 334 § 224; 1981 c 204 § 5. Formerly RCW 76.12.180.]

Intent—2003 c 334: See note following RCW 79.02.010.

Chapter 79.44 RCW ASSESSMENTS AND CHARGES AGAINST LANDS OF THE STATE

Sections

79.44.003	"Assessing district" defined.
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79.44.010	Lands subject to local assessments.
79.44.020	State to be charged its proportion of cost—Construction of chapter.
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79.44.120	When assessments need not be added in certain cases.
79.44.130	Local provisions superseded.
79.44.140	Application of chapter—Eminent domain assessments.
79.44.190	Acquisition of property by state or political subdivision which is subject to unpaid assessments or delinquencies—Payment of lien or installments.

Diking, drainage and sewerage improvement district assessments: RCW 85.08.370.

Diking and drainage district assessments: RCW 85.05.390.

Flood control district assessments: RCW 86.09.523, 86.09.526, 86.09.529.

Intercounty diking and drainage district assessments: RCW 85.24.275.

Irrigation district assessments: RCW 87.03.025.

Special benefit assessments for farm and agricultural land or timberland: RCW 84.34.300 through 84.34.390.

79.44.003 "Assessing district" defined. As used in this chapter "assessing district" means:

- (1) Incorporated cities and towns;
- (2) Diking districts;
- (3) Drainage districts;
- (4) Port districts;
- (5) Irrigation districts;
- (6) Water-sewer districts;
- (7) Counties; and
- (8) Any municipal corporation or public agency having power to levy local improvement or other assessments, rates, or charges which by statute are expressly made applicable to lands of the state. [1999 c 153 § 68; 1989 c 243 § 13; 1971 ex.s. c 234 § 14; 1963 c 20 § 1.]

Additional notes found at www.leg.wa.gov

79.44.004 "Assessment" defined. As used in this chapter, "assessment" shall mean any assessment, rate or charge levied, assessed, imposed, or charged by any assessing district as defined in RCW 79.44.003, and which assessments, rates or charges by statute are expressly made applicable to lands of the state. [1989 c 243 § 16.]

79.44.010 Lands subject to local assessments. All lands, including school lands, granted lands, escheated lands,

or other lands, held or owned by the state of Washington in fee simple (in trust or otherwise), situated within the limits of any assessing district in this state, may be assessed and charged for the cost of local or other improvements specially benefiting such lands which may be ordered by the proper authorities of any such assessing district and may be assessed by any irrigation district to the same extent as private lands within the district are assessed: PROVIDED, That the leasehold, contractual, or possessory interest of any person, firm, association, or private or municipal corporation in any such lands shall be charged and assessed in the proportional amount such leasehold, contractual, or possessory interest is benefited: PROVIDED, FURTHER, That no lands of the state shall be included within an irrigation district except as provided in RCW 87.03.025 and 89.12.090. [1982 1st ex.s. c 21 § 178; 1963 c 20 § 2; 1919 c 164 § 1; RRS § 8125. Cf. 1909 c 154 §§ 1, 4.]

Additional notes found at www.leg.wa.gov

79.44.020 State to be charged its proportion of cost—Construction of chapter. In all local improvement assessment districts in any assessing district in this state, property in such district, held or owned by the state shall be assessed and charged for its proportion of the cost of such local improvements in the same manner as other property in such district, it being the intention of this chapter that the state shall bear its just and equitable proportion of the cost of local improvements specially benefiting lands of the state. However, none of the provisions of this chapter shall have the effect, or be construed to have the effect, to alter or modify in any particular any existing lease of any lands or property owned by the state, or release or discharge any lessee of any such lands or property from any of the obligations, covenants, or conditions of the contract under which any such lands or property are leased or held by any such lessee. [2003 c 334 § 506; 1963 c 20 § 3; 1919 c 164 § 2; RRS § 8126. Cf. 1909 c 154 § 5.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.44.030 Apportioning cost on leaseholds. Where lands of the state are under lease, the proportionate amounts to be assessed against the leasehold interest, and the fee simple interest of the state, shall be fixed with reference to the life of the improvement and the period for which the lease has yet to run. [2003 c 334 § 507; 1919 c 164 § 3; RRS § 8127. Cf. 1909 c 154 § 3; 1907 c 74 § 3.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.44.040 Notice to state of intention to improve, or impose assessment—Consent—Notice to port commission. Notice of the intention to make such improvement, or impose any assessment, together with the estimate of the amount to be charged to each lot, tract or parcel of land, or other property owned by the state to be assessed, shall be forwarded by registered or certified mail to the chief administrative officer of the agency of state government occupying, using, or having jurisdiction over such lands at least thirty days prior to the date fixed for hearing on the resolution or petition initiating the assessment. Such assessing district, shall not have jurisdiction to order such improvement as to the interest of the state in harbor areas and state tidelands

until the written consent of the commissioner of public lands to the making of such improvement shall have been obtained, unless other means be provided for paying that portion of the cost which would otherwise be levied on the interest of the state of Washington in and to those tidelands, and nothing herein shall prevent the city from assessing the proportionate cost of the improvement against any leasehold, contractual, or possessory interest in and to any tideland or harbor area owned by the state: PROVIDED, HOWEVER, That in the case of tidelands and harbor areas within the boundaries of any port district, notice of intention to make such improvement shall also be forwarded to the commissioners of the port district. [2002 c 260 § 2; 1989 c 243 § 14; 1979 c 151 § 177; 1963 c 20 § 4; 1919 c 164 § 4; RRS § 8128. Cf. 1909 c 154 § 6.]

79.44.050 Certification of roll—Penalties, interest.

Upon the approval and confirmation of the assessment roll ordered by the proper authorities of any assessing district, the treasurer of such assessing district shall certify and forward to the chief administrative officer of the agency of state government occupying, using, or having jurisdiction over the lands, a statement of all the lots or parcels of land held or owned by the state and charged on such assessment roll, separately describing each such lot or parcel of the state's land, with the amount of the local assessment charged against it, or the proportionate amount assessed against the fee simple interest of the state, in case the land has been leased. The chief administrative officer upon receipt of such statement shall cause a proper record to be made in his or her office of the cost of such assessment upon the lands occupied, used, or under the jurisdiction of his or her agency.

No penalty shall be provided or enforced against the state, and the interest upon such assessments shall be computed and paid at the rate paid by other property situated in the same assessing district. [2013 c 23 § 263; 2002 c 260 § 3; 1989 c 243 § 15; 1979 c 151 § 178; 1963 c 20 § 5; 1933 c 108 § 1; 1919 c 164 § 5; RRS § 8129. Cf. 1909 c 154 § 6; 1907 c 74 §§ 1, 2, 4, 5.]

79.44.060 Payment procedure—Lands not subject to lien, exception. When the chief administrative officer of an agency of state government is satisfied that an assessing district has complied with all the conditions precedent to the levy of assessments for district purposes, pursuant to this chapter against lands occupied, used, or under the jurisdiction of the officer's agency, he or she shall pay them, together with any interest thereon from any funds specifically appropriated to the agency therefor or from any funds of the agency which under existing law have been or are required to be expended to pay assessments on a current basis.

Except as provided in RCW 79.44.190 no lands of the state shall be subject to a lien for unpaid assessments, nor shall the interest of the state in any land be sold for unpaid assessments where assessment liens attached to the lands prior to state ownership. [2015 3rd sp.s. c 1 § 307; 2003 c 334 § 508; 1979 c 151 § 179; 1971 ex.s. c 116 § 2; 1963 c 20 § 6; 1947 c 205 § 1; Rem. Supp. 1947 § 8136a.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.44.070 Enforcement against lessee or contract holder. When any assessing district has made or caused to be made an assessment against such leasehold, contractual, or possessory interest for any such local improvement, the treasurer of that assessing district shall immediately give notice to the chief administrative officer of the agency having jurisdiction over the lands. The assessment shall become a lien against the leasehold, contractual, or possessory interest in the same manner as the assessments on other property, and its collection may be enforced against such interests as provided by law for the enforcement of other local improvement assessments: PROVIDED, That the assessment shall not be made payable in installments unless the owner of such leasehold, contractual, or possessory interest shall first file with such treasurer a satisfactory bond guaranteeing the payment of such installments as they become due. [2002 c 260 § 4; 1979 c 151 § 180; 1963 c 20 § 7; 1919 c 164 § 6; RRS § 8130. Cf. 1909 c 154 § 2.]

79.44.080 Foreclosure against leasehold or contract interest—Cancellation of lease or contract. Whenever any assessing district shall have foreclosed the lien of any such delinquent assessments, as provided by law, and shall have obtained title to such leasehold, contractual, or possessory interest, the chief administrative officer of the agency having jurisdiction over the lands shall be notified by registered or certified mail of such action and furnished a statement of all assessments against such leasehold, contractual, or possessory interest, and the chief administrative officer shall cause the amount of such assessments to be paid as provided in RCW 79.44.060, and upon the receipt of an assignment from such assessing district, the chief administrative officer shall cancel such lease or contract: PROVIDED, HOWEVER, That unless the assessing district making the local improvement and levying the special assessment shall have used due diligence in the foreclosure thereof, the chief administrative officer shall not be required to pay any sum in excess of what they deem to be the special benefits accruing to the state's reversionary interest in the property: AND PROVIDED FURTHER, That if such delinquent assessment or installment shall be against a leasehold interest in freshwater harbor areas within a port district, the chief administrative officer shall notify the commissioners of that port district of the receipt of such assignment, and the commissioners shall forthwith cancel such lease. [2002 c 260 § 5; 1979 c 151 § 181; 1963 c 20 § 8; 1919 c 164 § 7; RRS § 8131.]

79.44.090 Payment by state after forfeiture of lease or contract. If by reason of default in the payment of rentals or installments, or other causes, the state shall cancel any lease or contract against which assessments have been levied as herein provided, the chief administrative officer of the agency having jurisdiction over the lands shall cause such assessments or installments as shall fall due subsequent to the cancellation of said contract or leasehold interest to be paid as provided in RCW 79.44.060, the same as if the assessments or installments thereof had been levied on the state's interest in said lands. [1963 c 20 § 9; 1919 c 164 § 8; RRS § 8132.]

79.44.095 Assessments paid by state to be added to purchase price of land. When any land, other than lands

occupied and used in connection with state institutions, owned or held by the state within incorporated cities, towns, diking, drainage or port districts in this state, against which local improvement assessments have been paid, as herein provided for, is offered for sale, there shall be added to the appraised value of such land, as provided by law, such portion of the local improvement assessment paid by the state as shall be deemed to represent the value added to such lands by such improvement for the purpose of sale, which amount so added shall be paid by the purchaser in cash at the time of the sale of said land, in addition to the amounts otherwise due to the state for said land, and no deed shall ever be executed until such local improvement assessments have been paid, and nothing herein shall be construed as canceling any unpaid assessments on the land so sold by the state, but such land shall be sold subject to all assessments unpaid at the time of sale. [1919 c 164 § 9; RRS § 8133. Cf. 1909 c 154 § 7.]

Assessments paid to be added to purchase price of land: RCW 79.11.320.

79.44.100 Assignment of lease or contract to purchaser at foreclosure sale. Whenever any such tide, state, school, granted, or other lands situated within the limits of any assessing district, has been included within any local improvement district by such assessing district, and the contract, leasehold, or other interest of any individual has been sold to satisfy the lien of such assessment for local improvement, the purchaser of such interest at such sale shall be entitled to receive from the state of Washington, on demand, an assignment of the contract, leasehold, or other interest purchased by him or her, and shall assume, subject to the terms and conditions of the contract or lease, the payment to the state of the amount of the balance which his or her predecessor in interest was obligated to pay. [2013 c 23 § 264; 1963 c 20 § 10; 1919 c 164 § 10; RRS § 8134. Cf. 1909 c 154 § 10.]

79.44.120 When assessments need not be added in certain cases. Whenever any state school, granted, tide, or other public lands of the state shall have been charged with local improvement assessments under any local improvement assessment district in any incorporated city, town, irrigation, diking, drainage, port, weed, or pest district, or any other district now authorized by law to levy assessments against lands of the state, where such assessments are required under existing statutes to be returned to the fund of the state treasury from which the assessments were originally paid, the department may, and is hereby authorized, to sell such lands for their appraised valuation without regard to such assessments, anything to the contrary in the existing statutes notwithstanding. However, nothing in this section shall be construed to alter in any way any existing statute providing for the method of procedure in levying assessments against lands of the state in any of such local improvement assessment districts. [2003 c 334 § 509; 1937 c 80 § 1; RRS § 7797-192a.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.44.130 Local provisions superseded. The provisions of this chapter shall apply to all assessing districts as herein defined, any charter or ordinance provisions to the contrary notwithstanding. [1963 c 20 § 11; 1919 c 164 § 11; RRS § 8135. Cf. 1909 c 154 § 8.]

79.44.140 Application of chapter—Eminent domain assessments. The provisions of this chapter shall apply to all local improvements initiated after June 11, 1919, including assessments to pay the cost and expense of taking and damaging property by the power of eminent domain, as provided by law: PROVIDED, That in case of eminent domain assessments, it shall not be necessary to forward notice of the intention to make such improvement, but the eminent domain commissioners, authorized to make such assessment, shall, at the time of filing the assessment roll with the court in the manner provided by law, forward by registered or certified mail to the chief administrative officer of the agency using, occupying or having jurisdiction over the lands a notice of such assessment, and of the day fixed by the court for the hearing thereof: PROVIDED, That no assessment against the state's interest in tidelands or harbor areas shall be binding against the state if the commissioner of public lands shall file a disapproval of the same in court before judgment confirming the roll. [2002 c 260 § 6; 1979 c 151 § 182; 1963 c 20 § 12; 1919 c 164 § 12; RRS § 8136.]

79.44.190 Acquisition of property by state or political subdivision which is subject to unpaid assessments or delinquencies—Payment of lien or installments. When real property subject to an unpaid special assessment for a local improvement levied by any political subdivision of the state authorized to form local improvement or utility local improvement districts is acquired by purchase or condemnation by the state or any political subdivision thereof, including but not limited to any special purpose district, the property so acquired shall continue to be subject to the assessment lien.

An assessment lien or installment thereof, delinquent at the time of such acquisition shall be paid at the time of acquisition, and the amount thereof, including any accrued interest and delinquent penalties, shall be withheld from the purchase price or condemnation award by the public body acquiring the property and shall be paid immediately to the county, city, or town treasurer, whichever is applicable, in payment of and discharge of such delinquent installment lien.

Any installment or installments not delinquent at the time of acquisition shall become due and payable in such year and at such date as said installment would have become due if such property had not been so acquired: PROVIDED, That where such property is acquired by the state of Washington, the balance of the assessment shall be paid in full at the time of acquisition.

For the purpose of this section, the "time of acquisition" shall mean the date of completion of the sale, date of condemnation verdict, date of the order of immediate possession and use pursuant to RCW 8.04.090, or the date of judgment, if not tried to a jury. [1971 ex.s. c 116 § 1.]

Chapter 79.64 RCW

FUNDS FOR MANAGING AND ADMINISTERING LANDS

Sections

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STATE LANDS

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(2016 Ed.)

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PART 2
STATE FORESTLANDS

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- 79.64.110 Revenue distribution.
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PART 1
STATE LANDS

79.64.010 Definitions. As used in this chapter, "rule" means rule as that term is defined by RCW 34.05.010. [2003 c 334 § 519; 1967 ex.s. c 63 § 1; 1961 c 178 § 1.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.64.020 Resource management cost account—Use.

A resource management cost account in the state treasury is created to be used solely for the purpose of defraying the costs and expenses necessarily incurred by the department in managing and administering state lands, aquatic lands, and the making and administering of leases, sales, contracts, licenses, permits, easements, and rights-of-way as authorized under the provisions of this title. Appropriations from the resource management cost account to the department shall be expended for no other purposes. Funds in the resource management cost account may be appropriated or transferred by the legislature for the benefit of all of the trusts from which the funds were derived. During the 2013-2015 fiscal biennium, the legislature may transfer from the aquatics revenues in the resources management cost account to the marine resources stewardship trust account for the purposes of chapter 43.372 RCW. [2014 c 32 § 3; 2013 2nd sp.s. c 4 § 1000; 2011 c 216 § 15; 2008 c 328 § 6004; 2004 c 199 § 226; 2003 c 334 § 520; 1993 c 460 § 1; 1985 c 57 § 80; 1981 c 4 § 2; 1961 c 178 § 2.]

Effective dates—2013 2nd sp.s. c 4: See note following RCW 2.68.020.

Part headings not law—Severability—Effective date—2008 c 328: See notes following RCW 43.155.050.

Intent—2003 c 334: See note following RCW 79.02.010.

Additional notes found at www.leg.wa.gov

79.64.030 Expenditures of certain funds in the resource management cost account to be for trust lands—Use for other lands—Repayment—Ordinary cost not deductible from sale proceeds—Accounting. Funds in the resource management cost account from the moneys received from leases, sales, contracts, licenses, permits, easements, and rights-of-way issued by the department and affecting school lands, university lands, scientific school lands, normal school lands, capitol building lands, or institutional lands

shall be pooled and expended by the department solely for the purpose of defraying the costs and expenses necessarily incurred in managing and administering all of the trust lands enumerated in this section. Such funds may be used for similar costs and expenses in managing and administering other lands managed by the department provided that such expenditures that have been or may be made on such other lands shall be repaid to the resource management cost account together with interest at a rate determined by the board.

Costs and expenses necessarily incurred in managing and administering agricultural college lands shall not be deducted from proceeds received from the sale of such lands or from the sale of resources that are part of the lands. Costs and expenses incurred in managing and administering agricultural college trust lands shall be funded by appropriation under RCW 79.64.090.

An accounting shall be made annually of the accrued expenditures from the pooled trust funds in the account. In the event the accounting determines that expenditures have been made from moneys received from trust lands for the benefit of other lands, such expenditure shall be considered a debt and an encumbrance against the property benefited, including state forestlands. The results of the accounting shall be reported to the legislature at the next regular session. The state treasurer is authorized, upon request of the department, to transfer funds between the forest development account and the resource management cost account solely for purpose of repaying loans pursuant to this section. [2003 c 334 § 521; 2001 c 250 § 15; 1999 c 279 § 1; 1993 c 460 § 2; 1988 c 70 § 4; 1977 ex.s. c 159 § 2; 1961 c 178 § 3.]

Intent—2003 c 334: See note following RCW 79.02.010.

Forest development account: RCW 79.64.100.

Additional notes found at www.leg.wa.gov

79.64.040 Deductions from proceeds of all transactions authorized—Limitations. (1) The board shall determine the amount deemed necessary in order to achieve the purposes of this chapter and shall provide by rule for the deduction of this amount from the moneys received from all leases, sales, contracts, licenses, permits, easements, and rights-of-way issued by the department and affecting state lands and aquatic lands, provided that no deduction shall be made from the proceeds from agricultural college lands.

(2) Moneys received as deposits from successful bidders, advance payments, and security under RCW 79.15.100, 79.15.080, and 79.11.150 prior to December 1, 1981, which have not been subjected to deduction under this section are not subject to deduction under this section.

(3) Except as otherwise provided in subsection (5) of this section, the deductions authorized under this section shall not exceed twenty-five percent of the moneys received by the department in connection with any one transaction pertaining to state lands and aquatic lands other than second-class tide and shore lands and the beds of navigable waters, and fifty percent of the moneys received by the department pertaining to second-class tide and shore lands and the beds of navigable waters.

(4) In the event that the department sells logs using the contract harvesting process described in RCW 79.15.500 through 79.15.530, the moneys received subject to this section are the net proceeds from the contract harvesting sale.

(5) During the 2013-2015 fiscal biennium, the twenty-five percent limitation on deductions set in subsection (3) of this section may be increased up to thirty percent by the board. During the 2015-2017 fiscal biennium, the board may increase the twenty-five percent limitation up to thirty-two percent. [2015 3rd sp.s. c 4 § 972; 2014 c 32 § 4; 2013 2nd sp.s. c 4 § 1001; 2012 2nd sp.s. c 7 § 927. Prior: 2011 1st sp.s. c 50 § 966; 2011 c 216 § 16; 2009 c 564 § 957; 2007 c 522 § 958; 2005 c 518 § 945; 2004 c 199 § 227; prior: 2003 c 334 § 522; 2003 c 313 § 8; 2001 c 250 § 16; 1999 c 279 § 2; 1981 2nd ex.s. c 4 § 3; 1971 ex.s. c 224 § 2; 1967 ex.s. c 63 § 2; 1961 c 178 § 4.]

Effective dates—2015 3rd sp.s. c 4: See note following RCW 28B.15.069.

Effective dates—2013 2nd sp.s. c 4: See note following RCW 2.68.020.

Effective date—2012 2nd sp.s. c 7: See note following RCW 2.68.020.

Effective dates—2011 1st sp.s. c 50: See note following RCW 15.76.115.

Effective date—2009 c 564: See note following RCW 2.68.020.

Severability—Effective date—2007 c 522: See notes following RCW 15.64.050.

Intent—2003 c 334: See note following RCW 79.02.010.

Findings—Severability—2003 c 313: See notes following RCW 79.15.500.

Additional notes found at www.leg.wa.gov

79.64.050 Deductions to be paid into resource management cost account. All deductions from moneys received made in accordance with RCW 79.64.040 shall be paid into the resource management cost account and the balance shall be paid into the state treasury to the credit of the fund otherwise entitled to the proceeds. [2003 c 334 § 523; 2001 c 250 § 17; 1961 c 178 § 5.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.64.060 Rules relating to account. The board shall adopt such rules as it deems necessary and proper for the purpose of carrying out the provisions of RCW 79.64.010 through 79.64.070. [1983 c 3 § 203; 1961 c 178 § 6.]

79.64.070 Severability—1961 c 178. If any provision of RCW 79.64.010 through 79.64.070, or its application to any person or circumstance is held invalid, the remainder of RCW 79.64.010 through 79.64.070, or the application of the provision to other persons or circumstances is not affected. [1983 c 3 § 204; 1961 c 178 § 7.]

79.64.090 Agricultural college trust management account—Creation. The agricultural college trust management account is created in the state treasury. To this account shall be deposited such funds as the legislature directs or appropriates. Moneys in the agricultural college trust management account may be spent only after appropriation. Expenditures from this account may be used only for the costs of managing the assets of the agricultural school trust. [2003 c 334 § 524; 1999 c 279 § 3.]

Intent—2003 c 334: See note following RCW 79.02.010.

Additional notes found at www.leg.wa.gov

PART 2
STATE FORESTLANDS

79.64.100 Forest development account (as amended by 2012 c 166).

(1) There is created a forest development account in the state treasury. The state treasurer shall keep an account of all sums deposited ~~((therein and))~~, expended, or withdrawn ~~((therefrom))~~ from the account.

(2)(a) Any sums placed in the forest development account shall be pledged for the purpose of:

(i) Paying interest and principal on the bonds issued by the department under RCW 79.22.080 and 79.22.090 and the provisions of this chapter~~(:)~~; and

~~((for))~~ (ii) The purchase of land for growing timber.

(b) Any bonds issued shall constitute a first and prior claim and lien against the account for the payment of principal and interest.

(3) No sums for the ~~((above))~~ purposes identified in subsection (2) of this section shall be withdrawn or paid out of the account except upon approval of the department.

(4) Appropriations may be made by the legislature from the forest development account to the department for the purpose of:

(a) Carrying on the activities of the department on state forestlands~~(:)~~;

(b) Establishing a state forestland pool under RCW 79.22.140 and carrying on the activities of the department on lands included in the land pool;

(c) Carrying on the activities of the department on lands managed on a sustained yield basis as provided for in RCW 79.10.320~~(:)~~; and

~~((for))~~ (d) Reimbursement of expenditures that have been made or may be made from the resource management cost account created in RCW 79.64.020 in the management of state forestlands. [2012 c 166 § 5; 2003 c 334 § 219; 2000 2nd sp.s. c 1 § 915; 1999 sp.s. c 13 § 18; 1998 c 347 § 55; 1988 c 128 § 31; 1985 c 57 § 75; 1977 ex.s. c 159 § 1; 1959 c 314 § 1; 1951 c 149 § 1; 1933 c 118 § 2; 1923 c 154 § 6; RRS § 5812-6. Formerly RCW 76.12.110.]

Findings—Intent—2012 c 166: See note following RCW 79.02.010.

79.64.100 Forest development account (as amended by 2012 2nd sp.s. c 7). There is created a forest development account in the state treasury. The state treasurer shall keep an account of all sums deposited therein and expended or withdrawn therefrom. Any sums placed in the forest development account shall be pledged for the purpose of paying interest and principal on the bonds issued by the department under RCW 79.22.080 and 79.22.090 and the provisions of this chapter, and for the purchase of land for growing timber. Any bonds issued shall constitute a first and prior claim and lien against the account for the payment of principal and interest. No sums for the above purposes shall be withdrawn or paid out of the account except upon approval of the department.

Appropriations may be made by the legislature from the forest development account to the department for the purpose of carrying on the activities of the department on state forestlands, lands managed on a sustained yield basis as provided for in RCW 79.10.320, and for reimbursement of expenditures that have been made or may be made from the resource management cost account in the management of state forestlands. For the 2011-2013 fiscal biennium, moneys from the forest development account shall be distributed as directed in section 706, chapter 7, Laws of 2012 2nd sp. sess. to the beneficiaries of the revenues derived from state forestlands. During the 2011-2013 fiscal biennium, the legislature may appropriate moneys in the forest development account to support emergency fire suppression activities in a manner that, at a maximum, represents the proportion of land that the department manages in comparison to the total land the department conducts emergency fire suppression activities on. [2012 2nd sp.s. c 7 § 928; 2003 c 334 § 219; 2000 2nd sp.s. c 1 § 915; 1999 sp.s. c 13 § 18; 1998 c 347 § 55; 1988 c 128 § 31; 1985 c 57 § 75; 1977 ex.s. c 159 § 1; 1959 c 314 § 1; 1951 c 149 § 1; 1933 c 118 § 2; 1923 c 154 § 6; RRS § 5812-6. Formerly RCW 76.12.110.]

Reviser's note: RCW 79.64.100 was amended twice during the 2012 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.

Effective date—2012 2nd sp.s. c 7: See note following RCW 2.68.020.

Intent—2003 c 334: See note following RCW 79.02.010.

Additional notes found at www.leg.wa.gov

79.64.110 Revenue distribution. (1) Any moneys derived from the lease of state forestlands or from the sale of valuable materials, oils, gases, coal, minerals, or fossils from those lands, or the appraised value of these resources when transferred to a public agency under RCW 79.22.060, except as provided in RCW 79.22.060(4), must be distributed as follows:

(a) For state forestlands acquired through RCW 79.22.040 or by exchange for lands acquired through RCW 79.22.040:

(i) The expense incurred by the state for administration, reforestation, and protection, not to exceed twenty-five percent, which rate of percentage shall be determined by the board, must be returned to the forest development account created in RCW 79.64.100. During the 2015-2017 fiscal biennium, the board may increase the twenty-five percent limitation up to twenty-seven percent.

(ii) Any balance remaining must be paid to the county in which the land is located or, for counties participating in a land pool created under RCW 79.22.140, to each participating county proportionate to its contribution of asset value to the land pool as determined by the board. Payments made under this subsection are to be paid, distributed, and prorated, except as otherwise provided in this section, to the various funds in the same manner as general taxes are paid and distributed during the year of payment.

(iii) Any balance remaining, paid to a county with a population of less than sixteen thousand, must first be applied to the reduction of any indebtedness existing in the current expense fund of the county during the year of payment.

(iv) With regard to moneys remaining under this subsection (1)(a), within seven working days of receipt of these moneys, the department shall certify to the state treasurer the amounts to be distributed to the counties. The state treasurer shall distribute funds to the counties four times per month, with no more than ten days between each payment date.

(b) For state forestlands acquired through RCW 79.22.010 or by exchange for lands acquired through RCW 79.22.010, except as provided in RCW 79.64.120:

(i) Fifty percent shall be placed in the forest development account.

(ii) Fifty percent shall be prorated and distributed to the state general fund, to be dedicated for the benefit of the public schools, to the county in which the land is located or, for counties participating in a land pool created under RCW 79.22.140, to each participating county proportionate to its contribution of asset value to the land pool as determined by the board, and according to the relative proportions of tax levies of all taxing districts in the county. The portion to be distributed to the state general fund shall be based on the regular school levy rate under RCW 84.52.065 and the levy rate for any maintenance and operation special school levies. With regard to the portion to be distributed to the counties, the department shall certify to the state treasurer the amounts to be distributed within seven working days of receipt of the money. The state treasurer shall distribute funds to the counties four times per month, with no more than ten days between each payment date. The money distributed to the county must be paid, distributed, and prorated to the various other funds in the same manner as general taxes are paid and distributed during the year of payment.

(2) A school district may transfer amounts deposited in its debt service fund pursuant to this section into its capital projects fund as authorized in RCW 28A.320.330. [2015 3rd sp.s. c 4 § 973; 2012 c 166 § 6; 2009 c 354 § 8; 2007 c 503 § 1; 2003 c 334 § 207.]

Effective dates—2015 3rd sp.s. c 4: See note following RCW 28B.15.069.

Findings—Intent—2012 c 166: See note following RCW 79.02.010.

Finding—Intent—2009 c 354: See note following RCW 84.33.140.

Intent—2003 c 334: See note following RCW 79.02.010.

79.64.120 Retirement of interfund loans—Transfer of timber cutting rights on state forestlands acquired under RCW 79.22.010 to the federal land grant trusts—Distribution of revenue from timber management activities. (1) The department is authorized to:

(a) Determine the total present account balance with interest of the interfund loans made by the resource management cost account to the forest development account in accordance with generally accepted accounting principles;

(b) Subject to approval of the board, effectuate a transfer of timber cutting rights on state forestlands acquired under RCW 79.22.010 to the federal land grant trusts in such proportion that each trust receives full and fair market value for the interfund loans and is fully repaid or so much thereof as possible within distribution constraints described in subsection (2) of this section.

(2) After the effective date of the transfer authorized by subsection (1)(b) of this section and until the exercise of the cutting rights on the timber transferred has been fully satisfied, the distribution of revenue from timber management activities on state forestlands acquired under RCW 79.22.010 on which cutting rights have been transferred shall be as follows:

(a) As determined by the board, an amount no greater than thirty-three and three-tenths percent to be distributed to the federal land grant trust accounts and resource management cost account as directed by RCW 79.64.040 and 79.64.050;

(b) As determined by the board, an amount not less than sixteen and seven-tenths percent to the forest development account;

(c) Fifty percent to be distributed as provided in RCW 79.64.110. [2003 c 334 § 463; 1988 c 70 § 3. Formerly RCW 79.12.035.]

Intent—2003 c 334: See note following RCW 79.02.010.

Purpose—1988 c 70 § 3: "The purpose of RCW 79.12.035 is to provide a means to retire interfund loans authorized by RCW 79.64.030 from the resource management cost account to the forest development account. The resource management cost account is an asset of the federal land grant trusts. Section 3 of this act is intended to authorize a process by which the interfund loans may be repaid such that the federal land grant trusts will receive full fair market value without disruption in income to counties and the state general fund from management activities on state forestlands managed pursuant to chapter 79.12 RCW." [1988 c 70 § 2.]

**Chapter 79.70 RCW
NATURAL AREA PRESERVES**

Sections

- 79.70.010 Purpose.
- 79.70.020 Definitions.

- 79.70.030 Powers of department.
- 79.70.040 Powers as to transactions involving public lands deemed natural areas—Alienation of lands designated natural area preserves.
- 79.70.060 Legislative findings—Natural heritage resources.
- 79.70.070 Natural heritage advisory council.
- 79.70.080 Council duties.
- 79.70.090 Dedication of property as natural area.
- 79.70.100 Public hearing—Establishment of boundary.
- 79.70.110 Important bird areas.
- 79.70.120 Important bird area—Recognition requirements.
- 79.70.130 Distribution of amount in lieu of real property taxes, weed control assessment.
- 79.70.900 Construction—1972 ex.s. c 119.

79.70.010 Purpose. The purpose of this chapter is to establish a state system of natural area preserves and a means whereby the preservation of these aquatic and land areas can be accomplished.

All areas within the state, except those which are expressly dedicated by law for preservation and protection in their natural condition, are subject to alteration by human activity. Natural lands, together with the plants and animals living thereon in natural ecological systems, are valuable for the purposes of scientific research, teaching, as habitats of rare and vanishing species, as places of natural historic and natural interest and scenic beauty, and as living museums of the original heritage of the state.

It is, therefore, the public policy of the state of Washington to secure for the people of present and future generations the benefit of an enduring resource of natural areas by establishing a system of natural area preserves, and to provide for the protection of these natural areas. [1972 ex.s. c 119 § 1.]

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

(1) "Department" means the department of natural resources.

(2) "Natural areas" and "natural area preserves" include such public or private areas of land or water which have retained their natural character, although not necessarily completely natural and undisturbed, or which are important in preserving rare or vanishing flora, fauna, geological, natural historical or similar features of scientific or educational value and which are acquired or voluntarily registered or dedicated by the owner under this chapter.

(3) "Public lands" and "state lands" have the meaning set out in RCW 79.02.010.

(4) "Council" means the natural heritage advisory council as established in RCW 79.70.070.

(5) "Commissioner" means the commissioner of public lands.

(6) "Important bird area" means those areas jointly identified by the natural heritage program and a qualifying non-profit organization using internationally recognized scientific criteria. These areas have been found to be necessary to conserve populations of wild waterfowl, upland game birds, songbirds, and other birds native to and migrating through Washington, and contain the habitats that birds are dependent upon for breeding, migration, shelter, and sustenance.

(7) "Instrument of dedication" means any written document intended to convey an interest in real property pursuant to chapter 64.04 RCW.

(8) "Natural heritage resources" means the plant community types, aquatic types, unique geologic types, and special plant and animal species and their critical habitat as defined in the natural heritage plan established under RCW 79.70.030.

(9) "Plan" means the natural heritage plan as established under RCW 79.70.030.

(10) "Program" means the natural heritage program as established under RCW 79.70.030.

(11) "Qualifying nonprofit organization" means a national nonprofit organization, or a branch of a national nonprofit organization, that conserves and restores natural ecosystems, focusing on birds, other wildlife, and their habitat.

(12) "Register" means the Washington register of natural area preserves as established under RCW 79.70.030. [2004 c 180 § 4; 2003 c 334 § 548; 1981 c 189 § 1; 1972 ex.s. c 119 § 2.]

Intent—2004 c 180: See note following RCW 79.70.110.

Intent—2003 c 334: See note following RCW 79.02.010.

79.70.030 Powers of department. In order to set aside, preserve, and protect natural areas within the state, the department is authorized, in addition to any other powers, to:

(1) Establish the criteria for selection, acquisition, management, protection, and use of such natural areas, including:

(a) Limiting public access to natural area preserves consistent with the purposes of this chapter. Where appropriate, and on a case-by-case basis, a buffer zone with an increased low level of public access may be created around the environmentally sensitive areas;

(b) Developing a management plan for each designated natural area preserve. The plan must identify the significant resources to be conserved consistent with the purposes of this chapter and identify the areas with potential for low-impact public and environmental educational uses. The plan must specify the types of management activities and public uses that are permitted, consistent with the purposes of this chapter. The department must make the plans available for review and comment by the public, and state, tribal, and local agencies, prior to final approval;

(2) Cooperate or contract with any federal, state, or local governmental agency, private organizations, or individuals in carrying out the purpose of this chapter;

(3) Consistent with the plan, acquire by gift, devise, purchase, grant, dedication, or means other than eminent domain, the fee or any lesser right or interest in real property which shall be held and managed as a natural area;

(4) Acquire by gift, devise, grant, or donation any personal property to be used in the acquisition and/or management of natural areas;

(5) Inventory existing public, state, and private lands in cooperation with the council to assess possible natural areas to be preserved within the state;

(6) Maintain a natural heritage program to provide assistance in the selection and nomination of areas containing natural heritage resources for registration or dedication. The program shall maintain a classification of natural heritage resources, an inventory of their locations, and a data bank for such information. The department shall cooperate with the department of fish and wildlife in the selection and nomination of areas from the data bank that relate to critical wildlife

habitats. Information from the data bank shall be made available to public and private agencies and individuals for environmental assessment and proprietary land management purposes. Usage of the classification, inventory, or data bank of natural heritage resources for any purpose inconsistent with the natural heritage program is not authorized;

(7) Prepare a natural heritage plan which shall govern the natural heritage program in the conduct of activities to create and manage a system of natural areas that includes natural resources conservation areas, and may include areas designated under the research natural area program on federal lands in the state;

(a) The plan shall list the natural heritage resources to be considered for registration and shall provide criteria for the selection and approval of natural areas under this chapter;

(b) The department shall provide opportunities for input, comment, and review to the public, other public agencies, and private groups with special interests in natural heritage resources during preparation of the plan;

(c) Upon approval by the council and adoption by the department, the plan shall be updated and submitted biennially to the appropriate committees of the legislature for their information and review. The plan shall take effect ninety days after the adjournment of the legislative session in which it is submitted unless the reviewing committees suggest changes or reject the plan; and

(8) Maintain a state register of natural areas containing significant natural heritage resources to be called the Washington register of natural area preserves. Selection of natural areas for registration shall be in accordance with criteria listed in the natural heritage plan and accomplished through voluntary agreement between the owner of the natural area and the department. No privately owned lands may be proposed to the council for registration without prior notice to the owner or registered without voluntary consent of the owner. No state or local governmental agency may require such consent as a condition of any permit or approval of or settlement of any civil or criminal proceeding or to penalize any landowner in any way for failure to give, or for withdrawal of, such consent.

(a) The department shall adopt rules as authorized by RCW 43.12.065 and 79.70.030(1) and chapter 34.05 RCW relating to voluntary natural area registration.

(b) After approval by the council, the department may place sites onto the register or remove sites from the register.

(c) The responsibility for management of registered natural area preserves shall be with the preserve owner. A voluntary management agreement may be developed between the department and the owners of the sites on the register.

(d) Any public agency may register lands under provisions of this chapter. [2003 c 334 § 549; 2002 c 284 § 1; 1994 c 264 § 61; 1988 c 36 § 54; 1981 c 189 § 3; 1972 ex.s. c 119 § 3.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.70.040 Powers as to transactions involving public lands deemed natural areas—Alienation of lands designated natural area preserves. The department is further authorized to purchase, lease, set aside, or exchange any public lands which are deemed to be natural areas: PROVIDED, That the appropriate state land trust receives the fair market

value for any interests that are disposed of: PROVIDED, FURTHER, That such transactions are approved by the board of natural resources.

An area consisting of public land designated as a natural area preserve shall be held in trust and shall not be alienated except to another public use upon a finding by the department of natural resources of imperative and unavoidable public necessity. [2004 c 199 § 228; 1972 ex.s. c 119 § 4.]

Additional notes found at www.leg.wa.gov

79.70.060 Legislative findings—Natural heritage resources. The legislature finds:

(1) That it is necessary to establish a process and means for public and private sector cooperation in the development of a system of natural areas. Private and public landowners should be encouraged to participate in a program of natural area establishment which will benefit all citizens of the state;

(2) That there is a need for a systematic and accessible means for providing information concerning the locations of the state's natural heritage resources; and

(3) That the natural heritage advisory council should utilize a specific framework for natural heritage resource conservation decision making through a classification, inventory, priority establishment, acquisition, and management process known as the natural heritage program. Future natural areas should avoid unnecessary duplication of already protected natural heritage resources including those which may already be protected in existing publicly owned or privately dedicated lands such as nature preserves, natural areas, natural resources conservation areas, parks, or wilderness. [2002 c 284 § 2; 1981 c 189 § 2.]

79.70.070 Natural heritage advisory council. (1) The natural heritage advisory council is hereby established. The council shall consist of fifteen members, ten of whom shall be chosen as follows and who shall elect from the council's membership a chairperson:

(a) Five individuals, appointed by the commissioner, who shall be recognized experts in the ecology of natural areas and represent the public, academic, and private sectors. Desirable fields of expertise are biological and geological sciences; and

(b) Five individuals, appointed by the commissioner, who shall be selected from the various regions of the state. At least one member shall be or represent a private forest landowner and at least one member shall be or represent a private agricultural landowner.

(2) Members appointed under subsection (1) of this section shall serve for terms of four years.

(3) In addition to the members appointed by the commissioner, the director of the department of fish and wildlife, the director of the department of ecology, the supervisor of the department of natural resources, the director of the state parks and recreation commission, and the director of the recreation and conservation office, or an authorized representative of each agency officer, shall serve as ex officio, nonvoting members of the council.

(4) Any vacancy on the council shall be filled by appointment for the unexpired term by the commissioner.

(5) In order to provide for staggered terms, of the initial members of the council:

(a) Three shall serve for a term of two years;

(b) Three shall serve for a term of three years; and

(c) Three shall serve for a term of four years.

(6) Members of the natural preserves advisory committee serving on July 26, 1981, shall serve as members of the council until the commissioner appoints a successor to each. The successor appointment shall be specifically designated to replace a member of the natural preserves advisory committee until all members of that committee have been replaced. A member of the natural preserves advisory committee is eligible for appointment to the council if otherwise qualified.

(7) Members of the council shall serve without compensation. Members shall be reimbursed for travel expenses as provided in RCW 43.03.050 and 43.03.060 as now or hereafter amended. [2007 c 241 § 24; 1998 c 50 § 1; 1994 c 264 § 62; 1988 c 36 § 55; 1981 c 189 § 4.]

Intent—Effective date—2007 c 241: See notes following RCW 79A.25.005.

79.70.080 Council duties. (1) The council shall:

(a) Meet at least annually and more frequently at the request of the chairperson;

(b) Recommend policy for the natural heritage program through the review and approval of the natural heritage plan;

(c) Advise the department, the department of fish and wildlife, the state parks and recreation commission, and other state agencies managing state-owned land or natural resources regarding areas under their respective jurisdictions which are appropriate for natural area registration or dedication;

(d) Advise the department of rules and regulations that the council considers necessary in carrying out this chapter;

(e) Review and approve area nominations by the department or other agencies for registration and review and comment on legal documents for the voluntary dedication of such areas;

(f) Recommend whether new areas proposed for protection be established as natural area preserves, natural resources conservation areas, a combination of both, or by some other protected status; and

(g) Review and comment on management plans proposed for individual natural area preserves.

(2) From time to time, the council shall identify areas from the natural heritage data bank which qualify for registration. Priority shall be based on the natural heritage plan and shall generally be given to those resources which are rarest, most threatened, or under-represented in the heritage conservation system on a statewide basis. After qualifying areas have been identified, the department shall advise the owners of such areas of the opportunities for acquisition or voluntary registration or dedication. [2002 c 284 § 3; 1994 c 264 § 63; 1988 c 36 § 56; 1981 c 189 § 5.]

79.70.090 Dedication of property as natural area. (1)

The owner of a registered natural area, whether a private individual or an organization, may voluntarily agree to dedicate the area as a natural area by executing with the state an instrument of dedication in a form approved by the council. The instrument of dedication shall be effective upon its recording in the real property records of the appropriate county or counties in which the natural area is located. The county assessor

in computing assessed valuation shall take into consideration any reductions in property values and/or highest and best use which result from natural area dedication.

(2) A public agency owning or managing a registered natural area preserve may dedicate lands under the provisions of this chapter.

(3) The department shall adopt rules as authorized by RCW 43.12.065 and 79.70.030(1) relating to voluntary natural area dedication and defining:

(a) The types of real property interests that may be transferred;

(b) Real property transfer methods and the types of consideration of payment possible;

(c) Additional dedication provisions, such as natural area management, custody, use, and rights and privileges retained by the owner; and

(d) Procedures for terminating dedication arrangements. [2003 c 334 § 550; 1981 c 189 § 6.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.70.100 Public hearing—Establishment of boundary. The department shall hold a public hearing in the county where the majority of the land in a proposed natural area preserve is located prior to establishing the boundary. [1998 c 50 § 2.]

79.70.110 Important bird areas. (1) The program may use information collected by a qualifying nonprofit organization to recognize important bird areas. The program should, to the greatest extent possible, coordinate with and use internationally agreed-upon, scientific criteria and protocols developed by a qualifying nonprofit organization to officially recognize these sites throughout Washington. Prior to using information collected by a qualifying nonprofit organization, the program must verify that the information was collected by individuals trained in scientific data collection, wildlife biology, or ornithology.

(2) When the program recognizes an important bird area, that information will be included in the program's data bank. An important bird area shall not be designated as a natural area or a natural area preserve unless that area satisfies the substantive and procedural requirements for becoming a natural area or natural area preserve under this chapter.

(3) The qualifying nonprofit organization that collected the information used to recognize important bird areas should be available to work with interested landowners, businesses, and state and local governments to identify ways to maintain or enhance the important bird areas.

(4) The recognition of private property as an important bird area under this chapter, or the inclusion of private property in the program's data bank, does not confer nor imply any rights of access or trespass onto the important bird area without full knowledge and consent of the owner pursuant to any state statutory and common laws dealing with trespass and access to private property.

(5) Recognition of an important bird area does not require or create critical area designation under chapter 36.70A RCW. [2004 c 180 § 2.]

Intent—2004 c 180: "Washington has a rich variety of birds, wildlife, and fish that its citizens and visitors enjoy. With over three hundred sixty-five bird species, Washington can use this natural asset to attract nature tour-

(2016 Ed.)

ists and sportsmen from all over the country and the world. According to a United States fish and wildlife service report, thirty-six percent of Washington's residents currently participate in bird watching, and the watchable wildlife industry brings nearly one billion dollars per year into the state's economy. The economic benefits delivered to rural economies in Washington by those choosing to recreate by hunting waterfowl or upland game birds is equally as impressive.

The legislature has long recognized the important role of waterfowl and upland game bird hunting and other sporting pursuits in both the state's economy and the quality of life for Washington residents. Additionally, the 2003 legislature recognized the economic value of promoting watchable wildlife and nature tourism when it required the departments of fish and wildlife and *community, trade, and economic development to host a watchable wildlife and nature tourism conference and write a statewide strategic plan. The 2002 legislature recognized the value of identifying and conserving our state's biodiversity for future generations when it created the biodiversity task force and required a plan be developed to recommend ways to conserve biodiversity. Furthermore, over the past fifteen years, the legislature has recognized the important contributions volunteers and nonprofit organizations have made in restoring and monitoring salmon and wildlife habitat. Therefore, it is the goal of the legislature to promote: Partnerships with volunteers; rural economic development; nature tourism; and conservation of biodiversity by encouraging partnerships between state government agencies, volunteers, and nonprofit organizations to designate and conserve natural assets that attract nature tourists and bird watchers to Washington's rural areas.

To accomplish this goal, the legislature recognizes the scientific work by volunteer organizations to use internationally recognized scientific criteria and protocols to identify, conserve, and monitor areas of the state that are important for migrating and resident birds. Scientists, ornithologists, and qualified volunteers have identified important bird areas. Wildlife conservation organizations and their volunteers are working to develop mutually agreed-upon bird conservation plans and monitoring plans in cooperation with public land managers and private landowners. Volunteers and scientists in more than one hundred countries around the world have already completed identification of fourteen thousand two hundred sixty sites that qualify as important bird areas.

Qualified volunteers and scientists have already successfully used the international criteria to identify fifty-three sites important for birds in Washington. Following the final round of site selection, volunteer organizations plan to work with landowners, businesses, and local and state governments to develop plans to maintain or enhance sites that will then become destinations for nature tourists to promote rural economic development. Therefore, it is the intent of the legislature to have Washington participate in the recognition portion of the important bird area program by directing the natural heritage program at the department of natural resources to officially recognize important bird areas." [2004 c 180 § 1.]

***Reviser's note:** The "department of community, trade, and economic development" was renamed the "department of commerce" by 2009 c 565.

79.70.120 Important bird area—Recognition requirements. Prior to recognizing an important bird area under this chapter, the department must:

(1) Publish notice of the proposed important bird area in the Washington state register;

(2) Publish notice of the proposed important bird area in a newspaper of general circulation in the county where the proposed important bird area is located; and

(3) Conduct at least one public hearing in the county where the proposed important bird area is located. [2004 c 180 § 3.]

Intent—2004 c 180: See note following RCW 79.70.110.

79.70.130 Distribution of amount in lieu of real property taxes, weed control assessment. The state treasurer, on behalf of the department, must distribute to counties for all lands acquired for the purposes of this chapter an amount in lieu of real property taxes equal to the amount of tax that would be due if the land were taxable as open space land under chapter 84.34 RCW except taxes levied for any state purpose, plus an additional amount equal to the amount of

weed control assessment that would be due if such lands were privately owned. The county assessor and county legislative authority shall assist in determining the appropriate calculation of the amount of tax that would be due. The county shall distribute the amount received under this section in lieu of real property taxes to all property taxing districts except the state in appropriate tax code areas the same way it would distribute local property taxes from private property. The county shall distribute the amount received under this section for weed control to the appropriate weed district. [2005 c 303 § 11.]

Additional notes found at www.leg.wa.gov

79.70.900 Construction—1972 ex.s. c 119. Nothing in this chapter is intended to supersede or otherwise affect any existing legislation. [1972 ex.s. c 119 § 6.]

Chapter 79.71 RCW WASHINGTON NATURAL RESOURCES CONSERVATION AREAS

Sections

79.71.010	Legislative findings.
79.71.020	Characteristics of lands considered for conservation purposes.
79.71.030	Definitions.
79.71.040	Acquisition of property for natural resources conservation areas—Designation.
79.71.050	Transfer of trust land for natural resources conservation areas—Use of proceeds.
79.71.060	Public hearing on proposed conservation area.
79.71.070	Management plans for designated areas.
79.71.080	Administration of natural resources conservation areas—Management agreements and activities.
79.71.090	Natural resources conservation areas stewardship account.
79.71.100	Designation of certain areas as natural resources conservation areas.
79.71.120	Elk river natural resources conservation area—Transfer of management—Hunting opportunities.
79.71.130	Distribution of amount in lieu of real property taxes, weed control assessment.

79.71.010 Legislative findings. The legislature finds that: (1) There is an increasing and continuing need by the people of Washington for certain areas of the state to be conserved, in rural as well as urban settings, for the benefit of present and future generations; (2) such areas are worthy of conservation for their outstanding scenic and ecological values and provide opportunities for low-impact public use; (3) in certain cases acquisition of property or rights in property is necessary to protect these areas for public purposes; and (4) there is a need for a state agency to act in an effective and timely manner to acquire interests in such areas and to develop appropriate management strategies for conservation purposes. [1991 c 352 § 1; 1987 c 472 § 1.]

79.71.020 Characteristics of lands considered for conservation purposes. Lands possessing the following characteristics are considered by the legislature to be worthy of consideration for conservation purposes:

(1) Lands identified as having high priority for conservation, natural systems, wildlife, and low-impact public use values;

(2) An area of land or water, or land and water, that has flora, fauna, geological, archaeological, scenic, or similar features of critical importance to the people of Washington

and that has retained to some degree or has reestablished its natural character;

(3) Examples of native ecological communities; and

(4) Environmentally significant sites threatened with conversion to incompatible or ecologically irreversible uses. [1991 c 352 § 2; 1987 c 472 § 2.]

79.71.030 Definitions. As used in this chapter:

"Commissioner" means the commissioner of public lands.

"Department" means the department of natural resources.

"Conservation purposes" include but are not limited to: (1) Maintaining, enhancing, or restoring ecological systems, including but not limited to aquatic, coastal, riparian, montane, and geological systems, whether such systems be unique or typical to the state of Washington; (2) maintaining exceptional scenic landscapes; (3) maintaining habitat for threatened, endangered, and sensitive species; (4) enhancing sites for primitive recreational purposes; and (5) outdoor environmental education.

"Low-impact public use" includes public recreation uses and improvements that do not adversely affect the resource values, are appropriate to the maintenance of the site in a relatively unmodified natural setting, and do not detract from long-term ecological processes.

"Management activities" may include limited production of income from forestry, agriculture, or other resource management activities, if such actions are consistent with the other purposes and requirements of this chapter.

"Natural resources conservation area" or "conservation area" means an area having the characteristics identified in RCW 79.71.020. [1991 c 352 § 3; 1987 c 472 § 3.]

79.71.040 Acquisition of property for natural resources conservation areas—Designation. The department is authorized to acquire property or less than fee interests in property, as defined by RCW 64.04.130, by all means, except eminent domain, for creating natural resources conservation areas, where acquisition is the best way to achieve the purposes of this chapter. Areas acquired or assembled by the department for conservation purposes will be designated as "Washington natural resources conservation areas." [1987 c 472 § 4.]

79.71.050 Transfer of trust land for natural resources conservation areas—Use of proceeds. The department is authorized to transfer fee simple interest or less than fee interests in trust land, as defined by Article XVI of the Washington Constitution, for the creation of natural resources conservation areas, provided the owner of the trust land receives full fair market value compensation for all rights transferred. The proceeds from such transfers shall be used for the exclusive purpose of acquiring real property to replace those interests utilized for the conservation area in order to meet the department's fiduciary obligations and to maintain the productive land base of the various trusts. [1991 c 352 § 4; 1987 c 472 § 5.]

79.71.060 Public hearing on proposed conservation area. The department shall hold a public hearing in the county where the majority of the land in the proposed natural resources conservation area is located prior to establishing the boundary. An area proposed for designation must contain resources consistent with characteristics identified in RCW 79.71.020. [1991 c 352 § 5; 1987 c 472 § 6.]

79.71.070 Management plans for designated areas. The department shall develop a management plan for each designated area. The plan shall identify the significant resources to be conserved consistent with the purposes of this chapter and identify the areas with potential for low-impact public and environmental educational uses. The plan shall specify what types of management activities and public uses that are permitted, consistent with the conservation purposes of this chapter. The department shall make such plans available for review and comment by the public and other state, tribal, and local agencies, prior to final approval by the commissioner. [1991 c 352 § 6; 1987 c 472 § 7.]

79.71.080 Administration of natural resources conservation areas—Management agreements and activities. The department is authorized to administer natural resources conservation areas and may enter into management agreements for these areas with federal agencies, state agencies, local governments, and private nonprofit conservancy corporations, as defined in RCW 64.04.130, when such agreements are consistent with the purposes of acquisition as defined in the adopted management plan. All management activities within a Washington natural resources conservation area will conform with the plan. Any moneys derived from the management of these areas in conformance with the adopted plan shall be deposited in the natural resources conservation areas stewardship account. [1991 c 352 § 7; 1987 c 472 § 8.]

79.71.090 Natural resources conservation areas stewardship account. There is hereby created the natural resources conservation areas stewardship account in the state treasury to ensure proper and continuing management of land acquired or designated pursuant to this chapter. Funds for the stewardship account shall be derived from appropriations of state general funds, federal funds, grants, donations, gifts, bond issue receipts, securities, and other monetary instruments of value. Income derived from the management of natural resources conservation areas shall also be deposited in this stewardship account.

Appropriations from this account to the department shall be expended for no other purpose than the following: (1) To manage the areas approved by the legislature in fulfilling the purposes of this chapter; (2) to manage property acquired as natural area preserves under chapter 79.70 RCW; (3) to manage property transferred under the authority and appropriation provided by the legislature to be managed under chapter 79.70 RCW or this chapter or acquired under chapter 79A.15 RCW; and (4) to pay for operating expenses for the natural heritage program under chapter 79.70 RCW. [2000 c 11 § 25; 1991 sp.s. c 13 § 118; 1991 c 352 § 8; 1987 c 472 § 9.]

Additional notes found at www.leg.wa.gov

79.71.100 Designation of certain areas as natural resources conservation areas. The legislature hereby designates certain areas as natural resources conservation areas:

(1) The Mt. Si conservation area (King County), RCW 79A.05.725, is hereby designated the Mt. Si natural resources conservation area. The department is directed to continue its management of this area and to develop a plan for its continued conservation and use by the public. In accordance with Article XVI of the Washington state Constitution, any available private lands and trust lands located within the designated boundaries of the Mt. Si conservation area shall be leased or acquired in fee from the appropriate trust at fair market value using funds appropriated for that purpose.

(2) Trust lands and state-owned land on Cypress Island (Skagit County) are hereby designated as the Cypress Island natural resources conservation area. Any available private lands necessary to achieve the purposes of this section shall be acquired by the department of natural resources using funds appropriated for that purpose. Trust lands located within the designated boundaries of the Cypress Island natural resources conservation area shall be leased or acquired in fee from the appropriate trust at fair market value.

(3) Woodard Bay (Thurston County) is hereby designated the Woodard Bay natural resources conservation area. The department is directed to acquire property available in Sec. 18, T.19N, R1W using funds appropriated for that purpose.

(4) The area adjacent to the Dishman Hills natural area (Spokane County) is hereby designated the Dishman Hills natural resources conservation area. The department is directed to acquire property available in Sec. 19, 29 and 30, T.25N, R44E, using funds appropriated for that purpose. [2000 c 11 § 26; 1987 c 472 § 10.]

79.71.120 Elk river natural resources conservation area—Transfer of management—Hunting opportunities. The property currently designated as the Elk river natural area preserve is transferred from management under chapter 79.70 RCW as a natural area preserve to management under chapter 79.71 RCW as a natural resources conservation area. The legislature finds that hunting is a suitable low-impact public use within the Elk river natural resources conservation area. The department of natural resources shall incorporate this legislative direction into the management plan developed for the Elk river natural resources conservation area. The department shall work with the department of fish and wildlife to identify hunting opportunities compatible with the area's conservation purposes. [1997 c 371 § 1.]

79.71.130 Distribution of amount in lieu of real property taxes, weed control assessment. The state treasurer, on behalf of the department, must distribute to counties for all lands acquired for the purposes of this chapter an amount in lieu of real property taxes equal to the amount of tax that would be due if the land were taxable as open space land under chapter 84.34 RCW except taxes levied for any state purpose, plus an additional amount equal to the amount of weed control assessment that would be due if such lands were privately owned. The county assessor and county legislative authority shall assist in determining the appropriate calculation of the amount of tax that would be due. The county shall

distribute the amount received under this section in lieu of real property taxes to all property taxing districts except the state in appropriate tax code areas the same way it would distribute local property taxes from private property. The county shall distribute the amount received under this section for weed control to the appropriate weed district. [2005 c 303 § 12.]

Additional notes found at www.leg.wa.gov

Chapter 79.73 RCW MILWAUKEE ROAD CORRIDOR

Sections

79.73.010	Management and control.
79.73.020	Recreational use—Permit—Rules—Fees.
79.73.030	Powers.
79.73.040	Leasing—Duties with respect to unleased portions.
79.73.050	Authority to terminate or modify leases—Notice.

79.73.010 Management and control. The portion of the Milwaukee Road corridor from the west end of the bridge structure over the Columbia river, which point is located in section 34, township 16 north, range 23 east, W.M., to the Idaho border purchased by the state shall be under the management and control of the department. [2003 c 334 § 456; (2003 c 334 § 455; 2000 c 11 § 23; 1996 c 129 § 8 expired July 1, 2006); 1989 c 129 § 2; 1984 c 174 § 6. Formerly RCW 79.08.275.]

Intent—2003 c 334: See note following RCW 79.02.010.

Purpose—1984 c 174: "The purpose of RCW 43.51.405 through 43.51.411 and 79.08.275 through 79.08.283 is to set forth the state's policy regarding the approximately two hundred thirteen-mile corridor of land purchased by the state from the Milwaukee Railroad Company under section 17(21), chapter 143, Laws of 1981." [1984 c 174 § 1.]

Additional notes found at www.leg.wa.gov

79.73.020 Recreational use—Permit—Rules—Fees. The portion of the Milwaukee Road corridor under management and control of the department shall be open to individuals or organized groups that obtain permits from the department to travel the corridor for recreational purposes. The department shall, for the purpose of issuing permits for corridor use, adopt rules necessary for the orderly and safe use of the corridor and protection of adjoining landowners. Permit fees shall be established at a level that will cover costs of issuance. Upon request of abutting landowners, the department shall notify the landowners of permits issued for use of the corridor adjacent to their property. [2003 c 334 § 457; 1984 c 174 § 7. Formerly RCW 79.08.277.]

Intent—2003 c 334: See note following RCW 79.02.010.

Purpose—1984 c 174: See note following RCW 79.73.010.

79.73.030 Powers. The department may do the following with respect to the portion of the Milwaukee Road corridor under its control:

(1) Enter into agreements to allow the realignment or modification of public roads, farm crossings, water conveyance facilities, and other utility crossings;

(2) Regulate activities and restrict uses, including, but not limited to, closing portions of the corridor to reduce fire danger or protect public safety in consultation with local legislative authorities or fire districts;

(3) Place hazard warning signs and close hazardous structures;

(4) Renegotiate deed restrictions upon agreement with affected parties; and

(5) Approve and process the sale or exchange of lands or easements if (a) such a sale or exchange will not adversely affect the recreational, transportation, or utility potential of the corridor and (b) the department has not entered into a lease of the property in accordance with RCW 79.73.040. [2003 c 334 § 458; 1984 c 174 § 8. Formerly RCW 79.08.279.]

Intent—2003 c 334: See note following RCW 79.02.010.

Purpose—1984 c 174: See note following RCW 79.73.010.

79.73.040 Leasing—Duties with respect to unleased portions. (1) The department shall offer to lease, and shall subsequently lease if a reasonable offer is made, portions of the Milwaukee Road corridor under its control to the person who owns or controls the adjoining land for periods of up to ten years commencing with June 7, 1984. The lessee shall assume the responsibility for fire protection, weed control, and maintenance of water conveyance facilities and culverts. The leases shall follow standard department leasing procedures, with the following exceptions:

(a) The lessee may restrict public access pursuant to RCW 79.73.020 and subsection (3) of this section.

(b) The right of renewal shall be to the current lessee if the lessee still owns or controls the adjoining lands.

(c) If two persons own or control opposite sides of the corridor, each person shall be eligible for equal portions of the available property.

(2) The department has the authority to renew leases in existence on June 7, 1984.

(3) The leases shall contain a provision allowing the department to issue permits to travel the corridor for recreational purposes.

(4) Unleased portions of the Milwaukee Road property under this section shall be managed by the department. On these unleased portions, the department solely shall be responsible for weed control, culvert, bridge, and other necessary maintenance and fire protection services. The department shall place hazard warning signs and close hazardous structures on unleased portions and shall regulate activities and restrict uses, including closing the corridor during seasons of high fire danger. [2003 c 334 § 459; 1984 c 174 § 9. Formerly RCW 79.08.281.]

Intent—2003 c 334: See note following RCW 79.02.010.

Purpose—1984 c 174: See note following RCW 79.73.010.

79.73.050 Authority to terminate or modify leases—Notice. The state, through the department, shall reserve the right to terminate a lease entered into pursuant to RCW 79.73.040 or modify authorized uses of the corridor for future recreation, transportation, or utility uses. If the state elects to terminate the lease, the state shall provide the lessee with a minimum of six months' notice. [2003 c 334 § 460; 1984 c 174 § 10. Formerly RCW 79.08.283.]

Intent—2003 c 334: See note following RCW 79.02.010.

Purpose—1984 c 174: See note following RCW 79.73.010.

Chapter 79.100 RCW
DERELICT VESSELS

Sections

79.100.005	Findings.
79.100.010	Definitions.
79.100.020	Chapter not exclusive remedy.
79.100.030	Authority of authorized public entity—Owner retains primary responsibility—Limitation on civil liability.
79.100.040	Obtaining custody of vessel.
79.100.050	Use or disposal of vessel.
79.100.060	Reimbursement for costs.
79.100.070	Contract with private company/individual.
79.100.080	Chapter not exclusive.
79.100.100	Derelict vessel removal account.
79.100.110	Vessel abandoned or derelict upon aquatic lands—Causing a vessel to block a navigational channel—Penalty.
79.100.120	Contesting an authorized public entity's decision to take temporary custody or possession of a vessel—Contesting the amount of reimbursement.
79.100.130	Private moorage facility owner may contract with a local government—Contract requirements.
79.100.140	Authority to board a vessel—Administrative search warrant.
79.100.150	Transfer of certain vessels—Vessel inspection—Secondary liability.
79.100.160	Voluntary vessel turn-in program.
79.100.170	Transfer of ownership of certain vessels—Marine insurance policy.
79.100.180	Derelict vessel removal fee.
79.100.901	Effective date—2002 c 286.

79.100.005 Findings. The legislature finds that there has been an increase in the number of derelict and abandoned vessels that are either grounded or anchored upon publicly or privately owned submerged lands. These vessels are public nuisances and safety hazards as they often pose hazards to navigation, detract from the aesthetics of Washington's waterways, and threaten the environment with the potential release of hazardous materials. The legislature further finds that the costs associated with the disposal of derelict and abandoned vessels are substantial, and that in many cases there is no way to track down the current vessel owners in order to seek compensation. As a result, the costs associated with the removal of derelict vessels becomes a burden on public entities and the taxpaying public. [2002 c 286 § 1.]

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

(1) "Abandoned vessel" means a vessel that has been left, moored, or anchored in the same area without the express consent, or contrary to the rules of, the owner, manager, or lessee of the aquatic lands below or on which the vessel is located for either a period of more than thirty consecutive days or for more than a total of ninety days in any three hundred sixty-five-day period, and the vessel's owner is: (a) Not known or cannot be located; or (b) known and located but is unwilling to take control of the vessel. For the purposes of this subsection (1) only, "in the same area" means within a radius of five miles of any location where the vessel was previously moored or anchored on aquatic lands.

(2) "Aquatic lands" means all tidelands, shorelands, harbor areas, and the beds of navigable waters, including lands owned by the state and lands owned by other public or private entities.

(3) "Authorized public entity" includes any of the following: The department of natural resources; the department of fish and wildlife; the parks and recreation commission; a

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metropolitan park district; a port district; and any city, town, or county with ownership, management, or jurisdiction over the aquatic lands where an abandoned or derelict vessel is located.

(4) "Department" means the department of natural resources.

(5) "Derelict vessel" means the vessel's owner is known and can be located, and exerts control of a vessel that:

(a) Has been moored, anchored, or otherwise left in the waters of the state or on public property contrary to RCW 79.02.300 or rules adopted by an authorized public entity;

(b) Has been left on private property without authorization of the owner; or

(c) Has been left for a period of seven consecutive days, and:

(i) Is sunk or in danger of sinking;

(ii) Is obstructing a waterway; or

(iii) Is endangering life or property.

(6) "Owner" means any natural person, firm, partnership, corporation, association, government entity, or organization that has a lawful right to possession of a vessel by purchase, exchange, gift, lease, inheritance, or legal action whether or not the vessel is subject to a security interest.

(7) "Ship" means every species of watercraft or other mobile artificial contrivance, powered or unpowered, intended to be used for transporting people or goods on water or for floating marine construction or repair and that exceeds two hundred feet in length.

(8) "Vessel" means every species of watercraft or other mobile artificial contrivance, powered or unpowered, intended to be used for transporting people or goods on water or for floating marine construction or repair and which does not exceed two hundred feet in length. "Vessel" includes any trailer used for the transportation of watercraft, or any attached floats or debris. [2014 c 195 § 604; 2007 c 342 § 1; 2006 c 153 § 2; 2002 c 286 § 2.]

Reviser's note: The definitions in this section have been alphabetized pursuant to RCW 1.08.015(2)(k).

Findings—Intent—2014 c 195: See notes following RCW 79.100.170 and 79.100.180.

79.100.020 Chapter not exclusive remedy. This chapter is not intended to limit or constrain the ability and authority of the authorized public entities to enact and enforce ordinances or other regulations relating to derelict and abandoned vessels, or to take any actions authorized by federal or state law in responding to derelict or abandoned vessels. This chapter is also not intended to be the sole remedy available to authorized public entities against the owners of derelict and abandoned vessels. [2002 c 286 § 3.]

79.100.030 Authority of authorized public entity—Owner retains primary responsibility—Limitation on civil liability. (1) An authorized public entity has the authority, subject to the processes and limitations of this chapter, to store, strip, use, auction, sell, salvage, scrap, or dispose of an abandoned or derelict vessel found on or above aquatic lands within the jurisdiction of the authorized public entity. A vessel disposal must be done in an environmentally sound manner and in accordance with all federal, state, and local laws, including the state solid waste disposal provisions provided

for in chapter 70.95 RCW. Scuttling or sinking of a vessel is only permissible after obtaining the express permission of the owner or owners of the aquatic lands below where the scuttling or sinking would occur, and obtaining all necessary state and federal permits or licenses.

(2) The primary responsibility to remove a derelict or abandoned vessel belongs to the owner, operator, or lessee of the moorage facility or the aquatic lands where the vessel is located. If the authorized public entity with the primary responsibility is unwilling or unable to exercise the authority granted by this section, it may request the department to assume the authorized public entity's authority for a particular vessel. The department may at its discretion assume the authorized public entity's authority for a particular vessel after being requested to do so. For vessels not at a moorage facility, an authorized public entity with jurisdiction over the aquatic lands where the vessel is located may, at its discretion, request to assume primary responsibility for that particular vessel from the owner of the aquatic lands where the vessel is located.

(3) The authority granted by this chapter is permissive, and no authorized public entity has a duty to exercise the authority. No liability attaches to an authorized public entity that chooses not to exercise this authority. An authorized public entity, in the good faith performance of the actions authorized under this chapter, is not liable for civil damages resulting from any act or omission in the performance of the actions other than acts or omissions constituting gross negligence or willful or wanton misconduct. Any person whose assistance has been requested by an authorized public entity, who has entered into a written agreement pursuant to RCW 79.100.070, and who, in good faith, renders assistance or advice with respect to activities conducted by an authorized public entity pursuant to this chapter, is not liable for civil damages resulting from any act or omission in the rendering of the assistance or advice, other than acts or omissions constituting gross negligence or willful or wanton misconduct. [2011 c 247 § 4; 2002 c 286 § 4.]

79.100.040 Obtaining custody of vessel. (1) Prior to exercising the authority granted in RCW 79.100.030, the authorized public entity must first obtain custody of the vessel. To do so, the authorized public entity must:

(a) Mail notice of its intent to obtain custody, at least twenty days prior to taking custody, to the last known address of the previous owner to register the vessel in any state or with the federal government and to any lien holders or secured interests on record. A notice need not be sent to the purported owner or any other person whose interest in the vessel is not recorded with a state or federal agency;

(b) Post notice of its intent clearly on the vessel for thirty days and publish its intent at least once, more than ten days but less than twenty days prior to taking custody, in a newspaper of general circulation for the county in which the vessel is located; and

(c) Post notice of its intent on the department's internet web site on a page specifically designated for such notices. If the authorized public entity is not the department, the department must facilitate the internet posting.

(2) All notices sent, posted, or published in accordance with this section must, at a minimum, explain the intent of the

authorized public entity to take custody of the vessel, the rights of the authorized public entity after taking custody of the vessel as provided in RCW 79.100.030, the procedures the owner must follow in order to avoid custody being taken by the authorized public entity, the procedures the owner must follow in order to reclaim possession after custody is taken by the authorized public entity, and the financial liabilities that the owner may incur as provided for in RCW 79.100.060.

(3)(a) Any authorized public entity may tow, beach, or otherwise take temporary possession of a vessel if the owner of the vessel cannot be located or is unwilling or unable to assume immediate responsibility for the vessel and if the vessel:

(i) Is in immediate danger of sinking, breaking up, or blocking navigational channels; or

(ii) Poses a reasonably imminent threat to human health or safety, including a threat of environmental contamination.

(b) Before taking temporary possession of the vessel, the authorized public entity must make reasonable attempts to consult with the department or the United States coast guard to ensure that other remedies are not available. The basis for taking temporary possession of the vessel must be set out in writing by the authorized public entity within seven days of taking action and be submitted to the owner, if known, as soon thereafter as is reasonable. If the authorized public entity has not already provided the required notice, immediately after taking possession of the vessel, the authorized public entity must initiate the notice provisions in subsection (1) of this section. The authorized public entity must complete the notice requirements of subsection (1) of this section before using or disposing of the vessel as authorized in RCW 79.100.050.

(4) An authorized public entity may invite the department of ecology to use the authority granted to it under RCW 90.56.410 prior to, or concurrently with, obtaining custody of a vessel under this section. However, this is not a necessary prerequisite to an authorized public entity obtaining custody. [2013 c 291 § 37; 2007 c 342 § 2; 2006 c 153 § 3; 2002 c 286 § 5.]

79.100.050 Use or disposal of vessel. (1) After taking custody of a vessel, the authorized public entity may use or dispose of the vessel in any appropriate and environmentally sound manner without further notice to any owners, but must give preference to uses that derive some monetary benefit from the vessel, either in whole or in scrap. If no value can be derived from the vessel, the authorized public entity must give preference to the least costly, environmentally sound, reasonable disposal option. Any disposal operations must be consistent with the state solid waste disposal provisions provided for in chapter 70.95 RCW.

(2) If the authorized public entity chooses to offer the vessel at a public auction, either a minimum bid may be set or a letter of credit may be required, or both, to discourage future reabandonment of the vessel.

(3) Proceeds derived from the sale of the vessel must first be applied to any administrative costs that are incurred by the authorized public entity during the notification procedures set forth in RCW 79.100.040, removal and disposal costs, and costs associated with environmental damages

directly or indirectly caused by the vessel. If the proceeds derived from the vessel exceed all administrative costs, removal and disposal costs, and costs associated with environmental damages directly or indirectly caused by the vessel, the remaining moneys must be applied to satisfying any liens registered against the vessel.

(4) Any value derived from a vessel greater than all liens and costs incurred reverts to the derelict vessel removal account established in RCW 79.100.100. [2002 c 286 § 6.]

79.100.060 Reimbursement for costs. (1) The owner of an abandoned or derelict vessel, or any person or entity that has incurred secondary liability for an abandoned or derelict vessel under this chapter or RCW 88.26.030, is responsible for reimbursing an authorized public entity for all reasonable and auditable costs associated with the removal or disposal of the owner's vessel under this chapter. These costs include, but are not limited to, costs incurred exercising the authority granted in RCW 79.100.030, all administrative costs incurred by the authorized public entity during the procedure set forth in RCW 79.100.040, removal and disposal costs, and costs associated with environmental damages directly or indirectly caused by the vessel. An authorized public entity that has taken temporary possession of a vessel may require that all reasonable and auditable costs associated with the removal of the vessel be paid before the vessel is released to the owner.

(2) Reimbursement for costs may be sought from an owner, or any person or entity that has incurred secondary liability under this chapter or RCW 88.26.030, who is identified subsequent to the vessel's removal and disposal.

(3) If the full amount of all costs due to the authorized public entity under this chapter is not paid to the authorized public entity within thirty days after first notifying the responsible parties of the amounts owed, the authorized public entity or the department may bring an action in any court of competent jurisdiction to recover the costs, plus reasonable attorneys' fees and costs incurred by the authorized public entity. [2014 c 195 § 601; 2013 c 291 § 40; 2006 c 153 § 4; 2002 c 286 § 7.]

Findings—Intent—2014 c 195: See notes following RCW 79.100.170 and 79.100.180.

79.100.070 Contract with private company/individual. An authorized public entity may enter into a contract with a private company or individual to carry out the authority granted in this chapter. [2002 c 286 § 8.]

79.100.080 Chapter not exclusive. The rights granted by this chapter are in addition to any other legal rights an authorized public entity may have to obtain title to, remove, recover, sell, or dispose of an abandoned or derelict vessel, and in no way does this chapter alter those rights, or affect the priority of other liens on a vessel. [2002 c 286 § 9.]

79.100.100 Derelict vessel removal account. (1)(a) The derelict vessel removal account is created in the state treasury. All receipts from RCW 79.100.050 and 79.100.060 and those moneys specified in RCW 88.02.640 must be deposited into the account. The account is authorized to receive fund transfers and appropriations from the general

fund, deposits from the derelict vessel removal surcharge under RCW 88.02.640(4), deposits under RCW 79.100.180, as well as gifts, grants, and endowments from public or private sources as may be made from time to time, in trust or otherwise, for the use and benefit of the purposes of this chapter and expend the same or any income according to the terms of the gifts, grants, or endowments provided those terms do not conflict with any provisions of this section or any guidelines developed to prioritize reimbursement of removal projects associated with this chapter.

(b) Moneys in the account may only be spent after appropriation. Expenditures from the account may only be used by the department for developing and administering the vessel turn-in program created in RCW 79.100.160 and to, except as provided in RCW 79.100.130 and 53.08.480, reimburse authorized public entities for up to ninety percent of the total reasonable and auditable administrative, removal, disposal, and environmental damage costs of abandoned or derelict vessels when the previous owner is either unknown after a reasonable search effort or insolvent. Reimbursement may not be made unless the department determines that the public entity has made reasonable efforts to identify and locate the party responsible for the vessel, or any other person or entity that has incurred secondary liability for the vessel under this chapter or RCW 88.26.030, regardless of the title of owner of the vessel.

(c) Funds in the account resulting from transfers from the general fund or from the deposit of funds from the watercraft excise tax as provided for under RCW 82.49.030 must be used to reimburse one hundred percent of costs and should be prioritized for the removal of large vessels.

(d) Costs associated with the removal and disposal of an abandoned or derelict vessel under the authority granted in RCW 53.08.320 also qualify for reimbursement from the derelict vessel removal account.

(e) In each biennium, up to twenty percent of the expenditures from the derelict vessel removal account may be used for administrative expenses of the department of licensing and department of natural resources in implementing this chapter.

(2) Priority for use of this account is for the removal of derelict and abandoned vessels that are in danger of sinking, breaking up, or blocking navigation channels, or that present environmental risks such as leaking fuel or other hazardous substances. The department must develop criteria, in the form of informal guidelines, to prioritize removal projects associated with this chapter, but may not consider whether the applicant is a state or local entity when prioritizing. The guidelines must also include guidance to the authorized public entities as to what removal activities and associated costs are reasonable and eligible for reimbursement.

(3) The department must keep all authorized public entities apprised of the balance of the derelict vessel removal account and the funds available for reimbursement. The guidelines developed by the department must also be made available to the other authorized public entities. This subsection (3) must be satisfied by utilizing the least costly method, including maintaining the information on the department's internet web site, or any other cost-effective method.

(4) An authorized public entity may contribute its ten percent of costs that are not eligible for reimbursement by

using in-kind services, including the use of existing staff, equipment, and volunteers.

(5) This chapter does not guarantee reimbursement for an authorized public entity. Authorized public entities seeking certainty in reimbursement prior to taking action under this chapter may first notify the department of their proposed action and the estimated total costs. Upon notification by an authorized public entity, the department must make the authorized public entity aware of the status of the fund and the likelihood of reimbursement being available. The department may offer technical assistance and assure reimbursement for up to two years following the removal action if an assurance is appropriate given the balance of the fund and the details of the proposed action. [2014 c 195 § 603; 2013 c 291 § 2; 2010 c 161 § 1161; 2007 c 342 § 4; 2006 c 153 § 6; 2002 c 286 § 11.]

Findings—Intent—2014 c 195: See notes following RCW 79.100.170 and 79.100.180.

Effective date—Intent—Legislation to reconcile chapter 161, Laws of 2010 and other amendments made during the 2010 legislative session—2010 c 161: See notes following RCW 46.04.013.

79.100.110 Vessel abandoned or derelict upon aquatic lands—Causing a vessel to block a navigational channel—Penalty. (1) A person who causes a vessel to become abandoned or derelict upon aquatic lands is guilty of a misdemeanor.

(2) A person who intentionally, through action or inaction and without the appropriate state, local, or federal authorization, causes a vessel to sink, break up, or block a navigational channel upon aquatic lands is guilty of a misdemeanor. [2011 c 247 § 1; 2006 c 153 § 1.]

79.100.120 Contesting an authorized public entity's decision to take temporary custody or possession of a vessel—Contesting the amount of reimbursement. (1)(a) An owner or lien holder seeking to contest an authorized public entity's decision to take temporary possession or custody of a vessel under this chapter, or to contest the amount of reimbursement owed to an authorized public entity under this chapter, may request a hearing in accordance with this section.

(b) A transferor or other entity with secondary liability under this chapter or RCW 88.26.030 may commence a lawsuit in the superior court for the county in which custody of the vessel was taken to contest the transferor's or other entity's liability or the amount of reimbursement owed the authorized public entity under this chapter.

(2)(a) If the contested decision or action was undertaken by a state agency, a written request for a hearing related to the decision or action must be filed with the pollution control hearings board and served on the state agency in accordance with RCW 43.21B.230 (2) and (3) within thirty days of the date the authorized public entity acquires custody of the vessel under RCW 79.100.040, or if the vessel is redeemed before the authorized public entity acquires custody, the date of redemption, or the right to a hearing is deemed waived and the vessel's owner is liable for any costs owed the authorized public entity. In the event of litigation, the prevailing party is entitled to reasonable attorneys' fees and costs.

(b) Upon receipt of a timely hearing request, the pollution control hearings board shall proceed to hear and determine the validity of the decision to take the vessel into temporary possession or custody and the reasonableness of any towing, storage, or other charges permitted under this chapter. Within five business days after the request for a hearing is filed, the pollution control hearings board shall notify the vessel owner requesting the hearing and the authorized public entity of the date, time, and location for the hearing. Unless the vessel is redeemed before the request for hearing is filed, the pollution control hearings board shall set the hearing on a date that is within ten business days of the filing of the request for hearing. If the vessel is redeemed before the request for a hearing is filed, the pollution control hearings board shall set the hearing on a date that is within sixty days of the filing of the request for hearing.

(c) Consistent with RCW 43.21B.305, a proceeding brought under this subsection may be heard by one member of the pollution control hearings board, whose decision is the final decision of the board.

(3)(a) If the contested decision or action was undertaken by a metropolitan park district, port district, city, town, or county, which has adopted rules or procedures for contesting decisions or actions pertaining to derelict or abandoned vessels, those rules or procedures must be followed in order to contest a decision to take temporary possession or custody of a vessel, or to contest the amount of reimbursement owed.

(b) If the metropolitan park district, port district, city, town, or county has not adopted rules or procedures for contesting decisions or actions pertaining to derelict or abandoned vessels, then an owner or lien holder requesting a hearing under this section must follow the procedure established in subsection (2) of this section. [2014 c 195 § 602; 2013 c 291 § 32; 2010 c 210 § 34; 2006 c 153 § 5.]

Findings—Intent—2014 c 195: See notes following RCW 79.100.170 and 79.100.180.

Intent—Effective dates—Application—Pending cases and rules—2010 c 210: See notes following RCW 43.21B.001.

79.100.130 Private moorage facility owner may contract with a local government—Contract requirements.

(1) A private moorage facility owner, as those terms are defined in RCW 88.26.010, may contract with the department or a local government for the purpose of participating in the derelict vessel removal program.

(2) If a contract is completed under this section, the department or local government shall serve as the authorized public entity for the removal of a derelict or abandoned vessel from the property of the private moorage facility owner. The contract must provide for the private moorage facility owner to be financially responsible for the removal and disposal costs that are not reimbursed by the department as provided under RCW 79.100.100, and any additional reasonable administrative costs incurred by the department or local government during the removal of the derelict or abandoned vessel.

(3) Prior to the commencement of any removal under this section for which a local government serves as the authorized public entity and that will seek reimbursement from the derelict vessel removal program, the contract and the proposed vessel removal shall be submitted to the department

review and approval. The local government shall use the procedure specified under RCW 79.100.100.

(4) If the private moorage facility owner has already seized the vessel under chapter 88.26 RCW and title has reverted to the moorage facility, the moorage facility is not considered the owner under this chapter for purposes of cost recovery for actions taken under this section.

(5)(a) The department and all local governments have discretion as to whether to enter into contracts to serve as the authorized public entity under this section for vessels located at a private moorage facility.

(b) The department may not enter into a contract to serve as the authorized public entity under this section for vessels located at a private moorage facility if the private moorage facility is not in compliance with the mandatory insurance requirements of RCW 88.26.030. [2014 c 195 § 201; 2013 c 291 § 4; 2011 c 247 § 2; 2007 c 342 § 3.]

Findings—Intent—2014 c 195: See notes following RCW 79.100.170 and 79.100.180.

79.100.140 Authority to board a vessel—Administrative search warrant. (1) An officer or employee of an authorized public entity, or the department of ecology at the request of an authorized public entity, may, consistent with subsection (2) of this section, board any vessel at any reasonable time for the purpose of:

(a) Administering this chapter, including identifying ownership of a vessel, assessing the structural integrity of a vessel, and assessing whether a vessel meets the criteria described under RCW 79.100.040(3); or

(b) For the department of ecology only, mitigating a potential threat to health, safety, or the environment under the authority provided in chapter 90.56 RCW.

(2)(a) Prior to boarding any vessel under the authority of this section, an officer or employee of an authorized public entity or the department of ecology must apply for and obtain an administrative search warrant in either Thurston county superior court or the superior court in the county where the vessel is located, unless a warrant is not otherwise required by law. The court may issue an administrative search warrant where the court has reasonable cause to believe it is necessary to achieve the purposes of this section.

(b) Prior to requesting an administrative search warrant under this subsection, the officer or employee must make a reasonable effort to contact the owner or the owner's designee and obtain consent to board the vessel.

(3) Nothing in this section affects an authorized public entity's authority to carry out actions under RCW 79.100.040 or any agency's existing authority to enter onto vessels under any other statute. [2013 c 291 § 35.]

79.100.150 Transfer of certain vessels—Vessel inspection—Secondary liability. (1) A vessel owner must obtain a vessel inspection under this section prior to transferring a vessel that is:

(a) More than sixty-five feet in length and more than forty years old; and

(b) Either:

(i) Is registered or required to be registered under chapter 88.02 RCW; or

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(ii) Is listed or required to be listed under chapter 84.40 RCW.

(2) If the vessel inspection determines the vessel is not seaworthy and the value of the vessel is less than the anticipated costs required to return the vessel to seaworthiness, then the vessel owner may not sell or transfer ownership of the vessel unless:

(a) The vessel is repaired to a seaworthy state prior to the transfer of ownership; or

(b) The vessel is sold for scrap, restoration, salvage, or another use that will remove the vessel from state waters to a person displaying a business license issued under RCW 19.02.070 that a reasonable person in the seller's position would believe has the capability and intent to do based on factors that may include the buyer's facilities, resources, documented intent, and relevant history.

(3) Where required under subsection (1) of this section, a vessel owner must provide a copy of the vessel inspection documentation to the transferee and, if the department did not conduct the inspection, to the department prior to the transfer.

(4) Unless rules adopted by the department provide otherwise, the vessel inspection required under this section must be contained in a formal marine survey conducted by a third party to the transaction. The survey must include, at a minimum, a conclusion relating to the seaworthiness of the vessel, an estimate of the vessel's fair market value, and, if applicable, an estimate as to the anticipated cost of repairs necessary to return the vessel to seaworthiness.

(5) The department may, by rule, allow other forms of vessel condition determinations, such as United States coast guard certificates of inspection, to replace the requirements for a formal marine survey under this section.

(6) Failure to comply with the requirements of this section will result in the transferor having secondary liability under RCW 79.100.060 if the vessel is later abandoned by the transferee or becomes derelict prior to a subsequent ownership transfer.

(7) Nothing in this section prevents a vessel owner from removing, dismantling, and lawfully disposing of any vessel lawfully under the vessel owner's control. [2014 c 195 § 102; 2013 c 291 § 38.]

Findings—Intent—2014 c 195: See notes following RCW 79.100.170 and 79.100.180.

Effective date—2013 c 291 § 38: "Section 38 of this act takes effect July 1, 2014." [2013 c 291 § 48.]

79.100.160 Voluntary vessel turn-in program. (1) The department may develop and administer a voluntary vessel turn-in program.

(2) The purpose of the vessel turn-in program is to allow the department to dismantle and dispose of vessels that pose a high risk of becoming a derelict vessel or abandoned vessel, but that do not yet meet the definition of those terms. The department shall design the program with the goal of dismantling and disposing of as many vessels as available resources allow, particularly those vessels posing the greatest risk of becoming abandoned or derelict in the future.

(3) The department shall disseminate information about the vessel turn-in program, including information about the application process, on its internet site and through appropriate agency publications and information sources as deter-

mined by the department. The department shall disseminate this information for a reasonable time as determined by the department prior to accepting applications.

(4) The department shall accept and review vessel turn-in program applications from eligible vessel owners, including private marinas that have gained legal title to a vessel in an advanced state of disrepair, during the time period or periods identified by the department. In order to be eligible for the vessel turn-in program, an applicant must demonstrate to the department's satisfaction that the applicant:

(a) Is a Washington resident or business;

(b) Owns a vessel that is in an advanced state of disrepair, has minimal or no value, and has a high likelihood of becoming an abandoned or derelict vessel; and

(c) Has insufficient resources to properly dispose of the vessel outside of the vessel turn-in program.

(5) Decisions regarding program eligibility and whether to accept a vessel for dismantling and disposal under the turn-in program are within the sole discretion of the department.

(6) The department may take other actions not inconsistent with this section in order to develop and administer the vessel turn-in program.

(7) The department may not spend more than two hundred thousand dollars in any one biennium on the program established in this section. [2013 c 291 § 42.]

79.100.170 Transfer of ownership of certain vessels—Marine insurance policy. (1) Any individual or company that purchases or otherwise receives a used vessel greater than sixty-five feet in length and more than forty years old must, prior to or concurrent with the transfer of ownership, secure a marine insurance policy consistent with this section. Proof of the marine insurance policy must be provided to:

(a) The transferor of the vessel upon purchase or other transfer; and

(b) If applicable, the department of licensing upon registration or the department of revenue upon the payment of any taxes.

(2) The transferor of a vessel greater than sixty-five feet in length and more than forty years old has an affirmative duty to ensure that any potential transferee has secured a marine insurance policy consistent with this section prior to or concurrent with the finalization of any sale or transfer. Nothing in this section prohibits the sale or other transfer of a vessel greater than sixty-five feet in length and more than forty years old to a transferee that fails to secure a marine insurance policy. However, a transferor that chooses to finalize a sale or other transfer with a transferee not in possession of a marine insurance policy assumes secondary liability for the vessel consistent with RCW 79.100.060 if the vessel is later abandoned by the transferee or becomes derelict prior to a subsequent ownership transfer.

(3) The marine insurance policy required under this section must be secured by the transferee prior to, or concurrent with, assuming ownership of a vessel greater than sixty-five feet in length and more than forty years old. The marine insurance policy must satisfy the following conditions:

(a) Have a term of at least twelve months following the transferee's assumption of vessel ownership;

(b) Provide coverage of an amount that is, unless otherwise provided by the department by rule, at least three hundred thousand dollars;

(c) Provide, unless otherwise provided by the department by rule, coverage for the removal of the vessel if it should sink and coverage should it cause a pollution event.

(4) The purchaser of marine insurance under this section may satisfy the requirements of this section through the purchase of multiple policies as necessary.

(5) The department may, by rule, provide for a purchaser of a vessel to also satisfy the insurance requirements of this section through the posting of adequate security with a financial institution.

(6) A person required to secure marine insurance or show proof of marine insurance under this section who either: (a) Fails to secure a marine insurance policy consistent with this section prior to or concurrent with the transfer of ownership, unless the vessel was sold consistent with RCW 79.100.150(2)(b); or (b) cancels a marine insurance policy consistent with this section prior to the end of the twelfth month of vessel ownership or to a subsequent transfer of ownership, whichever occurs first, without securing another marine insurance policy consistent with this section in its place, is guilty of a misdemeanor. The department may contact any vessel owner required by this section to have a marine insurance policy to ensure compliance with this section. [2014 c 195 § 101.]

Findings—Intent—2014 c 195: "(1) The legislature finds that section 45, chapter 291, Laws of 2013 required the department of natural resources, in consultation with the department of ecology, to evaluate potential changes to laws and rules related to derelict and abandoned vessels that increase vessel owner responsibility and address challenges associated with the economics of removing vessels from the water.

(2) The legislature further finds that, during the 2013 legislative interim, the two responsible agencies engaged in a thorough process to satisfy their legislative charge. This process involved exhausting in-state expertise on various topics and reaching out to experts in vessel deconstruction, surety bonding, letters of credit, marine insurance, taxation, federal regulation, similar programs in other states, and more. The process also involved two open invitation public meetings.

(3) The legislature further finds that a significant number of various and competing options were discussed, analyzed, and ultimately dismissed during the process undertaken by the two agencies. It is the intent of the legislature to capture the recommendations for meeting the goals of increased vessel owner responsibility and addressing the challenges associated with the economics of removing vessels from the water that rose to the top from the process undertaken by the agencies.

(4) It is the further intent of the legislature that this act serve as the final report due by the department of natural resources under section 45, chapter 291, Laws of 2013." [2014 c 195 § 1.]

Findings—Intent—2014 c 195: See note following RCW 79.100.180.

79.100.180 Derelict vessel removal fee. (1)(a) Except as otherwise provided in (b) of this subsection, an annual derelict vessel removal fee is imposed upon all persons required by RCW 84.40.065 to list any ship or vessel with the department of revenue for state property tax purposes.

(b) The derelict vessel removal fee imposed in (a) of this subsection does not apply in any year that a person required to list a ship or vessel does not owe the state property tax levied for collection in that year with respect to that ship or vessel.

(c) The annual derelict vessel removal fee is equal to one dollar per vessel foot measured by extreme length of the vessel, rounded up to the nearest whole foot.

(2) Each year, the department of revenue must include the amount of the derelict vessel removal fee due under this section for that calendar year in the tax statement required in RCW 84.40.065.

(3) The person listing a ship or vessel and the owner of the ship or vessel, if not the same person, are jointly and severally liable for the fee imposed in this section.

(4) The department of revenue must collect the derelict vessel removal fee imposed in this section as provided in RCW 84.56.440.

(5) All derelict vessel removal fees collected under this section must be deposited into the derelict vessel removal account created in RCW 79.100.100. [2014 c 195 § 402.]

Effective date—2014 c 195 §§ 401-403: "Sections 401 through 403 of this act take effect January 1, 2015." [2014 c 195 § 404.]

Findings—Intent—2014 c 195: "(1) The legislature finds that:

(a) Derelict and abandoned vessels are a threat to the safety of the public waterways, an environmental hazard for humans and marine life, and an occupational danger for persons that make their living on the waters of this state;

(b) Derelict vessel removal fees are imposed when recreational vessels are registered with the department of licensing. The accumulation of these fees is sufficient for the removal and disposal of recreational vessels that become derelict or abandoned;

(c) Derelict vessel removal fees do not apply to commercial vessels. Former commercial vessels are among the most costly to remove from Washington waters and to dispose of in an environmentally responsible manner. The costs for removing and disposing of these vessels far exceeds the funding provided by the derelict vessel removal fees paid by recreational vessels;

(d) According to the department of natural resources, as of January 1, 2015, there is a significant backlog of abandoned or derelict vessels that are former commercial vessels; and

(e) The use of general fund revenue to pay for the removal and disposal of derelict or abandoned vessels places an undue burden on the nonboating public and reduces the revenue available to pay for necessary governmental services.

(2) The legislature intends for either the owners or operators, or both, of commercial vessels to pay their fair share for the removal of abandoned or derelict vessels by imposing a per foot fee on commercial vessels." [2014 c 195 § 401.]

Findings—Intent—2014 c 195: See note following RCW 79.100.170.

79.100.901 Effective date—2002 c 286. This act takes effect January 1, 2003. [2002 c 286 § 26.]

**Chapter 79.105 RCW
AQUATIC LANDS—GENERAL**

Sections

79.105.001 Intent—2005 c 155.

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- 79.105.902 Effective date—1984 c 221.

79.105.001 Intent—2005 c 155. This act is intended to make technical amendments to certain codified statutes that deal with the department of natural resources. Any statutory changes made by this act should be interpreted as technical in nature and not be interpreted to have any substantive policy implications. [2005 c 155 § 1001.]

GENERAL PROVISIONS

79.105.010 Aquatic lands—Findings. The legislature finds that state-owned aquatic lands are a finite natural resource of great value and an irreplaceable public heritage. The legislature recognizes that the state owns these aquatic lands in fee and has delegated to the department the responsibility to manage these lands for the benefit of the public. The legislature finds that water-dependent industries and activities have played a major role in the history of the state and will continue to be important in the future. The legislature finds that revenues derived from leases of state-owned aquatic lands should be used to enhance opportunities for public recreation, shoreline access, environmental protection, and other public benefits associated with the aquatic lands of the state. The legislature further finds that aquatic lands are

faced with conflicting use demands. [2005 c 155 § 139; 1984 c 221 § 1. Formerly RCW 79.90.450.]

79.105.020 Purpose—Articulation of management philosophy. The purpose of RCW 79.105.060, 79.105.230, 79.105.280, and 79.105.010 through 79.105.040 is to articulate a management philosophy to guide the exercise of the state's ownership interest and the exercise of the department's management authority, and to establish standards for determining equitable and predictable lease rates for users of state-owned aquatic lands. [2005 c 155 § 101. FORMERLY PART OF RCW 79.90.450.]

79.105.030 Aquatic lands—Management guidelines. The management of state-owned aquatic lands shall be in conformance with constitutional and statutory requirements. The manager of state-owned aquatic lands shall strive to provide a balance of public benefits for all citizens of the state. The public benefits provided by state-owned aquatic lands are varied and include:

- (1) Encouraging direct public use and access;
- (2) Fostering water-dependent uses;
- (3) Ensuring environmental protection;
- (4) Utilizing renewable resources.

Generating revenue in a manner consistent with subsections (1) through (4) of this section is a public benefit. [2005 c 155 § 140; 1984 c 221 § 2. Formerly RCW 79.90.455.]

79.105.040 Application to existing property rights—Application of shoreline management act. Nothing in *this chapter or RCW 79.120.040 or 79.120.060 shall modify or affect any existing legal rights involving the boundaries of, title to, or vested property rights in aquatic lands or waterways. Nothing in *this chapter shall modify, alter, or otherwise affect the applicability of chapter 90.58 RCW. [2005 c 155 § 157; 1984 c 221 § 20. Formerly RCW 79.90.545.]

***Reviser's note:** The reference to "this chapter" referred to chapter 79.90 RCW, which was recodified and/or repealed in its entirety by 2005 c 155.

79.105.050 Fostering use of aquatic environment—Limitation. The department shall foster the commercial and recreational use of the aquatic environment for production of food, fibre, income, and public enjoyment from state-owned aquatic lands and from associated waters, and to this end the department may develop and improve production and harvesting of seaweeds and sealife attached to or growing on aquatic land or contained in aquaculture containers, but nothing in this section alters the responsibility of other state agencies for their normal management of fish, shellfish, game, and water. [2005 c 155 § 141; 2003 c 334 § 541; 1971 ex.s. c 234 § 8. Formerly RCW 79.90.456, 79.68.080.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.105.060 Definitions. The definitions in this section apply throughout chapters 79.105 through 79.145 RCW unless the context clearly requires otherwise.

- (1) "Aquatic lands" means all tidelands, shorelands, harbor areas, and the beds of navigable waters.
- (2) "Beds of navigable waters" means those lands lying waterward of and below the line of navigability on rivers and

lakes not subject to tidal flow, or extreme low tide mark in navigable tidal waters, or the outer harbor line where harbor area has been created.

(3) "First-class shorelands" means the shores of a navigable lake or river belonging to the state, not subject to tidal flow, lying between the line of ordinary high water and the line of navigability, or inner harbor line where established and within or in front of the corporate limits of any city or within two miles of either side.

(4) "First-class tidelands" means the shores of navigable tidal waters belonging to the state, lying within or in front of the corporate limits of any city, or within one mile of either side and between the line of ordinary high tide and the inner harbor line; and within two miles of the corporate limits on either side and between the line of ordinary high tide and the line of extreme low tide.

(5) "Harbor area" means the area of navigable waters determined as provided in Article XV, section 1 of the state Constitution, which shall be forever reserved for landings, wharves, streets, and other conveniences of navigation and commerce.

(6) "Improvements" when referring to state-owned aquatic lands means anything considered a fixture in law placed within, upon, or attached to aquatic lands that has changed the value of those lands, or any changes in the previous condition of the fixtures that changes the value of the land.

(7) "Inflation rate" means for a given year the percentage rate of change in the previous calendar year's all commodity producer price index of the bureau of labor statistics of the United States department of commerce. If the index ceases to be published, the department shall designate by rule a comparable substitute index.

(8) "Inner harbor line" means a line located and established in navigable waters between the line of ordinary high tide or ordinary high water and the outer harbor line, constituting the inner boundary of the harbor area.

(9) "Log booming" means placing logs into and taking them out of the water, assembling and disassembling log rafts before or after their movement in waterborne commerce, related handling and sorting activities taking place in the water, and the temporary holding of logs to be taken directly into a processing facility. "Log booming" does not include the temporary holding of logs to be taken directly into a vessel.

(10) "Log storage" means the water storage of logs in rafts or otherwise prepared for shipment in waterborne commerce, but does not include the temporary holding of logs to be taken directly into a vessel or processing facility.

(11) "Nonwater-dependent use" means a use that can operate in a location other than on the waterfront. Examples include, but are not limited to, hotels, condominiums, apartments, restaurants, retail stores, and warehouses not part of a marine terminal or transfer facility.

(12) "Outer harbor line" means a line located and established in navigable waters as provided in Article XV, section 1 of the state Constitution, beyond which the state shall never sell or lease any rights whatever to private persons.

(13) "Person" means any private individual, partnership, association, organization, cooperative, firm, corporation, the state or any agency or political subdivision thereof, any pub-

lic or municipal corporation, or any unit of government, however designated.

(14) "Port district" means a port district created under Title 53 RCW.

(15) "Public utility lines" means pipes, conduits, and similar facilities for distribution of water, electricity, natural gas, telephone, other electronic communication, and sewers, including sewer outfall lines.

(16) "Real rate of return" means the average for the most recent ten calendar years of the average rate of return on conventional real property mortgages as reported by the federal home loan bank board or any successor agency, minus the average inflation rate for the most recent ten calendar years.

(17) "Second-class shorelands" means the shores of a navigable lake or river belonging to the state, not subject to tidal flow, lying between the line of ordinary high water and the line of navigability, and more than two miles from the corporate limits of any city.

(18) "Second-class tidelands" means the shores of navigable tidal waters belonging to the state, lying outside of and more than two miles from the corporate limits of any city, and between the line of ordinary high tide and the line of extreme low tide.

(19) "Shorelands," where not preceded by "first-class" or "second-class," means both first-class shorelands and second-class shorelands.

(20) "State-owned aquatic lands" means all tidelands, shorelands, harbor areas, the beds of navigable waters, and waterways owned by the state and administered by the department or managed under RCW 79.105.420 by a port district. "State-owned aquatic lands" does not include aquatic lands owned in fee by, or withdrawn for the use of, state agencies other than the department.

(21) "Terminal" means a point of interchange between land and water carriers, such as a pier, wharf, or group of such, equipped with facilities for care and handling of either cargo or passengers, or both.

(22) "Tidelands," where not preceded by "first-class" or "second-class," means both first-class tidelands and second-class tidelands.

(23) "Valuable materials" when referring to state-owned aquatic lands means any product or material within or upon lands, such as forest products, forage, stone, gravel, sand, peat, agricultural crops, and all other materials of value except mineral, coal, petroleum, and gas as provided for under chapter 79.14 RCW. However, RCW 79.140.190 and 79.140.200 also apply to materials provided for under chapter 79.14 RCW.

(24) "Water-dependent use" means a use that cannot logically exist in any location but on the water. Examples include, but are not limited to: Waterborne commerce; terminal and transfer facilities; ferry terminals; watercraft sales in conjunction with other water-dependent uses; watercraft construction, repair, and maintenance; moorage and launching facilities; aquaculture; log booming; and public fishing piers and parks.

(25) "Water-oriented use" means a use that historically has been dependent on a waterfront location, but with existing technology could be located away from the waterfront. Examples include, but are not limited to, wood products manufacturing, watercraft sales, fish processing, petroleum refin-

ing, sand and gravel processing, log storage, and houseboats. For the purposes of determining rent under this chapter, water-oriented uses shall be classified as water-dependent uses if the activity either is conducted on state-owned aquatic lands leased on October 1, 1984, or was actually conducted on the state-owned aquatic lands for at least three years before October 1, 1984. If, after October 1, 1984, the activity is changed to a use other than a water-dependent use, the activity shall be classified as a nonwater-dependent use. If continuation of the existing use requires leasing additional state-owned aquatic lands and is permitted under the shoreline management act of 1971, chapter 90.58 RCW, the department may allow reasonable expansion of the water-oriented use. [2005 c 155 § 102.]

GENERAL USE, SALE, AND LEASE PROVISIONS

79.105.100 Sale and lease of state-owned aquatic lands—Blank forms of applications. The department shall prepare, and furnish to applicants, blank forms of applications for the purchase of state-owned tidelands or shorelands, otherwise permitted by RCW 79.125.200 to be sold, and the purchase of valuable material situated thereon, and the lease of state-owned tidelands, shorelands, and harbor areas, which forms shall contain such instructions as will inform and aid the applicants. [2005 c 155 § 104; 1982 1st ex.s. c 21 § 15. Formerly RCW 79.90.090.]

79.105.110 Who may purchase or lease—Application—Fees. Any person desiring to purchase any state-owned tidelands or shorelands, otherwise permitted under RCW 79.125.200 to be sold, or to purchase any valuable material situated thereon, or to lease any state-owned aquatic lands, shall file with the department an application, on the proper form which shall be accompanied by reasonable fees to be prescribed by the board in its rules, in an amount sufficient to defray the cost of performing or otherwise providing for the processing, review, or inspection of the applications or activities permitted pursuant to the applications for each category of services performed. These fees shall be credited to the resource management cost account fund in the general fund. [2005 c 155 § 105; 1982 1st ex.s. c 21 § 16. Formerly RCW 79.90.100.]

79.105.120 Survey to determine areas subject to sale or lease. The department may cause any state-owned aquatic lands to be surveyed for the purpose of ascertaining and determining the area subject to sale or lease. [2005 c 155 § 108; 1982 1st ex.s. c 21 § 18. Formerly RCW 79.90.120.]

79.105.130 Reconsideration of official acts. The department may review and reconsider any of its official acts relating to state-owned aquatic lands until such time as a lease, contract, or deed is made, executed, and finally issued, and the department may recall any lease, contract, or deed issued for the purpose of correcting mistakes or errors, or supplying omissions. [2005 c 155 § 138; 1982 1st ex.s. c 21 § 47. Formerly RCW 79.90.410.]

79.105.140 Assignment of contracts or leases. All contracts of purchase of state-owned tidelands or shorelands, otherwise permitted under RCW 79.125.200 to be sold, and all leases of state-owned tidelands, shorelands, or beds of navigable waters issued by the department shall be assignable in writing by the contract holder or lessee. The assignee shall be subject to the provisions of law applicable to the purchaser or lessee of whom they are the assignee, and shall have the same rights in all respects as the original purchaser or lessee of the lands, but only if the assignment is first approved by the department and entered upon the records in the department. [2005 c 155 § 135; 1982 1st ex.s. c 21 § 43. Formerly RCW 79.90.370.]

79.105.150 Deposit, use of proceeds from sale or lease of aquatic lands or valuable materials therefrom—Aquatic lands enhancement project grant requirements—Aquatic lands enhancement account. (1) After deduction for management costs as provided in RCW 79.64.040 and payments to towns under RCW 79.115.150(2), all moneys received by the state from the sale or lease of state-owned aquatic lands and from the sale of valuable material from state-owned aquatic lands shall be deposited in the aquatic lands enhancement account which is hereby created in the state treasury. After appropriation, these funds shall be used solely for aquatic lands enhancement projects; for the purchase, improvement, or protection of aquatic lands for public purposes; for providing and improving access to the lands; and for volunteer cooperative fish and game projects. During the 2013-2015 and 2015-2017 fiscal biennia, the aquatic lands enhancement account may be used to support the shellfish program, the ballast water program, hatcheries, the Puget Sound toxic sampling program and steelhead mortality research at the department of fish and wildlife, the knotweed program at the department of agriculture, actions at the University of Washington for reducing ocean acidification, which may include the creation of a center on ocean acidification, and the Puget SoundCorps program. During the 2013-2015 fiscal biennium, the legislature may transfer from the aquatic lands enhancement account to the geoduck aquaculture research account for research related to shellfish aquaculture. During the 2015-2017 fiscal biennium, the legislature may transfer moneys from the aquatic lands enhancement account to the marine resources stewardship trust account.

(2) In providing grants for aquatic lands enhancement projects, the recreation and conservation funding board shall:

(a) Require grant recipients to incorporate the environmental benefits of the project into their grant applications;

(b) Utilize the statement of environmental benefits, consideration, except as provided in RCW 79.105.610, of whether the applicant is a Puget Sound partner, as defined in RCW 90.71.010, whether a project is referenced in the action agenda developed by the Puget Sound partnership under RCW 90.71.310, and except as otherwise provided in RCW 79.105.630, and effective one calendar year following the development and statewide availability of model evergreen community management plans and ordinances under RCW 35.105.050, whether the applicant is an entity that has been recognized, and what gradation of recognition was received, in the evergreen community recognition program created in

RCW 35.105.030 in its prioritization and selection process; and

(c) Develop appropriate outcome-focused performance measures to be used both for management and performance assessment of the grants.

(3) To the extent possible, the department should coordinate its performance measure system with other natural resource-related agencies as defined in RCW 43.41.270.

(4) The department shall consult with affected interest groups in implementing this section.

(5) After January 1, 2010, any project designed to address the restoration of Puget Sound may be funded under this chapter only if the project is not in conflict with the action agenda developed by the Puget Sound partnership under RCW 90.71.310. [2015 3rd sp.s. c 4 § 974; 2013 2nd sp.s. c 4 § 1002. Prior: 2012 2nd sp.s. c 7 § 929; 2012 2nd sp.s. c 2 § 6008; 2011 2nd sp.s. c 9 § 911; 2011 1st sp.s. c 50 § 967; 2010 1st sp.s. c 37 § 949; 2009 c 564 § 959; 2008 c 299 § 28; 2007 c 341 § 32; prior: 2005 c 518 § 946; 2005 c 155 § 121; 2004 c 276 § 914; 2002 c 371 § 923; 2001 c 227 § 7; 1999 c 309 § 919; 1997 c 149 § 913; 1995 2nd sp.s. c 18 § 923; 1994 c 219 § 12; 1993 sp.s. c 24 § 927; 1987 c 350 § 1; 1985 c 57 § 79; 1984 c 221 § 24; 1982 2nd ex.s. c 8 § 4; 1969 ex.s. c 273 § 12; 1967 ex.s. c 105 § 3; 1961 c 167 § 9. Formerly RCW 79.90.245, 79.24.580.]

Effective dates—2015 3rd sp.s. c 4: See note following RCW 28B.15.069.

Effective dates—2013 2nd sp.s. c 4: See note following RCW 2.68.020.

Effective date—2012 2nd sp.s. c 7: See note following RCW 2.68.020.

Effective date—2012 2nd sp.s. c 2: See note following RCW 43.155.050.

Effective dates—2011 2nd sp.s. c 9: See note following RCW 28B.50.837.

Effective dates—2011 1st sp.s. c 50: See note following RCW 15.76.115.

Effective date—2010 1st sp.s. c 37: See note following RCW 13.06.050.

Effective date—2009 c 564: See note following RCW 2.68.020.

Short title—2008 c 299: See note following RCW 35.105.010.

Effective date—2007 c 341: See RCW 90.71.907.

Findings—Intent—2001 c 227: See note following RCW 43.41.270.

Finding—1994 c 219: See note following RCW 43.88.030.

Additional notes found at www.leg.wa.gov

79.105.160 Aquatic lands—Court review of actions. Any applicant to purchase or lease any state-owned aquatic lands, or any valuable materials on state-owned aquatic lands, and any person whose property rights or interest will be affected by the sale or lease, feeling himself or herself aggrieved by any order or decision of the board, or the commissioner, concerning the order or decision, may appeal in the manner provided in RCW 79.02.030. [2005 c 155 § 137; 2003 c 334 § 606; 1982 1st ex.s. c 21 § 46. Formerly RCW 79.90.400.]

Intent—2003 c 334: See note following RCW 79.02.010.

LEASING AND RENTAL RATES

79.105.200 Use and occupancy fee in lieu of lease—Construction of section. (1) The department may require

the payment of a use and occupancy fee in lieu of a lease where improvements have been placed without authorization on state-owned aquatic lands.

(2) Nothing in this section shall be construed to prevent the assertion of public ownership rights in any publicly owned aquatic lands, or the leasing of the aquatic lands when the leasing is not contrary to the statewide public interest. [2005 c 155 § 516; 1982 1st ex.s. c 21 § 102. Formerly RCW 79.94.170.]

79.105.210 Aquatic lands—Preservation and enhancement of water-dependent uses—Leasing authority.

(1) The management of state-owned aquatic lands shall preserve and enhance water-dependent uses. Water-dependent uses shall be favored over other uses in state-owned aquatic land planning and in resolving conflicts between competing lease applications. In cases of conflict between water-dependent uses, priority shall be given to uses which enhance renewable resources, waterborne commerce, and the navigational and biological capacity of the waters, and to statewide interests as distinguished from local interests.

(2) Nonwater-dependent use of state-owned aquatic lands is a low-priority use providing minimal public benefits and shall not be permitted to expand or be established in new areas except in exceptional circumstances where it is compatible with water-dependent uses occurring in or planned for the area.

(3) The department shall consider the natural values of state-owned aquatic lands as wildlife habitat, natural area preserve, representative ecosystem, or spawning area prior to issuing any initial lease or authorizing any change in use. The department may withhold from leasing lands which it finds to have significant natural values, or may provide within any lease for the protection of such values.

(4) The power to lease state-owned aquatic lands is vested in the department, which has the authority to make leases upon terms, conditions, and length of time in conformance with the state Constitution and chapters 79.105 through 79.140 RCW.

(5) State-owned aquatic lands shall not be leased to persons or organizations which discriminate on the basis of race, color, creed, religion, sex, age, or physical or mental handicap. [2005 c 155 § 143; 1984 c 221 § 3. Formerly RCW 79.90.460.]

79.105.220 Lease of tidelands in front of public parks. The department may lease state-owned tidelands that are in front of state parks only with the approval of the state parks and recreation commission. The department may lease bedlands in front of state parks only after the department has consulted with the state parks and recreation commission. [2005 c 155 § 145. FORMERLY PART OF RCW 79.94.010; 2002 c 152 § 2; 1984 c 221 § 5. Formerly RCW 79.90.470.]

Findings—Severability—2002 c 152: See notes following RCW 79.110.240.

79.105.230 Use for public parks or public recreation purposes. Use for public parks or public recreation purposes shall be granted without charge if the state-owned aquatic lands and improvements are available to the general public on a first-come, first-served basis and are not managed to

produce a profit for the operator or a concessionaire. [2005 c 155 § 144.]

79.105.240 Determination of annual rent rates for lease of aquatic lands for water-dependent uses. Except as otherwise provided by this chapter, annual rent rates for the lease of state-owned aquatic lands for water-dependent uses shall be determined as follows:

(1)(a) The assessed land value, exclusive of improvements, as determined by the county assessor, of the upland tax parcel used in conjunction with the leased area or, if there are no such uplands, of the nearest upland tax parcel used for water-dependent purposes divided by the parcel area equals the upland value.

(b) The upland value times the area of leased aquatic lands times thirty percent equals the aquatic land value.

(2) As of July 1, 1989, and each July 1st thereafter, the department shall determine the real capitalization rate to be applied to water-dependent aquatic land leases commencing or being adjusted under subsection (3)(a) of this section in that fiscal year. The real capitalization rate shall be the real rate of return, except that until June 30, 1989, the real capitalization rate shall be five percent and thereafter it shall not change by more than one percentage point in any one year or be more than seven percent or less than three percent.

(3) The annual rent shall be:

(a) Determined initially, and redetermined every four years or as otherwise provided in the lease, by multiplying the aquatic land value times the real capitalization rate; and

(b) Adjusted by the inflation rate each year in which the rent is not determined under (a) of this subsection.

(4) If the upland parcel used in conjunction with the leased area is not assessed or has an assessed value inconsistent with the purposes of the lease, the nearest comparable upland parcel used for similar purposes shall be substituted and the lease payment determined in the same manner as provided in this section.

(5) For the purposes of this section, "upland tax parcel" is a tax parcel, some portion of which has upland characteristics. Filled tidelands or shorelands with upland characteristics which abut state-owned aquatic land shall be considered as uplands in determining aquatic land values.

(6) The annual rent for filled state-owned aquatic lands that have the characteristics of uplands shall be determined in accordance with RCW 79.105.270 in those cases in which the state owns the fill and has a right to charge for the fill.

(7) For all new leases for other water-dependent uses, issued after December 31, 1997, the initial annual water-dependent rent shall be determined by the methods in subsections (1) through (6) of this section. [2005 c 155 § 147; 2003 c 310 § 1; 1998 c 185 § 2; 1984 c 221 § 7. Formerly RCW 79.90.480.]

Findings—Report—1998 c 185: "(1) The legislature finds that the current method for determining water-dependent rental rates for aquatic land leases may not be achieving the management goals in RCW 79.90.455. The current method for setting rental rates, as well as alternatives to the current methods, should be evaluated in light of achieving management goals for aquatic lands leases. The legislature further finds that there should be no further increases in water-dependent rental rates for marina leases before the completion of this evaluation.

(2) The department of natural resources shall study and prepare a report to the legislature on alternatives to the current method for determination of water-dependent rent set forth in RCW 79.90.480. The report shall be pre-

pared with the assistance of appropriate outside economic expertise and stakeholder involvement. Affected stakeholders shall participate with the department by providing information necessary to complete this study. For each alternative, the report shall:

- (a) Describe each method and the costs and benefits of each;
 - (b) Compare each with the current method of calculating rents;
 - (c) Provide the private industry perspective;
 - (d) Describe the public perspective;
 - (e) Analyze the impact on state lease revenue;
 - (f) Evaluate the impacts of water-dependent rates on economic development in economically distressed counties; and
 - (g) Evaluate the ease of administration.
- (3) The report shall be presented to the legislature by November 1, 1998, with the recommendations of the department clearly identified. The department's recommendations shall include draft legislation as necessary for implementation of its recommendations." [1998 c 185 § 1.]

Additional notes found at www.leg.wa.gov

79.105.250 Log storage rents. (1) Until June 30, 1989, the log storage rents per acre shall be the average rents the log storage leases in effect on July 1, 1984, would have had under the formula for water-dependent leases as set out in RCW 79.105.240, except that the aquatic land values shall be thirty percent of the assessed value of the abutting upland parcels exclusive of improvements, if they are assessed. If the abutting upland parcel is not assessed, the nearest assessed upland parcel shall be used.

(2) On July 1, 1989, and every four years thereafter, the base log storage rents established under subsection (1) of this section shall be adjusted in proportion to the change in average water-dependent lease rates per acre since the date the log storage rates were last established under this section.

(3) The annual rent shall be adjusted by the inflation rate each year in which the rent is not determined under subsection (1) or (2) of this section.

(4) If the lease provides for seasonal use so that portions of the leased area are available for public use without charge part of the year, the annual rent may be discounted to reflect such public use in accordance with rules adopted by the board. [2005 c 155 § 148; 1984 c 221 § 8. Formerly RCW 79.90.485.]

79.105.260 Rent for leases in effect October 1, 1984.

(1) For leases in effect on October 1, 1984, the rent shall remain at the annual rate in effect on September 30, 1984, until the next lease anniversary date, at which time rent established under RCW 79.105.240 or 79.105.250 shall become effective. If the first rent amount established is an increase of more than one hundred dollars and is more than thirty-three percent above the rent in effect on September 30, 1984, the annual rent shall not increase in any year by more than thirty-three percent of the difference between the previous rent and the rent established under RCW 79.105.240 or 79.105.250. If the first rent amount established under RCW 79.105.240 or 79.105.250 is more than thirty-three percent below the rent in effect on September 30, 1984, the annual rent shall not decrease in any year by more than thirty-three percent of the difference between the previous rent and the rent established under RCW 79.105.240 or 79.105.250. Thereafter, notwithstanding any other provision of this title, the annual rental established under RCW 79.105.240 or 79.105.250 shall not increase more than fifty percent in any year.

(2) This section applies only to leases of state-owned aquatic lands subject to RCW 79.105.240 or 79.105.250.

[2005 c 155 § 149; 1984 c 221 § 9. Formerly RCW 79.90.490.]

79.105.270 Aquatic lands—Leases/rents for nonwater-dependent uses. Leases for nonwater-dependent uses of state-owned aquatic lands shall be charged the fair market rental value of the leased lands, determined in accordance with appraisal techniques specified by rule. However, rents for nonwater-dependent uses shall always be more than the amount that would be charged as rent for a water-dependent use of the same parcel. [2005 c 155 § 150; 1984 c 221 § 11. Formerly RCW 79.90.500.]

79.105.280 Rents and fees for recovery of mineral or geothermal resources. Rents and fees for the mining or other recovery of mineral or geothermal resources shall be established through competitive bidding, negotiations, or as otherwise provided by statute. [2005 c 155 § 151. FORMERLY PART OF RCW 79.90.500.]

79.105.290 Aquatic lands—Rents for multiple uses. If water-dependent and nonwater-dependent uses occupy separate portions of the same leased parcel of state-owned aquatic land, the rental rate for each use shall be that established for the use by this chapter, prorated in accordance with the proportion of the whole parcel that each use occupies. If water-dependent and nonwater-dependent uses occupy the same portion of a leased parcel of state-owned aquatic land, the rental rate for the parcel shall be subject to negotiation with the department taking into account the proportion of the improvements each use occupies. [2005 c 155 § 152; 1984 c 221 § 12. Formerly RCW 79.90.505.]

79.105.300 Aquatic lands—Lease for water-dependent use—Rental for nonwater-dependent use. If a parcel leased for water-dependent uses is used for an extended period of time, as defined by rule of the department, for a nonwater-dependent use, the rental for the nonwater-dependent use shall be negotiated with the department. [1984 c 221 § 13. Formerly RCW 79.90.510.]

79.105.310 Aquatic lands—Rent for improvements. (1) Except as agreed between the department and the lessee prior to construction of the improvements, rent shall not be charged under any lease of state-owned aquatic lands for improvements, including fills, authorized by the department or installed by the lessee or its predecessor before June 1, 1971, so long as the lands remain under a lease or succession of leases without a period of three years in which no lease is in effect or a bona fide application for a lease is pending.

(2) If improvements were installed under a good faith belief that a state-owned aquatic lands lease was not necessary, rent shall not be charged for the improvements if, within ninety days after specific written notification by the department that a lease is required, the owner either applies for a lease or files suit to determine if a lease is required. [2005 c 155 § 153; 1984 c 221 § 14. Formerly RCW 79.90.515.]

79.105.320 Aquatic lands—Administrative review of proposed rent. The manager shall, by rule, provide for an administrative review of any state-owned aquatic land rent

proposed to be charged. The rules shall require that the lessee or applicant for release file a request for review within thirty days after the manager has notified the lessee or applicant of the rent due. For leases issued by the department, the final authority for the review rests with the board. For leases managed under RCW 79.105.420, the final authority for the review rests with the appropriate port commission. If the request for review is made within thirty days after the manager's final determination as to the rental, the lessee may pay rent at the preceding year's rate pending completion of the review, and shall pay any additional rent or be entitled to a refund, with interest thirty days after announcement of the decision. The interest rate shall be fixed by rule adopted by the board and shall not be less than six percent per annum. Nothing in this section abrogates the right of an aggrieved party to pursue legal remedies. For purposes of this section, "manager" is the department except where state-owned aquatic lands are managed by a port district, in which case "manager" is the port district. [2005 c 155 § 154; 1991 c 64 § 1; 1984 c 221 § 15. Formerly RCW 79.90.520.]

79.105.330 Aquatic lands—Security for leases for more than one year. For any lease for a term of more than one year, the department may require that the rent be secured by insurance, bond, or other security satisfactory to the department in an amount not exceeding two years' rent. The department may require additional security for other lease provisions. The department shall not require cash deposits exceeding one-twelfth of the annual rental. [1984 c 221 § 16. Formerly RCW 79.90.525.]

79.105.340 Aquatic lands—Payment of rent. If the annual rent charged for the use of a parcel of state-owned aquatic lands exceeds four thousand dollars, the lessee may pay on a prorated quarterly basis. If the annual rent exceeds twelve thousand dollars, the lessee may pay on a prorated monthly basis. [1984 c 221 § 17. Formerly RCW 79.90.530.]

79.105.350 Aquatic lands—Interest rate. The interest rate and all interest rate guidelines shall be fixed by rule adopted by the board and shall not be less than six percent per annum. [2005 c 155 § 155; 1991 c 64 § 2; 1984 c 221 § 18. Formerly RCW 79.90.535.]

79.105.360 Adoption of rules. The department shall adopt such rules as are necessary to carry out the purposes of RCW 79.105.010, 79.105.030, 79.105.050, 79.105.210, 79.105.220, 79.105.240 through 79.105.260, 79.105.270, 79.105.290 through 79.105.350, 79.105.400, 79.105.420, 79.130.070, and 79.135.100, specifically including criteria for determining under RCW 79.105.240(4) when an abutting upland parcel has been inappropriately assessed and for determining the nearest comparable upland parcel used for water-dependent uses. [2005 c 155 § 156; 1984 c 221 § 19. Formerly RCW 79.90.540.]

OTHER CONVEYANCES

79.105.400 Authority to exchange state-owned tidelands and shorelands—Rules—Limitation. The department may exchange state-owned tidelands and shorelands

with private and other public landowners if the exchange is in the public interest and will actively contribute to the public benefits established in RCW 79.105.030. The board shall adopt rules which establish criteria for determining when a proposed exchange is in the public interest and actively contributes to the public benefits established in RCW 79.105.030. The department may not exchange state-owned harbor areas or waterways. [2005 c 155 § 142; 1995 c 357 § 1. Formerly RCW 79.90.457.]

79.105.410 Gifts of aquatic land—Procedures and criteria. (1) The department is authorized to accept gifts of aquatic land within the state, including tidelands, shorelands, harbor areas, and the beds of navigable waters, which shall become part of the state-owned aquatic land base. Consistent with RCW 79.105.030, the department must develop procedures and criteria that state the manner in which gifts of aquatic land, received after July 27, 2003, may occur. No gift of aquatic land may be accepted until: (a) An appraisal of the value of the land has been prepared; (b) an environmental site assessment has been conducted; and (c) the title property report has been examined and approved by the attorney general of the state. The results of the appraisal, the site assessment, and the examination of the title property report must be submitted to the board before the department may accept a gift of aquatic land.

(2) The authorization to accept gifts of aquatic land within the state extends to aquatic land accepted as gifts prior to July 27, 2003. [2005 c 155 § 163; 2003 c 176 § 1. Formerly RCW 79.90.580.]

79.105.420 Management of certain aquatic lands by port district—Agreement—Rent—Model management agreement. (1) Upon request of a port district, the department and port district may enter into an agreement authorizing the port district to manage state-owned aquatic lands abutting or used in conjunction with and contiguous to uplands owned, leased, or otherwise managed by a port district, for port purposes as provided in Title 53 RCW. The agreement shall include, but not be limited to, provisions defining the specific area to be managed, the term, conditions of occupancy, reservations, periodic review, and other conditions to ensure consistency with the state Constitution and the policies of this chapter. If a port district acquires operating management, lease, or ownership of real property which abuts state-owned aquatic lands currently under lease from the state to a person other than the port district, the port district shall manage state-owned aquatic lands if: (a) The port district acquires the leasehold interest in accordance with state law, or (b) the current lessee and the department agree to termination of the current lease to accommodate management by the port. The administration of state-owned aquatic lands covered by a management agreement shall be consistent with the aquatic land policies of chapters 79.105 through 79.140 RCW and the implementing rules adopted by the department. The administrative procedures for management of the lands shall be those of Title 53 RCW.

(2) No rent is due the state for the use of state-owned aquatic lands managed under this section for water-dependent or water-oriented uses. If a port district manages state-owned aquatic lands under this section and either leases or

otherwise permits any person to use the lands, the rental fee attributable to the state-owned aquatic land only shall be comparable to the rent charged lessees for the same or similar uses by the department. However, a port district need not itemize for the lessee any charges for state-owned aquatic lands improved by the port district for use by carriers by water. If a port leases state-owned aquatic lands to any person for nonwater-dependent use, eighty-five percent of the revenue attributable to the rent of the state-owned aquatic land only shall be paid to the state.

(3) Upon application for a management agreement, and so long as the application is pending and being diligently pursued, no rent is due the department for the lease by the port district of state-owned aquatic lands included within the application for water-dependent or water-oriented uses.

(4) The department and representatives of the port industry shall develop a proposed model management agreement which shall be used as the basis for negotiating the management agreements required by this section. The model management agreement shall be reviewed and approved by the board. [2005 c 155 § 146; 1984 c 221 § 6. Formerly RCW 79.90.475.]

79.105.430 Private recreational docks—Mooring buoys. (1) The abutting residential owner to state-owned shorelands, tidelands, or related beds of navigable waters, other than harbor areas, may install and maintain without charge a dock on the areas if used exclusively for private recreational purposes and the area is not subject to prior rights, including any rights of upland, tideland, or shoreland owners as provided in RCW 79.125.400, 79.125.460, 79.125.410, and 79.130.010. The dock cannot be sold or leased separately from the upland residence. The dock cannot be used to moor boats for commercial or residential use. This permission is subject to applicable local, state, and federal rules and regulations governing location, design, construction, size, and length of the dock. Nothing in this subsection (1) prevents the abutting owner from obtaining a lease if otherwise provided by law.

(2) The abutting residential owner to state-owned shorelands, tidelands, or related beds of navigable waters, other than harbor areas, may install and maintain a mooring buoy without charge if the boat that is moored to the buoy is used for private recreational purposes, the area is not subject to prior rights, including any rights of upland, tideland, or shoreland owners as provided in RCW 79.125.400, 79.125.460, 79.125.410, and 79.130.010, and the buoy will not obstruct the use of mooring buoys previously authorized by the department.

(a) The buoy must be located as near to the upland residence as practical, consistent with applicable rules and regulations and the provisions of this section. The buoy must be located, or relocated if necessary, to accommodate the use of lawfully installed and maintained buoys.

(b) If two or more residential owners, who otherwise qualify for free use under the provisions of this section, are in dispute over assertion of rights to install and maintain a mooring buoy in the same location, they may seek formal settlement through adjudication in superior court for the county in which the buoy site is located. In the adjudication, preference must be given to the residential owner that first installed

and continually maintained and used a buoy on that site, if it meets all applicable rules, regulations, and provisions of this section, and then to the owner of the residential property nearest the site. Nothing in this section requires the department to mediate or otherwise resolve disputes between residential owners over the use of the same site for a mooring buoy.

(c) The buoy cannot be sold or leased separately from the abutting residential property. The buoy cannot be used to moor boats for commercial or residential use, nor to moor boats over sixty feet in length.

(d) If the department determines that it is necessary for secure moorage, the abutting residential owner may install and maintain a second mooring buoy, under the same provisions as the first, the use of which is limited to a second mooring line to the boat moored at the first buoy.

(e) The permission granted in this subsection (2) is subject to applicable local, state, and federal rules and regulations governing location, design, installation, maintenance, and operation of the mooring buoy, anchoring system, and moored boat. Nothing in this subsection (2) prevents a boat owner from obtaining a lease if otherwise provided by law. This subsection (2) also applies to areas that have been designated by the commissioner or the fish and wildlife commission as aquatic reserves.

(3) This permission to install and maintain a recreational dock or mooring buoy may be revoked by the department, or the department may direct the owner of a recreational dock or mooring buoy to relocate their dock or buoy, if the department makes a finding of public necessity to protect waterward access, ingress rights of other landowners, public health or safety, or public resources. Circumstances prompting a finding of public necessity may include, but are not limited to, the dock, buoy, anchoring system, or boat posing a hazard or obstruction to navigation or fishing, contributing to degradation of aquatic habitat, or contributing to decertification of shellfish beds otherwise suitable for commercial or recreational harvest. The revocation may be appealed as provided for under RCW 79.105.160.

(4) Nothing in this section authorizes a boat owner to abandon a vessel at a recreational dock, mooring buoy, or elsewhere. [2005 c 155 § 106; 2002 c 304 § 1; 2001 c 277 § 1; 1989 c 175 § 170; 1983 2nd ex.s. c 2 § 2. Formerly RCW 79.90.105.]

Additional notes found at www.leg.wa.gov

DREDGED MATERIAL DISPOSAL

79.105.500 Aquatic land dredged material disposal sites—Findings. The legislature finds that the department provides, manages, and monitors aquatic land dredged material disposal sites on state-owned aquatic lands for materials dredged from rivers, harbors, and shipping lanes. These disposal sites are approved through a cooperative planning process by the departments of natural resources and ecology, the United States army corps of engineers, and the United States environmental protection agency in cooperation with the Puget Sound partnership. These disposal sites are essential to the commerce and well-being of the citizens of the state of Washington. Management and environmental monitoring of these sites are necessary to protect environmental quality and

to assure appropriate use of state-owned aquatic lands. The creation of an aquatic land dredged material disposal site account is a reasonable means to enable and facilitate proper management and environmental monitoring of these disposal sites. [2007 c 341 § 58; 2005 c 155 § 158; 1987 c 259 § 1. Formerly RCW 79.90.550.]

Effective date—2007 c 341: See RCW 90.71.907.

Additional notes found at www.leg.wa.gov

79.105.510 Aquatic land dredged material disposal site account. The aquatic land dredged material disposal site account is established in the state treasury. The account shall consist of funds appropriated to the account; funds transferred or paid to the account pursuant to settlements; court or administrative agency orders or judgments; gifts and grants to the account; and all funds received by the department from users of aquatic land dredged material disposal sites. After appropriation, moneys in the fund may be spent only for the management and environmental monitoring of aquatic land dredged material disposal sites. The account is subject to the allotment procedure provided under chapter 43.88 RCW. [2005 c 155 § 159; 1991 sp.s. c 13 § 63; 1987 c 259 § 2. Formerly RCW 79.90.555.]

Additional notes found at www.leg.wa.gov

79.105.520 Fees for use of aquatic land dredged material disposal sites authorized. The department shall estimate the costs of site management and environmental monitoring at aquatic land dredged material disposal sites and may, by rule, establish fees for use of the sites in amounts no greater than necessary to cover the estimated costs. All such revenues shall be placed in the aquatic land dredged material disposal site account under RCW 79.105.510. [2005 c 155 § 160; 1987 c 259 § 3. Formerly RCW 79.90.560.]

Additional notes found at www.leg.wa.gov

OTHER MANAGEMENT PROVISIONS

79.105.600 Archaeological activities on state-owned aquatic lands—Agreements, leases, or other conveyances. After consultation with the *director of community, trade, and economic development, the department may enter into agreements, leases, or other conveyances for archaeological activities on state-owned aquatic lands. The agreements, leases, or other conveyances may contain those conditions as are required for the department to comply with its legal rights and duties. All agreements, leases, or other conveyances, shall be issued in accordance with the terms of chapters 79.105 through 79.140 RCW. [2005 c 155 § 161; 1995 c 399 § 210; 1988 c 124 § 9. Formerly RCW 79.90.565.]

***Reviser's note:** The "director of community, trade, and economic development" was renamed the "director of commerce" by 2009 c 565.

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

79.105.610 Puget Sound partners. When administering funds under this chapter, the *interagency committee for outdoor recreation shall give preference only to Puget Sound partners, as defined in RCW 90.71.010, in comparison to other entities that are eligible to be included in the definition of Puget Sound partner. Entities that are not eligible to be a

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Puget Sound partner due to geographic location, composition, exclusion from the scope of the Puget Sound action agenda developed by the Puget Sound partnership under RCW 90.71.310, or for any other reason, shall not be given less preferential treatment than Puget Sound partners. [2007 c 341 § 33.]

***Reviser's note:** Chapter 241, Laws of 2007 changed the name of the interagency committee for outdoor recreation to the recreation and conservation funding board.

Effective date—2007 c 341: See RCW 90.71.907.

79.105.620 City use of state-owned aquatic lands for publicly owned marina—Reduced fee lease—Expiration date. (*Expires July 1, 2029.*) (1)(a) A city with a population between twenty thousand and twenty-five thousand on June 12, 2008, and that currently operates a publicly owned marina may enter into a reduced fee lease authorizing the city to use state-owned aquatic lands for the purpose of operating a publicly owned marina. The office of financial management's population estimate must be used to determine a city's population for purposes of this section. The lease period may not exceed twenty years.

(b) No rent is due the state for the use of state-owned aquatic lands for the first ten years under such a lease. During subsequent years under such a lease, rent is due for only those lands that have been included under a previous aquatic land lease for the marina. The lease may not be renewed, extended, or put into holdover.

(2) A city choosing to enter into a lease as provided in subsection (1) of this section must do so within one year of June 12, 2008. Prior to entering into such a lease, the city must be in good standing with the department and must have paid all amounts owed the department including any accrued interest.

(3) State-owned aquatic lands that may be included in the lease are limited only to those lands included in the most recent expired lease with the city for the marina, along with any state-owned aquatic lands immediately adjacent to those lands. Only those marina operations conducted directly by the city may be included within the leased area.

(4) If a city chooses to enter into an agreement as provided in subsection (1) of this section, the city is not eligible to apply for grants from the aquatic lands enhancement account created under RCW 79.105.150 for the first ten years of the lease.

(5) Upon expiration of the twenty-year lease, the city may enter into a new lease for the use of state-owned aquatic lands or vacate the lands as agreed to in the expiring lease. To ensure the consistent statewide application of aquatic land management principles, the new lease must be completed in accordance with all applicable sections of this title.

(6) This section expires July 1, 2029. [2008 c 132 § 1.]

79.105.630 Administering funds—Preference to an evergreen community. When administering funds under this chapter, the recreation and conservation funding board shall give preference only to an evergreen community recognized under RCW 35.105.030 in comparison to other entities that are eligible to receive evergreen community designation. Entities not eligible for designation as an evergreen commu-

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nity shall not be given less preferential treatment than an evergreen community. [2008 c 299 § 33.]

Short title—2008 c 299: See note following RCW 35.105.010.

79.105.902 Effective date—1984 c 221. This act shall take effect on October 1, 1984. [1984 c 221 § 32. Formerly RCW 79.90.902.]

Chapter 79.110 RCW
AQUATIC LANDS—EASEMENTS
AND RIGHTS-OF-WAY

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- 79.110.330 Grant of overflow rights.
- 79.110.340 Construction of RCW 79.110.010 through 79.110.220 and 79.110.240 through 79.110.330 relating to rights-of-way and overflow rights.
- 79.110.350 Grant of such easements and rights-of-way as applicant may acquire in private lands by eminent domain.

79.110.001 Intent—2005 c 155. See RCW 79.105.001.

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EASEMENTS FOR REMOVAL OF
VALUABLE MATERIALS

79.110.010 Certain aquatic lands subject to easements for removal of valuable materials. All tidelands and shorelands originally belonging to the state, and which were granted, sold, or leased at any time after June 15, 1911, and which contain any valuable materials or are contiguous to or in proximity of state lands or other tidelands or shorelands which contain any valuable materials, shall be subject to the right of the state or any grantee or lessee who has acquired the other lands, or any valuable materials thereon, after June 15, 1911, to acquire the right-of-way over the lands so granted, sold, or leased, for private railroads, skid roads, flumes, canals, watercourses, or other easements for the purpose of, and to be used in, transporting and moving valuable materials from the other lands, over and across the lands so granted or leased in accordance with the provisions of RCW 79.36.370. [2005 c 155 § 201; 2003 c 334 § 607; 1982 1st ex.s. c 21 § 48. Formerly RCW 79.91.010.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.110.020 Certain aquatic lands subject to easements for removal of valuable materials—Private easements subject to common use in removal of valuable materials. Every right-of-way for a private railroad, skid road, canal, flume, or watercourse, or other easement, over and across any state-owned tidelands or shorelands, for the purpose of, and to be used in, transporting and moving valuable materials of the land, granted after June 15, 1911, shall be subject to joint and common use in accordance with the provisions of RCW 79.36.380. [2005 c 155 § 202; 1982 1st ex.s. c 21 § 49. Formerly RCW 79.91.020.]

79.110.030 Certain state and aquatic lands subject to easements for removal of valuable materials—Reasonable facilities and service for transporting must be furnished. Any person having acquired a right-of-way or easement as provided in RCW 79.110.010 and 79.110.020 over any state-owned tidelands or shorelands or over or across beds of any navigable water or stream for the purpose of transporting or moving valuable materials and being engaged in such business, or any grantee or lessee thereof acquiring after June 15, 1911, state lands or tidelands or shorelands containing valuable materials, where the land is contiguous to or in proximity of the right-of-way or easement, shall accord to the state or any person acquiring after June 15, 1911, valuable materials upon any such lands, proper and reasonable facilities and service for transporting and moving valuable materials under reasonable rules and upon payment of just and reasonable charges in accordance with the provisions of RCW 79.36.390. [2005 c 155 § 203; 2003 c 334 § 608; 1982 1st ex.s. c 21 § 50. Formerly RCW 79.91.030.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.110.040 Certain state and aquatic lands subject to easements for removal of valuable materials—Duty of utilities and transportation commission. Should the owner or operator of any private railroad, skid road, flume, canal, watercourse, or other right-of-way or easement provided for in RCW 79.110.020 and 79.110.030 fail to agree with the

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state or any grantee or lessee, as to the reasonable and proper rules and charges, concerning the transportation and movement of valuable materials from those lands contiguous to or in proximity to the lands over which the private right-of-way or easement is operated, the state or any grantee or lessee, owning and desiring to have the valuable materials transported or moved, may apply to the Washington state utilities and transportation commission for an inquiry into the reasonableness of the rules, investigate the rules, and make binding reasonable, proper, and just rates and regulations in accordance with the provisions of RCW 79.36.400. [2005 c 155 § 204; 2003 c 334 § 609; 1982 1st ex.s. c 21 § 51. Formerly RCW 79.91.040.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.110.050 Certain state and aquatic lands subject to easements for removal of valuable materials—Penalty for violation of orders. Any person owning or operating any right-of-way or easement subject to the provisions of RCW 79.110.020 through 79.110.040, over and across any state-owned tidelands or shorelands or across any beds of navigable waters, and violating or failing to comply with any rule or order made by the utilities and transportation commission, after inquiry, investigation, and a hearing as provided in RCW 79.110.040, shall be subject to the same penalties provided in RCW 79.36.410. [2005 c 155 § 205; 2003 c 334 § 610; 1982 1st ex.s. c 21 § 52. Formerly RCW 79.91.050.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.110.060 Certain state and aquatic lands subject to easements for removal of valuable materials—Application for right-of-way. Any person engaged in the business of logging or lumbering, quarrying, mining, or removing sand, gravel, or other valuable materials from land, and desirous of obtaining a right-of-way or easement provided for in RCW 79.110.010 through 79.110.030 over and across any state-owned tidelands or shorelands, or beds of navigable waters or any lands sold or leased by the state since June 15, 1911, shall file with the department upon a form to be furnished for that purpose, a written application for the right-of-way in accordance with the provisions of RCW 79.36.350. [2005 c 155 § 206; 2003 c 334 § 611; 1982 1st ex.s. c 21 § 53. Formerly RCW 79.91.060.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.110.070 Certain state and aquatic lands subject to easements for removal of valuable materials—Forfeiture for nonuser. Any right-of-way or easement granted under the provisions of RCW 79.110.010 through 79.110.030 which has never been used, or for a period of two years has ceased to be used for the purpose for which it was granted, shall be deemed forfeited. The forfeiture of any such right-of-way previously granted or granted under the provisions of RCW 79.110.010 through 79.110.030, shall be rendered effective by the mailing of a notice of the forfeiture to the grantee at the grantee's last known post office address and by posting a copy of the certificate, or other record of the grant, in the department's Olympia office with the word "canceled" and the date of the cancellation. [2005 c 155 § 207; 1982 1st ex.s. c 21 § 54. Formerly RCW 79.91.070.]

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RIGHTS-OF-WAY FOR ROADS, BRIDGES, AND TRESTLES

79.110.100 United States of America, state agency, county, or city right-of-way for roads and streets over, and wharves over and upon aquatic lands. Any county or city or the United States of America or any state agency desiring to locate, establish, and construct a road or street over and across any aquatic lands, or wharf over any state-owned tidelands or shorelands, shall by resolution of the legislative body of the county, or city council or other governing body of the city, or proper agency of the United States of America or state agency, file a petition with the department for a right-of-way for the road or street or wharf in accordance with the provisions of RCW 79.36.440.

The department may grant the petition if it deems it in the best interest of the state and upon payment for the right-of-way and any damages to the affected aquatic lands. [2005 c 155 § 208; 2003 c 334 § 612; 1982 1st ex.s. c 21 § 55. Formerly RCW 79.91.080.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.110.110 Railroad bridge rights-of-way across navigable streams. Any railroad company organized under the laws of the territory or state of Washington, or under any other state or territory of the United States, or under any act of the congress of the United States, and authorized to do business in the state and to construct and operate railroads, shall have the right to construct bridges across the navigable streams within this state over which the line or lines of its railway shall run for the purpose of being made a part of the railway line, or for the more convenient use thereof, if the bridges are constructed so as not to interfere with, impede, or obstruct navigation on the streams. However, payment for any right-of-way and any damages to those aquatic lands affected must be paid first. [2005 c 155 § 209; 1982 1st ex.s. c 21 § 56. Formerly RCW 79.91.090.]

79.110.120 Public bridges or trestles across waterways and aquatic lands—Recovery of reasonable direct administrative costs—Report to the legislature. (1) Counties, cities, towns, and other municipalities shall have the right to construct bridges and trestles across waterways heretofore or hereafter laid out under the authority of the state of Washington, and over and across any tidelands, shorelands, bedlands, or harbor areas owned and managed by the state adjacent thereto over which the projected line or lines of highway will run, if such bridges or trestles are constructed in good faith for the purpose of being made a part of the constructed line of such a highway, upon payment for any natural resource damages to those aquatic lands affected not already covered by an approved state or federal regulatory mitigation plan. Such a right shall be granted by easement and no charge may be made to the county, city, town, or other municipality, for such an easement. The department may recover only its reasonable direct administrative costs incurred in processing and approving the request or application, and reviewing plans for construction of the bridge or trestle.

(2) For purposes of this section, "direct administrative costs" means the cost of hours worked directly on an application or request, based on salaries and benefits, plus travel

reimbursement and other actual out-of-pocket costs. Direct administrative costs recovered by the department must be deposited into the resource management cost account.

(3) By December 1, 2008, the department must deliver a report to the legislature regarding the collection of administrative fees as described in this section. [2005 c 58 § 1; 1982 1st ex.s. c 21 § 57. Formerly RCW 79.91.100.]

79.110.130 Common carriers may bridge or trestle state waterways. Any person authorized by any state or municipal law or ordinance to construct and operate railroads, interurban railroads, or street railroads as common carriers within this state, shall have the right to construct bridges or trestles across waterways laid out under the authority of the state of Washington, over which the projected line or lines of railroad will run. The bridges or trestles shall be constructed in good faith for the purpose of being made a part of the constructed line of the railroad, and may also include a roadway for the accommodation of vehicles and foot passengers. Full payment for any right-of-way and any damages to those aquatic lands affected by the right-of-way shall first be made. [2005 c 155 § 211; 1982 1st ex.s. c 21 § 58. Formerly RCW 79.91.110.]

79.110.140 Location and plans of bridge or trestle to be approved—Future alterations. The location and plans of any bridge, draw bridge, or trestle proposed to be constructed under RCW 79.110.110 through 79.110.130 shall be submitted to and approved by the department before construction is commenced. However, in case the portion of the waterway, river, stream, or watercourse, at the place to be crossed is navigable water of the United States, or otherwise within the jurisdiction of the United States, the location and plans shall also be submitted to and approved by the United States army corps of engineers before construction is commenced. When plans for any bridge or trestle have been approved by the department and the United States army corps of engineers, it is unlawful to deviate from the plans either before or after the completion of the structure, unless the modification of the plans has previously been submitted to, and received the approval of the department and the United States army corps of engineers, as the case may be. Any structure authorized and approved as indicated in this section shall remain within the jurisdiction of the respective officer or officers approving the structure, and shall be altered or changed from time to time at the expense of the municipality owning the highway, or at the expense of the common carriers, at the time owning the railway or road using the structure, to meet the necessities of navigation and commerce in such a manner as may be from time to time ordered by the respective officer or officers at the time having jurisdiction of the structure, and the orders may be enforced by appropriate action at law or in equity at the suit of the state. [2005 c 155 § 212; 1982 1st ex.s. c 21 § 59. Formerly RCW 79.91.120.]

RIGHTS-OF-WAY FOR UTILITY LINES

79.110.200 Right-of-way for utility pipelines, transmission lines, etc. A right-of-way through, over, and across any tidelands, shorelands, beds of navigable waters, oyster reserves belonging to the state, or the reversionary interest of

the state in oyster lands may be granted to any person or the United States of America, constructing or proposing to construct, or which has constructed, any telephone line, ditch, flume, or pipeline for the domestic water supply of any municipal corporation or transmission line for the purpose of generating or transmitting electricity for light, heat, or power. [2005 c 155 § 213; 1982 1st ex.s. c 21 § 60. Formerly RCW 79.91.130.]

79.110.210 Right-of-way for utility pipelines, transmission lines, etc.—Procedure to acquire. In order to obtain the benefits of the grant made in RCW 79.110.200, the person or the United States of America constructing or proposing to construct, or which has constructed, a telephone line, ditch, flume, pipeline, or transmission line, shall file, with the department, a map accompanied by the field notes of the survey and location of the telephone line, ditch, flume, pipeline, or transmission line, and shall make payment as provided in RCW 79.110.220. The land within the right-of-way shall be limited to an amount necessary for the construction of the telephone line, ditch, flume, pipeline, or transmission line sufficient for the purposes required, together with sufficient land on either side thereof for ingress and egress to maintain and repair the telephone line, ditch, flume, pipeline, or transmission line. The grant shall also include the right to cut all standing timber outside the right-of-way marked as danger trees located on public lands upon full payment of the appraised value. [2005 c 155 § 214; 1982 1st ex.s. c 21 § 61. Formerly RCW 79.91.140.]

79.110.220 Right-of-way for utility pipelines, transmission lines, etc.—Appraisal—Certificate—Reversion for nonuser. On the filing of the plat and field notes, as provided in RCW 79.110.210, the land applied for and any improvements included in the right-of-way applied for, if any, shall be appraised as in the case of an application to purchase state lands. Upon full payment of the appraised value of the state-owned aquatic land applied for, or upon payment of an annual rental when the department deems a rental to be in the best interests of the state, and upon full payment of the appraised value of any danger trees and improvements, if any, the department shall issue to the applicant a certificate of the grant of right-of-way stating the terms and conditions and shall enter the certificate in the abstracts and records in the department's Olympia office, and thereafter any sale or lease of the lands affected by the right-of-way shall be subject to the easement of the right-of-way. However, should the person or the United States of America securing the right-of-way ever abandon the use of the right-of-way for the purposes for which it was granted, the right-of-way shall revert to the state, or the state's grantee. [2005 c 155 § 215; 1982 1st ex.s. c 21 § 62. Formerly RCW 79.91.150.]

79.110.230 Use of state-owned aquatic lands for public utility lines. (1) The use of state-owned aquatic lands for public utility lines owned by a governmental entity shall be granted by an agreement, permit, or other instrument if the use is consistent with the purposes of RCW 79.105.010, 79.105.030, 79.105.050, 79.105.210, 79.105.400, and 79.130.070 and does not obstruct navigation or other public uses. The department may recover only its administrative

costs incurred in processing and approving the request or application, and reviewing plans for construction of public utility lines as determined under RCW 79.110.240. Administrative costs recovered by the department must be deposited into the resource management cost account.

(2) The use of state-owned aquatic lands for local public utility lines owned by a nongovernmental entity will be granted by easement if the use is consistent with the purpose of RCW 79.105.010, 79.105.030, 79.105.050, 79.105.210, 79.105.400, and 79.130.070 and does not obstruct navigation or other public uses. The total charge for the easement will be determined under RCW 79.110.240.

(3) Nothing in this section limits the ability of the department to obtain payment for commodity costs, such as lost revenue from renewable resources, resulting from the granted use of state-owned aquatic lands for public utility lines. [2008 c 55 § 1; 2005 c 155 § 216. FORMERLY PART OF RCW 79.90.470.]

79.110.240 Charge for term of easement—Recovery of costs. (1) Until July 1, 2017, the charge for the term of an easement granted under RCW 79.110.230(2) will be determined as follows and will be paid in advance upon grant of the easement:

(a) Five thousand dollars for individual easement crossings that are no longer than one mile in length;

(b) Twelve thousand five hundred dollars for individual easement crossings that are more than one mile but less than five miles in length; or

(c) Twenty thousand dollars for individual easement crossings that are five miles or more in length.

(2) The charge for easements under subsection (1) of this section must be adjusted annually by the rate of yearly increase in the most recently published consumer price index, all urban consumers, for the Seattle-Everett SMSA, over the consumer price index for the preceding year, as compiled by the bureau of labor statistics, United States department of labor for the state of Washington rounded up to the nearest fifty dollars.

(3) The term of the easement is thirty years or a period of less than thirty years if requested by the person or entity seeking the easement.

(4) In addition to the charge for the easement under subsection (1) of this section, the department may recover its administrative costs incurred in receiving an application for the easement, approving the easement, and reviewing plans for and construction of the public utility lines. For the purposes of this subsection, "administrative costs" is equivalent to twenty percent of the fee for the easement as determined under subsection (1) of this section and adjusted under subsection (2) of this section. For public utility lines owned by a governmental entity, the administrative costs will be calculated based on the length of the easement and the fee that it would be charged if it were subject to the easement charges in this section. When multiple public utility lines are owned by the same entity and are authorized under the same easement, the administrative fee for the easement shall be equal to twenty percent of the easement fee for the single longest public utility line. Administrative costs recovered by the department must be deposited into the resource management cost account.

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(5) Applicants under RCW 79.110.230(2) providing a residence with an individual service connection for electrical, natural gas, cable television, or telecommunications service are not required to pay the charge for the easement under subsection (1) of this section but shall pay administrative costs under subsection (4) of this section.

(6) A final decision on applications for an easement must be made within one hundred twenty days after the department receives the completed application and after all applicable regulatory permits for the aquatic easement have been acquired. This subsection applies to applications submitted before June 13, 2002, as well as to applications submitted on or after June 13, 2002. Upon request of the applicant, the department may reach a decision on an application within sixty days and charge an additional fee for an expedited processing. The fee for an expedited processing is ten percent of the combined total of the easement charge and administrative costs.

(7) By December 31, 2016, the legislature shall review the granting of easements on state-owned aquatic lands under this chapter and determine whether all applications for easements are processed within one hundred twenty days for normal processing of applications and sixty days for expedited processing of applications, and whether the granting of easements on state-owned aquatic lands generates reasonable income for the aquatic lands enhancement account. [2008 c 55 § 2; 2005 c 155 § 162; 2002 c 152 § 3. Formerly RCW 79.90.575.]

Findings—2002 c 152: "The legislature finds that local public utilities provide essential services to all of the residents of the state and that the construction and improvement of local utility infrastructure is critical to the public health, safety, and welfare, community and economic development, and installation of modern and reliable communication and energy technology. The legislature further finds that local utility lines must cross state-owned aquatic lands in order to reach all state residents and that, for the benefit of such residents, the state should permit the crossings, consistent with all applicable state environmental laws, in a nondiscriminatory, economic, and timely manner. The legislature further finds that this act and the valuation methodology in section 3 of this act applies only to the uses listed in section 2 of this act, and does not establish a precedent for valuation for any other uses on state-owned aquatic lands." [2002 c 152 § 1.]

Additional notes found at www.leg.wa.gov

RIGHTS-OF-WAY FOR IRRIGATION, DIKING, AND DRAINAGE/OVERFLOW RIGHTS

79.110.300 Right-of-way for irrigation, diking, and drainage purposes. A right-of-way through, over, and across any state-owned tidelands or shorelands is granted to any irrigation district, or irrigation company duly organized under the laws of this state, and to any person, or the United States of America, constructing or proposing to construct an irrigation ditch or pipeline for irrigation, or to any diking and drainage district or any diking and drainage improvement district proposing to construct a dike or drainage ditch. [2005 c 155 § 217; 1982 1st ex.s. c 21 § 63. Formerly RCW 79.91.160.]

79.110.310 Right-of-way for irrigation, diking, and drainage purposes—Procedure to acquire. In order to obtain the benefits of the grant provided for in RCW 79.110.300, the irrigation district, irrigation company, person, or the United States of America, constructing or propos-

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ing to construct an irrigation ditch or pipeline for irrigation, or the diking and drainage district or diking and drainage improvement district constructing or proposing to construct any dike or drainage ditch, shall file with the department a map accompanied by the field notes of the survey and location of the proposed irrigation ditch, pipeline, dike, or drainage ditch, and shall pay to the state as provided in RCW 79.110.320, the amount of the appraised value of the lands used for or included within the right-of-way. The land within the right-of-way shall be limited to an amount necessary for the construction of the irrigation ditch, pipeline, dike, or drainage ditch for the purposes required, together with sufficient land on either side for ingress and egress to maintain and repair the irrigation ditch, pipeline, dike, or drainage ditch. [2005 c 155 § 218; 1982 1st ex.s. c 21 § 64. Formerly RCW 79.91.170.]

79.110.320 Right-of-way for irrigation, diking, and drainage purposes—Appraisal—Certificate. Upon the filing of the plat and field notes as in RCW 79.110.310, the lands included within the right-of-way applied for shall be appraised as in the case of an application to purchase the lands, at full market value. Upon full payment of the appraised value of the lands the department shall issue to the applicant a certificate of right-of-way, and enter the certificate in the department records. Any subsequent sale or lease by the state of the lands affected by the right-of-way shall be subject to the certificate of right-of-way. [2005 c 155 § 219; 1982 1st ex.s. c 21 § 65. Formerly RCW 79.91.180.]

79.110.330 Grant of overflow rights. The department has the power and authority to grant to any person, the right, privilege, and authority to perpetually back and hold water upon or over any state-owned tidelands or shorelands, and to overflow and inundate the lands, whenever the department deems it necessary for the purpose of erecting, constructing, maintaining, or operating any water power plant, reservoir, or works for impounding water for power purposes, irrigation, mining, or other public use in accordance with the provisions of RCW 79.36.570. [2005 c 155 § 220; 2003 c 334 § 613; 1982 1st ex.s. c 21 § 66. Formerly RCW 79.91.190.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.110.340 Construction of RCW 79.110.010 through 79.110.220 and 79.110.240 through 79.110.330 relating to rights-of-way and overflow rights. RCW 79.110.010 through 79.110.220 and 79.110.240 through 79.110.330, relating to the acquiring of rights-of-way and overflow rights through, over, and across state-owned aquatic lands, shall not be construed as exclusive or as affecting the right of municipal and public service corporations to acquire lands belonging to or under the control of the state, or rights-of-way or other rights, by condemnation proceedings. [2005 c 155 § 221; 1982 1st ex.s. c 21 § 67. Formerly RCW 79.91.200.]

79.110.350 Grant of such easements and rights-of-way as applicant may acquire in private lands by eminent domain. The department may grant to any person easements and rights in tidelands and shorelands and oyster reserves owned by the state as the applicant may acquire in privately or publicly owned lands through proceedings in eminent

domain in accordance with the provisions of RCW 79.36.355. [2005 c 155 § 222; 2003 c 334 § 614; 1982 1st ex.s. c 21 § 68. Formerly RCW 79.91.210.]

Intent—2003 c 334: See note following RCW 79.02.010.

Chapter 79.115 RCW AQUATIC LANDS—HARBOR AREAS

Sections

79.115.001 Intent—2005 c 155.

HARBOR LINE ESTABLISHMENT AND RELOCATION

79.115.010 Harbor lines and areas to be established.
79.115.020 Relocation of harbor lines by the harbor line commission.
79.115.030 Commission on harbor lines may change, relocate, or reestablish harbor lines.
79.115.040 Modification of harbor lines in Port Gardner Bay.
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HARBOR AREA LEASES

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79.115.110 Construction or extension of docks, wharves, etc., in harbor areas—New lease.
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79.115.130 Procedure to re-lease harbor areas.
79.115.140 Regulation of wharfage, dockage, and other tolls.
79.115.150 Harbor areas and tidelands within towns—Distribution of rents to municipal authorities.

79.115.001 Intent—2005 c 155. See RCW 79.105.001.

HARBOR LINE ESTABLISHMENT AND RELOCATION

79.115.010 Harbor lines and areas to be established.

(1) It is the duty of the board acting as the harbor line commission to locate and establish harbor lines and determine harbor areas, as required by Article XV, section 1 of the state Constitution, where harbor lines and harbor areas have not previously been located and established.

(2) The board shall locate and establish outer harbor lines beyond which the state shall never sell or lease any rights whatever to private persons, and to locate and establish the inner harbor line, thereby defining the width of the harbor area between such harbor lines. The harbor area shall be forever reserved for landings, wharves, streets, and other conveniences of navigation and commerce. [2005 c 155 § 301; 1982 1st ex.s. c 21 § 69. Formerly RCW 79.92.010.]

79.115.020 Relocation of harbor lines by the harbor line commission. Whenever it appears that the inner harbor line of any harbor area has been so established as to overlap or fall inside the government meander line, or for any other good cause, the board acting as the harbor line commission is empowered to relocate and reestablish said inner harbor line so erroneously established, outside of the meander line. All tidelands or shorelands within the inner harbor line so reestablished and relocated, shall belong to the state and may be sold or leased as other first-class tidelands or shorelands in accordance with the provisions of RCW 79.125.200. However, in all other cases, authority to relocate the inner harbor line or outer harbor line, or both, shall first be obtained from the legislature. [2005 c 155 § 302; 1982 1st ex.s. c 21 § 70. Formerly RCW 79.92.020.]

79.115.030 Commission on harbor lines may change, relocate, or reestablish harbor lines. The commission on harbor lines is authorized to change, relocate, or reestablish harbor lines. [2010 c 45 § 1; 2005 c 155 § 303; 2004 c 219 § 1; 1989 c 79 § 1; 1982 1st ex.s. c 21 § 71. Formerly RCW 79.92.030.]

79.115.040 Modification of harbor lines in Port Gardner Bay. The harbor line commission shall modify harbor lines in Port Gardner Bay as necessary to facilitate the conveyance through exchange authorized in RCW 79.125.800. [2005 c 155 § 304; 1987 c 271 § 5. Formerly RCW 79.92.035.]

Additional notes found at www.leg.wa.gov

79.115.050 Seizure or sale of improvements for taxes. Whenever improvements have been made on state-owned tidelands, shorelands, or beds of navigable waters, in front of cities or towns, prior to the location of harbor lines in front of the cities or towns, and the reserved harbor area as located include the improvements, no seizure or sale of the improvements for taxes shall be had until six months after the lands have been leased or offered for lease. However, this section shall not affect or impair the lien for taxes on the improvements. [2005 c 155 § 136; 1982 1st ex.s. c 21 § 45. Formerly RCW 79.90.390.]

HARBOR AREA LEASES

79.115.100 Terms of harbor area leases. Applications, leases, and bonds of lessees shall be in such a form as the department shall prescribe. Every lease shall provide that the rental shall be payable to the department, and for cancellation by the department upon sixty days' written notice for any breach of the conditions. Every lessee shall furnish a bond, with surety satisfactory to the department, with such penalty as the department may prescribe, but not less than five hundred dollars, conditioned upon the faithful performance of the terms of the lease and the payment of the rent when due. If the department at any time deems any bond insufficient, it may require the lessee to file a new and sufficient bond within thirty days after receiving notice to do so.

Applications for leases of harbor areas upon tidal waters shall be accompanied by plans and drawings and other data concerning the proposed wharves, docks, or other structures or improvements as the department shall require. Every lease of harbor areas shall provide that, wharves, docks, or other conveniences of navigation and commerce adequate for the public needs, to be specified in the lease, shall be constructed within the time as may be fixed in each case by the department. In no case shall the construction be commenced more than two years from the date of the lease and shall be completed within such reasonable time as the department shall fix, any of which times may be extended by the department either before or after their expiration, and the character of the improvements may be changed either before or after completion with the approval of the department. However, if in its opinion improvements existing upon such harbor area or the tidelands adjacent thereto are adequate for public needs of commerce and navigation, the department shall require the maintenance of existing improvements and need not require

further improvements. [2005 c 155 § 305; 1982 1st ex.s. c 21 § 74. Formerly RCW 79.92.060.]

79.115.110 Construction or extension of docks, wharves, etc., in harbor areas—New lease. If the owner of any harbor area lease upon tidal waters desires to construct any wharf, dock, or other convenience of navigation or commerce, or to extend, enlarge, or substantially improve any existing structure used in connection with the harbor area, and deems the required expenditure not warranted by the lessee's right to occupy the harbor area during the remainder of the term of their lease, the lease owner may make application to the department for a new lease of the harbor area for a period not exceeding thirty years. Upon the filing of an application accompanied by proper plans, drawings, or other data, the department shall investigate the application and if the department determines that the proposed work or improvement is in the public interest and reasonably adequate for the public needs, it shall by order fix the terms and conditions and the rate of rental for a new lease, the rate of rental shall be a fixed percentage, during the term of the lease, on the true and fair value in money of the harbor area determined by the department. The department may propose modifications of the proposed wharf, dock, or other convenience or extensions, enlargements, or improvements. The department shall, within ninety days from the filing of an application notify the applicant in writing of the terms and conditions upon which a new lease will be granted, and of the rental to be paid, and if the applicant shall within ninety days elect to accept a new lease of the harbor area upon the terms and conditions, and at the rental prescribed by the department, the department shall make a new lease for the harbor area for the term applied for and the existing lease shall be surrendered and canceled. [2005 c 155 § 306; 2000 c 11 § 27; 1982 1st ex.s. c 21 § 75. Formerly RCW 79.92.070.]

79.115.120 Re-leases of harbor areas. Upon the expiration of any harbor area lease upon tidal waters, the lessee may apply for a re-lease of the harbor area for a period not exceeding thirty years. The application shall be accompanied with maps showing the existing improvements upon the harbor area and the adjacent tidelands and with proper plans, drawings, and other data showing any proposed extensions or improvements of existing structures. Upon the filing of an application the department shall investigate the application and if it determines that the character of the wharves, docks, or other conveniences of commerce and navigation are reasonably adequate for the public needs and in the public interest, it shall by order fix and determine the terms and conditions upon which the re-lease shall be granted and the rate of rental to be paid, which rate shall be a fixed percentage during the term of the lease on the true and fair value in money of the harbor area as determined by the department. [2005 c 155 § 307; 2000 c 11 § 28; 1982 1st ex.s. c 21 § 76. Formerly RCW 79.92.080.]

79.115.130 Procedure to re-lease harbor areas. Upon completion of the valuation of any tract of harbor area applied for under RCW 79.115.120, the department shall notify the applicant of the terms and conditions upon which the re-lease will be granted and of the rental fixed. The appli-

cant or the applicant's successor in interest shall have the option for the period of sixty days from the date of the service of notice in which to accept a lease on the terms and conditions and at the rental so fixed and determined by the department. If the terms and conditions and rental are accepted a new lease shall be granted for the term applied for. If the terms and conditions are not accepted by the applicant within the period of time, or within such further time, not exceeding three months, as the department shall grant, the lease shall be deemed rejected by the applicant, and the department shall give eight weeks' notice by publication once a week in one or more newspapers of general circulation in the county in which the harbor area is located, that a lease of the harbor area will be sold on the terms and conditions and at the rental, at a time and place specified in the notice (which shall not be more than three months from the date of the first publication of the notice) to the person offering at the public sale to pay the highest sum as a cash bonus at the time of sale of the lease. Notice of the sale shall be served upon the applicant at least six weeks prior to the date of sale. The person paying the highest sum as a cash bonus shall be entitled to lease the harbor area. However, if the lease is not sold at the public sale the department may at any time or times again fix the terms, conditions, and rental, and again advertise the lease for sale as provided in this section and upon similar notice. Further, upon failure to secure any sale of the lease as prescribed in this section, the department may issue revocable leases without requirement of improvements for one year periods at a minimum rate of two percent. [2005 c 155 § 308; 1985 c 469 § 61; 1982 1st ex.s. c 21 § 77. Formerly RCW 79.92.090.]

79.115.140 Regulation of wharfage, dockage, and other tolls. The state of Washington retains and reserves the right to regulate the rates of wharfage, dockage, and other tolls to be imposed by the lessee or the lessee's assigns upon commerce for any of the purposes for which the leased area may be used and the right to prevent extortion and discrimination in such use. [2005 c 155 § 309; 1982 1st ex.s. c 21 § 78. Formerly RCW 79.92.100.]

79.115.150 Harbor areas and tidelands within towns—Distribution of rents to municipal authorities. (1) Where any leased harbor area or tideland is situated within the limits of a town, whether or not the harbor area or tideland lies within a port district, the rents from the leases shall be paid by the state treasurer to the municipal authorities of the town to be expended for water-related improvements.

(2) The state treasurer is authorized and directed to make payments to the respective towns on the first days of July and January of each year, of all moneys payable under the terms of this section. [2005 c 155 § 310; 1984 c 221 § 25; 1983 c 153 § 1; 1982 2nd ex.s. c 8 § 2; 1982 1st ex.s. c 21 § 79. Formerly RCW 79.92.110.]

Additional notes found at www.leg.wa.gov

Chapter 79.120 RCW

AQUATIC LANDS—WATERWAYS AND STREETS

Sections

79.120.001 Intent—2005 c 155.

[Title 79 RCW—page 104]

- 79.120.010 First-class tidelands and shorelands to be platted—Public waterways and streets.
- 79.120.020 Streets, waterways, etc., validated.
- 79.120.030 Approval of plans/authorize construction on state-owned aquatic lands.
- 79.120.040 Permits to use waterways.
- 79.120.050 Excavation of waterways—Waterways open to public—Tide gates or locks.
- 79.120.060 Vacation of waterways—Extension of streets.

79.120.001 Intent—2005 c 155. See RCW 79.105.001.

79.120.010 First-class tidelands and shorelands to be platted—Public waterways and streets. It is the duty of the department simultaneously with the establishment of harbor lines and the determination of harbor areas in front of any city or town, or as soon as practicable, to survey and plat all first-class tidelands and shorelands not previously platted, and in plating the tidelands and shorelands to lay out streets which shall be dedicated to public use, subject to the control of the cities or towns in which they are situated.

The department shall also establish one or more public waterways not less than fifty nor more than one thousand feet wide, beginning at the outer harbor line and extending inland across the tidelands belonging to the state. These waterways shall include within their boundaries, as nearly as practicable, all navigable streams running through the tidelands, and shall be located at other places as in the judgment of the department may be necessary for the present and future convenience of commerce and navigation. All waterways shall be reserved from sale or lease and remain as public highways for watercraft until vacated as provided for in this chapter.

The department shall appraise the value of platted tidelands and shorelands and enter the appraisals in its records. [2005 c 155 § 401; 1982 1st ex.s. c 21 § 80. Formerly RCW 79.93.010.]

79.120.020 Streets, waterways, etc., validated. All alleys, streets, avenues, boulevards, waterways, and other public places and highways located and platted on the first-class tidelands and shorelands, or harbor areas, as provided by law, and not vacated as provided by law, are validated as public highways and dedicated to the use of the public for the purposes for which they were intended, subject to vacation as provided for in this chapter. [2005 c 155 § 402; 1982 1st ex.s. c 21 § 81. Formerly RCW 79.93.020.]

79.120.030 Approval of plans/authorize construction on state-owned aquatic lands. The department has the power to approve plans for and authorize the construction of slopes, with rock, riprap, or other protection, upon any state-owned aquatic lands incident to the improvement of any abutting or adjacent street or avenue by any city or town in this state. [2005 c 155 § 403; 1982 1st ex.s. c 21 § 82. Formerly RCW 79.93.030.]

79.120.040 Permits to use waterways. If the United States government has established pierhead lines within a waterway created under the laws of this state at any distance from the boundaries established by the state, structures may be constructed in that strip of waterway between the waterway boundary and the nearest pierhead line only with the

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consent of the department and upon such plans, terms, and conditions and for such term as determined by the department. However, no permit shall extend for a period longer than thirty years.

The department may cancel any permit upon sixty days' notice for a substantial breach by the permittee of any of the permit conditions.

If a waterway is within the territorial limits of a port district, the duties assigned by this section to the department may be exercised by the port commission of the port district as provided in RCW 79.105.420.

Nothing in this section shall confer upon, create, or recognize in any abutting owner any right or privilege in or to any strip of waterway abutting any street and between prolongations of the lines of the street, but the control of and the right to use the strip is reserved to the state of Washington, except as authorized by RCW 79.105.420. [2005 c 155 § 404; 1984 c 221 § 21; 1982 1st ex.s. c 21 § 83. Formerly RCW 79.93.040.]

Application to existing property rights: RCW 79.105.040.

Additional notes found at www.leg.wa.gov

79.120.050 Excavation of waterways—Waterways open to public—Tide gates or locks. All waterways excavated through any state-owned tidelands or shorelands by virtue of the provisions of chapter 99, Laws of 1893, so far as they run through the tidelands or shorelands, are declared to be public waterways, free to all citizens upon equal terms, and subject to the jurisdiction of the proper authorities, as otherwise provided by law. However, where tide gates or locks are considered by the contracting parties excavating any waterways to be necessary to the efficiency of the waterway, the department may, in its discretion, authorize tide gates or locks to be constructed and may authorize the parties constructing the waterway to operate them and collect a reasonable toll from vessels passing through the tide gates or locks. Further, the state of Washington or the United States of America can, at any time, appropriate the tide gates or locks upon payment to the parties erecting them of the reasonable value of the tide gates or locks at the date of the appropriation, reasonable value to be ascertained and determined as in other cases of condemnation of private property for public use. [2005 c 155 § 405; 1982 1st ex.s. c 21 § 84. Formerly RCW 79.93.050.]

79.120.060 Vacation of waterways—Extension of streets. If a waterway established under the laws of this state, or any portion of the waterway, has not been excavated, or is not used for navigation, or is not required in the public interest to exist as a waterway, the waterway or a portion of the waterway may be vacated by written order of the commissioner upon request by ordinance or resolution of the city council of the city in which such waterway is located or by resolution of the port commission of the port district in which the waterway is located. If the waterway or a portion of the waterway which is vacated is navigable water of the United States, or otherwise within the jurisdiction of the United States, a copy of the resolution or ordinance, together with a copy of the vacation order of the commissioner shall be submitted to the United States army corps of engineers for their approval, and if they approve, the waterway or a portion of

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the waterway is vacated. However, if a port district owns property abutting the waterway and the provisions of this section are otherwise satisfied, the waterway, or the portion of the waterway that abuts the port district property, shall be vacated.

Upon vacation of a waterway, the commissioner shall notify the city in which the waterway is located, and the city has the right, if otherwise permitted by RCW 79.125.200, to extend across the portions so vacated any existing streets, or to select portions of the waterway as the city may desire for street purposes, in no case to exceed one hundred fifty feet in width for any one street. The selection shall be made within sixty days subsequent to the receipt of notice of the vacation of the portion of the waterway.

If the city fails to make a selection within the time, or selects only a portion of the waterway, the title of the remaining portions of the vacated waterway shall vest in the state, unless the waterway is located within the territorial limits of a port district, in which event, if otherwise permitted by RCW 79.125.200, the title shall vest in the port district. The title is subject to any railroad or street railway crossings existing at the time of the vacation. [2005 c 155 § 406; 1984 c 221 § 22; 1982 1st ex.s. c 21 § 85. Formerly RCW 79.93.060.]

Application to existing property rights: RCW 79.105.040.

Additional notes found at www.leg.wa.gov

**Chapter 79.125 RCW
AQUATIC LANDS—TIDELANDS AND
SHORELANDS**

Sections

- 79.125.001 Intent—2005 c 155.
PLAT/APPRaisal/REPLAT
- 79.125.010 Location of line dividing tidelands from shorelands in tidal rivers.
- 79.125.020 First-class tidelands and shorelands to be platted.
- 79.125.030 Second-class tidelands and shorelands may be platted.
- 79.125.040 Tidelands and shorelands—Plats—Record.
- 79.125.050 Date of sale limited by time of appraisal.
- 79.125.060 First or second-class tidelands and shorelands—Appraisal—Record.
- 79.125.070 Tidelands and shorelands—Notice of filing plat and record of appraisal—Appeal.
- 79.125.080 Tidelands and shorelands—Petition for replat—Replating and reappraisal—Vacation by replat.
- 79.125.090 Tidelands and shorelands—Dedication of replat—All interests must join.
- 79.125.100 Tidelands and shorelands—Vacation procedure cumulative.
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EXCHANGE, SALE, LEASE LIMITATIONS/TERMS
- 79.125.200 State-owned tidelands, shorelands, and waterways—Sold only to public entities—Leasing—Limitation.
- 79.125.210 Sale of second-class tidelands.
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- 79.125.230 Second-class tidelands or shorelands separated from uplands by navigable water—Sale.
- 79.125.240 Sale procedure—Terms of payment—Deferred payments, rate of interest.
- 79.125.250 Sale procedure—Certificate to governor of payment in full—Deed.
- 79.125.260 Sale procedure—Reservation in contract.
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- 79.125.280 Subdivision of leases—Fee.
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- 79.125.300 Tidelands or shorelands—Failure to re-lease tidelands or shorelands—Appraisal of improvements.
- 79.125.310 Effect of mistake or fraud.

SALE OR LEASING PREFERENCE

- 79.125.400 First-class tidelands and shorelands—Lease—Preference right of upland owner—How exercised.
- 79.125.410 First-class unplatted tidelands and shorelands—Lease preference right to upland owners—Lease for booming purposes.
- 79.125.420 Tidelands and shorelands—Vacation by replat—Preference right of tideland or shoreland owner.
- 79.125.430 Tidelands or shorelands—Preference rights, time limit on exercise.
- 79.125.440 Tidelands or shorelands—Accretions—Lease.
- 79.125.450 Second-class shorelands on navigable lakes—Sale.
- 79.125.460 Second-class shorelands—Sale or lease when in best public interest—Preference right of upland owner—Procedure upon determining sale or lease not in best public interest or where transfer made for public use—Platting.

SECOND-CLASS SHORELANDS—

SPECIAL PLATTING AND SELECTION PROVISIONS

- 79.125.500 Second-class shorelands—Boundary of shorelands when water lowered—Certain shorelands granted to city of Seattle.
- 79.125.510 Second-class shorelands—Survey/platting—Selection for slips, docks, wharves, etc.—Filing of plat.
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- 79.125.530 Platting of certain shorelands of Lake Washington for use as harbor area—Selection for slips, docks, wharves, etc.—Vesting of title.

SALES OF TIDELANDS AND SHORELANDS

- 79.125.600 Sale procedure—Fixing date, place, and time of sale—Notice—Publication and posting.
- 79.125.610 List of state-owned tidelands and shorelands permitted to be sold.
- 79.125.620 Sale procedure—Additional advertising expense.
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- 79.125.650 Highest responsible bidder—Determination.
- 79.125.660 Sale procedure—Conduct of sales—Deposits—Bid bonds—Memorandum of purchase.
- 79.125.670 Sale procedure—Readvertisement of lands not sold.
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CONVEYANCE TO PUBLIC ENTITIES/PUBLIC USE

- 79.125.700 Sale of state-owned tidelands or shorelands to municipal corporation or state agency—Authority to execute agreements, deeds, etc.
- 79.125.710 Grant of lands for city park or playground purposes.
- 79.125.720 Exchange of lands to secure city parks and playgrounds.
- 79.125.730 Director of ecology to assist city parks.
- 79.125.740 Certain tidelands reserved for recreational use and taking of fish and shellfish.
- 79.125.750 Access to and from tidelands reserved for recreational use and taking of fish and shellfish.
- 79.125.760 Use of certain tidelands, shorelands, and abutting bedlands—Grant to the United States—Purposes—Limitations.
- 79.125.770 Tidelands and shorelands—Use of lands granted to United States—Application—Proof of upland use—Conveyance.
- 79.125.780 Tidelands and shorelands—Use of lands granted to United States—Easements over tidelands or shorelands to United States.
- 79.125.790 Tidelands and shorelands—Use of lands granted to United States—Reversion on cessation of use.
- 79.125.800 United States Navy base—Exchange of property—Procedure.

79.125.001 Intent—2005 c 155. See RCW 79.105.001.

PLAT/APPRaisal/REPLAT

79.125.010 Location of line dividing tidelands from shorelands in tidal rivers. The department is authorized to locate in all navigable rivers in this state which are subject to tidal flow, the line dividing the tidelands in the river from the shorelands in the river, and the classification or the location of the dividing line shall be final and not subject to review,

and the department shall enter the location of the line upon the plat of the tidelands and shorelands affected. [2005 c 155 § 532; 1982 1st ex.s. c 21 § 118. Formerly RCW 79.94.330.]

79.125.020 First-class tidelands and shorelands to be platted. It is the duty of the department simultaneously with the establishment of harbor lines and the determination of harbor areas in front of any city or town or as soon as practicable to survey and plat all first-class tidelands and shorelands not previously platted as provided in RCW 79.120.010. [2005 c 155 § 501; 1982 1st ex.s. c 21 § 87. Formerly RCW 79.94.020.]

79.125.030 Second-class tidelands and shorelands may be platted. The department may survey and plat any second-class tidelands and shorelands not previously platted. [2005 c 155 § 502; 1982 1st ex.s. c 21 § 88. Formerly RCW 79.94.030.]

79.125.040 Tidelands and shorelands—Plats—Record. The department shall prepare plats showing all tidelands and shorelands, surveyed, platted, and appraised by it in the respective counties, on which shall be marked the location of all tidelands and shorelands, with reference to the lines of the United States survey of the abutting upland, and shall prepare a record of its proceedings, including a list of the tidelands and shorelands surveyed, platted, or replatted, and appraised by it and its appraisal of the tidelands and shorelands, which plats and books shall be in triplicate and the department shall file one copy of the plats and records in the department's Olympia office, and file one copy in the office of the county auditor of the county where the lands platted, or replatted, and appraised are situated, and file one copy in the office of the city engineer of the city in which, or within two miles of which, the lands platted, or replatted, are situated. [2005 c 155 § 503; 1982 1st ex.s. c 21 § 89. Formerly RCW 79.94.040.]

79.125.050 Date of sale limited by time of appraisal. In no case shall any state-owned tidelands or shorelands, otherwise permitted under RCW 79.125.200 to be sold, be offered for sale unless the lands have been appraised by the department within ninety days prior to the date fixed for the sale. [2005 c 155 § 107; 1982 1st ex.s. c 21 § 17. Formerly RCW 79.90.110.]

79.125.060 First or second-class tidelands and shorelands—Appraisal—Record. In appraising tidelands or shorelands, the department shall appraise each lot, tract, or piece of land separately, and shall maintain a description of each lot, tract, or piece of first or second-class tidelands or shorelands, its full appraised value, the area and rate per acre at which it was appraised, and if any lot is covered in whole or in part by improvements in actual use for commerce, trade, residence, or business, on or prior to, the date of the plat or replat, the department shall enter the name of the owner, or reputed owner, the nature of the improvements, the area covered by the improvements, the portion of each lot, tract, or piece of land covered, and the appraised value of the land covered, with and exclusive of, the improvements. [2005 c

155 § 504; 1982 1st ex.s. c 21 § 90. Formerly RCW 79.94.050.]

79.125.070 Tidelands and shorelands—Notice of filing plat and record of appraisal—Appeal. (1) The department shall, before filing in the department's Olympia office the plat and record of appraisal of any tidelands or shorelands platted and appraised by it, publish a notice once each week for four consecutive weeks in a newspaper published and of general circulation in the county where the lands covered by the plat and record are situated, stating that the plat and record, describing it, is complete and subject to inspection at the department's Olympia office, and will be filed on a certain day to be named in the notice.

(2) Any person entitled to purchase under RCW 79.125.200 and claiming a preference right of purchase of any of the tidelands or shorelands platted and appraised by the department, and who feels aggrieved at the appraisal fixed by the department upon the lands, or any part thereof, may within sixty days after the filing of the plat and record in the department's Olympia office (which shall be done on the day fixed in the notice), appeal from the appraisal to the superior court of the county in which the tidelands or shorelands are situated, in the manner provided for taking appeals from orders or decisions under RCW 79.105.160.

(3) The prosecuting attorney of any county, or city attorney of any city, in which the aquatic lands are located, shall at the request of the governor, appeal on behalf of the state, or the county, or city, from any appraisal in the manner provided in this section. Notice of the appeal shall be served upon the commissioner, and the department must immediately notify all persons entitled to purchase under RCW 79.125.200 and claiming a preference right to purchase the lands subject to the appraisal.

(4) Any party, other than the state or the county or city appealing, shall execute a bond to the state with sufficient surety, to be approved by the department, in the sum of two hundred dollars conditioned for the payment of costs on appeal.

(5) The superior court to which an appeal is taken shall hear evidence as to the value of the lands appraised and enter an order confirming, or raising, or lowering the appraisal appealed from, and the clerk of the court shall file a certified copy in the department's Olympia office. The appraisal fixed by the court shall be final. [2005 c 155 § 505; 1982 1st ex.s. c 21 § 91. Formerly RCW 79.94.060.]

79.125.080 Tidelands and shorelands—Petition for replat—Replating and reappraisal—Vacation by replat. Whenever all of the owners and other persons having a vested interest in those tidelands or shorelands embraced within any plat of tidelands or shorelands or within any portion of any plat in which there are unsold state-owned tidelands or shorelands, shall file a petition with the department accompanied by proof of service of the petition upon the city council, or other governing body, of the city or town in which the tidelands or shorelands described in the petition are situated, or upon the legislative body of the county in which the tidelands or shorelands outside of any incorporated city or town are situated, asking for a replat of the tidelands or shorelands, the department is authorized and empowered to replat the tide-

lands or shorelands described in the petition, and all unsold tidelands or shorelands situated within the replat shall be reappraised as provided for the original appraisal of tidelands or shorelands. However, any streets or alleys embraced within the plat or portion of plat, vacated by the replat shall vest in the owner or owners of the abutting lands. [2005 c 155 § 509; 1982 1st ex.s. c 21 § 95. Formerly RCW 79.94.100.]

79.125.090 Tidelands and shorelands—Dedication of replat—All interests must join. If in the preparation of a replat provided for in RCW 79.125.080 by the department, it becomes desirable to appropriate any tidelands or shorelands previously sold for use as streets, alleys, waterways, or other public places, all persons interested in the title to the tidelands or shorelands desired for public places shall join in the dedication of the replat before it shall become effective. [2005 c 155 § 510; 1982 1st ex.s. c 21 § 96. Formerly RCW 79.94.110.]

79.125.100 Tidelands and shorelands—Vacation procedure cumulative. RCW 79.125.080, 79.125.090, and 79.125.420 are intended to afford a method of procedure, in addition to other methods provided in this title for the vacation of streets, alleys, waterways, and other public places platted on tidelands or shorelands. [2005 c 155 § 512; 1982 1st ex.s. c 21 § 98. Formerly RCW 79.94.130.]

79.125.110 Tidelands and shorelands—Effect of replat. A replat of tidelands or shorelands platted shall be in full force and effect and shall constitute a vacation of streets, alleys, waterways, and other dedicated public places, when otherwise permitted by RCW 79.125.200, and the dedication of new streets, alleys, waterways, and other public places appearing upon the replat, when the replat is recorded and filed as in the case of original plats. [2005 c 155 § 513; 1982 1st ex.s. c 21 § 99. Formerly RCW 79.94.140.]

EXCHANGE, SALE, LEASE LIMITATIONS/TERMS

79.125.200 State-owned tidelands, shorelands, and waterways—Sold only to public entities—Leasing—Limitation. (1) This section applies to:

- (a) First-class tidelands as defined in RCW 79.105.060;
- (b) Second-class tidelands as defined in RCW 79.105.060;
- (c) First-class shorelands as defined in RCW 79.105.060;
- (d) Second-class shorelands as defined in RCW 79.105.060, except as included within RCW 79.125.450;
- (e) Waterways as described in RCW 79.120.010.

(2) Notwithstanding any other provision of law, from and after August 9, 1971, all state-owned tidelands and shorelands enumerated in subsection (1) of this section shall not be sold except to public entities as may be authorized by law and they shall not be given away.

(3) Tidelands and shorelands enumerated in subsection (1) of this section may be leased for a period not to exceed fifty-five years. However, nothing in this section shall be construed as modifying or canceling any outstanding lease during its present term.

(4) Nothing in this section shall:

(a) Be construed to cancel an existing sale contract;

(b) Prohibit sale or exchange of beds and shorelands where the water course has changed and the area now has the characteristics of uplands;

(c) Prevent exchange involving state-owned tidelands and shorelands;

(d) Be construed to prevent the assertion of public ownership rights in any publicly owned aquatic lands, or the leasing of such aquatic lands when such leasing is not contrary to the statewide public interest. [2005 c 155 § 514. FORMERLY PART OF RCW 79.94.170; 1982 1st ex.s. c 21 § 100. Formerly RCW 79.94.150.]

79.125.210 Sale of second-class tidelands. All second-class tidelands shall be offered for sale, when otherwise permitted under RCW 79.125.200 to be sold, and sold in the same manner as state lands, other than capitol building lands, but for not less than five dollars per lineal chain, measured on the United States meander line bounding the inner shore limit of the tidelands, and shall pay one-tenth of the purchase price on the date of sale. [2005 c 155 § 508; 1982 1st ex.s. c 21 § 94. Formerly RCW 79.94.090.]

79.125.220 Second-class tidelands or shorelands—Lease for booming purposes. (1) The department is authorized to lease any second-class tidelands or shorelands, whether reserved from sale, or from lease for other purposes, by or under authority of law, or not, except any oyster reserve containing oysters in merchantable quantities, to any person, for booming purposes, for any term not exceeding ten years from the date of the lease, for annual rental and upon terms and conditions as the department may fix and determine, and may also provide for forfeiture and termination of any lease at any time for failure to pay the fixed rental or for any violation of the terms or conditions.

(2) The lessee of any lands for booming purposes shall receive, hold, and sort the logs and other timber products of all persons requesting the service and upon the same terms and without discrimination, and may charge and collect tolls for the service not to exceed seventy-five cents per thousand feet scale measure on all logs, spars, or other large timber and reasonable rates on all other timber products, and shall be subject to the same duties and liabilities, so far as the duties and liabilities are applicable, as are imposed upon boom companies organized under the laws of the state. However, failure to use any lands leased under the provisions of this section for booming purposes for a period of one year shall work a forfeiture of the lease, and the lands shall revert to the state without any notice to the lessee upon the entry of a declaration of forfeiture in the records of the department.

(3) At the expiration of any lease issued under the provisions of this section, the lessee shall have the preference right to re-lease the lands covered by the lessee's original lease for a further term, not exceeding ten years, at the rental and upon the terms and conditions as may be prescribed by the department. [2005 c 155 § 528; 1982 1st ex.s. c 21 § 114. Formerly RCW 79.94.290.]

79.125.230 Second-class tidelands or shorelands separated from uplands by navigable water—Sale. Second-class tidelands and shorelands that are separated from the upland by navigable waters shall be sold, when otherwise permitted under RCW 79.125.200 to be sold, but in no case at less than five dollars per acre. An applicant to purchase the tidelands or shorelands shall, at the applicant's own expense, survey and file with the application a plat of the surveys of the land applied for, which survey shall be connected with, and the plat shall show, two or more connections with the United States survey of the uplands, and the applicant shall file the field notes of the survey of the land with the application. The department shall examine and test the plat and field notes of the survey, and if found incorrect or indefinite, it shall cause the survey to be corrected or may reject the survey and cause a new survey to be made. [2005 c 155 § 526; 1982 1st ex.s. c 21 § 112. Formerly RCW 79.94.270.]

79.125.240 Sale procedure—Terms of payment—Deferred payments, rate of interest. All state-owned tidelands and shorelands, otherwise permitted under RCW 79.125.200 to be sold, shall be sold on the following terms: One-tenth to be paid on the date of sale; one-tenth to be paid one year from the date of the issuance of the contract of sale; and one-tenth annually thereafter until the full purchase price has been made; but any purchaser may make full payment at any time. All deferred payments shall draw interest at the rate as may be fixed by rule adopted by the board, and the rate of interest, as so fixed at the date of each sale, shall be stated in all advertising for and notice of the sale and in the contract of sale. The first installment of interest shall become due and payable one year after the date of the contract of sale and all interest shall become due and payable annually on that date, and all remittances for payment of either principal or interest shall be forwarded to the department. [2005 c 155 § 122; 1982 1st ex.s. c 21 § 31. Formerly RCW 79.90.250.]

79.125.250 Sale procedure—Certificate to governor of payment in full—Deed. When the entire purchase price of any state-owned tidelands or shorelands, otherwise permitted under RCW 79.125.200 to be sold, shall have been fully paid, the department shall certify the fact to the governor, and shall cause a deed signed by the governor and attested by the secretary of state, with the seal of the state attached, to be issued to the purchaser and to be recorded in the department, and no fee shall be required for any deed issued by the governor other than the fee provided for in this chapter. [2005 c 155 § 123; 1982 1st ex.s. c 21 § 32. Formerly RCW 79.90.260.]

79.125.260 Sale procedure—Reservation in contract. Each and every contract for the sale of, and each deed to, state-owned tidelands or shorelands, otherwise permitted under RCW 79.125.200 to be sold, shall contain the reservation contained in RCW 79.11.210. [2005 c 155 § 124; 2003 c 334 § 601; 1982 1st ex.s. c 21 § 33. Formerly RCW 79.90.270.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.125.270 Sale procedure—Form of contract—Forfeiture—Extension of time. The purchaser of state-owned tidelands or shorelands, otherwise permitted under RCW 79.125.200 to be sold, except in cases where the full purchase price is paid at the time of the purchase, shall enter into and sign a contract with the state to be signed by the commissioner on behalf of the state, with the seal of the commissioner's office attached, and in a form to be prescribed by the attorney general, and under those terms and conditions provided in RCW 79.11.200. [2005 c 155 § 125; 1982 1st ex.s. c 21 § 34. Formerly RCW 79.90.280.]

79.125.280 Subdivision of leases—Fee. Whenever the holder of any contract to purchase any state-owned tidelands or shorelands, otherwise permitted under RCW 79.125.200 to be sold, or the holder of any lease of any lands, except for mining of valuable minerals, or coal, or extraction of petroleum or gas, shall surrender the contract or lease to the department with the request to have it divided into two or more contracts or leases, the department may divide the contract or lease and issue new contracts or leases. However, no new contract or lease shall issue while there is due and unpaid any rental, taxes, or assessments on the land held under the contract or lease, nor in any case where the department is of the opinion that the state's security would be impaired or endangered by the proposed division. For all new contracts or leases a fee as determined by the board for each new contract or lease issued, shall be paid by the applicant and the fee shall be paid into the state treasury to the resource management cost account in the general fund, pursuant to RCW 79.64.020. [2005 c 155 § 133; 1982 1st ex.s. c 21 § 41. Formerly RCW 79.90.350.]

79.125.290 First-class tidelands and shorelands—Sale of remaining lands. Any first-class tidelands or shorelands remaining unsold, and where there is no pending application for purchase under claim of any preference right, when otherwise permitted under RCW 79.125.200 to be sold, shall be sold on the same terms and in the same manner as provided for the sale of state lands for not less than the appraised value fixed at the time of the application to purchase, and the department whenever it deems it advisable and for the best interest of the state may reappraise the lands in the same manner as provided for the appraisal of state lands. [2005 c 155 § 507; 1982 1st ex.s. c 21 § 93. Formerly RCW 79.94.080.]

79.125.300 Tidelands or shorelands—Failure to re-lease tidelands or shorelands—Appraisal of improvements. (1) In case any lessee of tidelands or shorelands, for any purpose except mining of valuable minerals or coal, or extraction of petroleum or gas, or the lessee's successor in interest, shall after the expiration of any lease, fail to purchase, when otherwise permitted under RCW 79.125.200 to be purchased, or re-lease from the state the tidelands or shorelands formerly covered by the lease, when the lands are offered for sale or re-lease, then and in that event the department shall appraise and determine the value of all improvements existing upon the tidelands or shorelands at the expiration of the lease which are not capable of removal without damage to the land, including the cost of filling and raising the property above high tide, or high water, whether filled or

raised by the lessee or the lessee's successors in interest, or by virtue of any contract made with the state, and also including the then value to the land of all existing local improvements paid for by the lessee or the lessee's successors in interest. In case the lessee or the lessee's successor in interest is dissatisfied with the appraised value of the improvements as determined by the department, the lessee shall have the right of appeal to the superior court of the county where the tidelands or shorelands are situated, within the time and according to the method prescribed in RCW 79.105.160 for taking appeals from decisions of the department.

(2) In case the tidelands or shorelands are leased, or sold, to any person other than such lessee or the lessee's successor in interest, within three years from the expiration of the former lease, the bid of the subsequent lessee or purchaser shall not be accepted until payment is made by the subsequent lessee or purchaser of the appraised value of the improvements as determined by the department, or as may be determined on appeal, to the former lessee or the former lessee's successor in interest.

(3) In case the tidelands or shorelands are not leased, or sold, within three years after the expiration of the former lease, then in that event, the improvements existing on the lands at the time of any subsequent lease, shall belong to the state and be considered a part of the land, and shall be taken into consideration in appraising the value, or rental value, of the land and sold or leased with the land. [2005 c 155 § 531; 1982 1st ex.s. c 21 § 117. Formerly RCW 79.94.320.]

79.125.310 Effect of mistake or fraud. Any sale or lease of state-owned tidelands or shorelands, otherwise permitted under RCW 79.125.200 to be sold, made by mistake, or not in accordance with law, or obtained by fraud or misrepresentation, shall be void, and the contract of purchase or lease, issued shall be of no effect, and the holder of the contract or lease, shall be required to surrender the contract or lease to the department, which, except in the case of fraud on the part of the purchaser, or lessee, shall cause the money paid on account of the surrendered contract or lease to be refunded to the holder, provided the money has not been paid into the state treasury. [2005 c 155 § 134; 1982 1st ex.s. c 21 § 42. Formerly RCW 79.90.360.]

SALE OR LEASING PREFERENCE

79.125.400 First-class tidelands and shorelands—Lease—Preference right of upland owner—How exercised. (1) Upon platting and appraisal of first-class tidelands or shorelands as provided in this chapter, if the department deems it for the best public interest to offer the first-class tidelands or shorelands for lease, the department shall notify the owner of record of uplands fronting upon the tidelands or shorelands to be offered for lease if the upland owner is a resident of the state, or the upland owner is a nonresident of the state, shall mail to the upland owner's last known post office address, as reflected in the county records, a copy of the notice notifying the owner that the state is offering the tidelands or shorelands for lease, giving a description of those lands and the department's appraised fair market value of the tidelands or shorelands for lease, and notifying the owner that the upland owner has a preference right to apply to lease the

tidelands or shorelands at the appraised value for the lease for a period of sixty days from the date of service of mailing of the notice.

(2) If at the expiration of sixty days from the service or mailing of the notice, as provided in subsection (1) of this section, there being no conflicting applications filed, and the owner of the uplands fronting upon the tidelands or shorelands offered for lease, has failed to avail themselves of their preference right to apply to lease or to pay to the department the appraised value for lease of the tidelands or shorelands described in the notice, the tidelands or shorelands may be offered for lease to any person and may be leased in the manner provided for in the case of lease of state lands.

(3) If at the expiration of sixty days two or more claimants asserting a preference right to lease have filed applications to lease any tract, conflicting with each other, the conflict between the claimants shall be equitably resolved by the department as the best interests of the state require in accord with the procedures prescribed by chapter 34.05 RCW. However, any contract purchaser of lands or rights therein, which upland qualifies the owner for a preference right under this section, shall have first priority for the preference right. [2005 c 155 § 506; 2000 c 11 § 29; 1982 1st ex.s. c 21 § 92. Formerly RCW 79.94.070.]

79.125.410 First-class unplatted tidelands and shorelands—Lease preference right to upland owners—Lease for booming purposes. (1) The department is authorized to lease to the abutting upland owner any unplatted first-class tidelands or shorelands.

(2) The department shall, prior to the issuance of any lease under the provisions of this section, fix the annual rental for the tidelands or shorelands and prescribe the terms and conditions of the lease. No lease issued under the provisions of this section shall be for a longer term than ten years, and every lease shall be subject to termination upon ninety days' notice to the lessee in the event that the department shall decide that it is in the best interest of the state that the tidelands or shorelands be surveyed and platted. At the expiration of any lease issued under the provisions of this section, the lessee or the lessee's successors or assigns shall have a preference right to re-lease the lands covered by the original lease or any portion of the lease, if the department deems it to be in the best interests of the state to re-lease the lands, for succeeding periods not exceeding five years each at the rental and upon the terms and conditions as may be prescribed by the department.

(3) In case the abutting uplands are not improved and occupied for residential purposes and the abutting upland owner has not filed an application for the lease of the lands, the department may lease the lands to any person for booming purposes under the terms and conditions of this section. However, failure to use for booming purposes any lands leased under this section for such purposes for a period of one year shall work a forfeiture of the lease and the land shall revert to the state without any notice to the lessee upon the entry of a declaration of forfeiture in the records of the department. [2005 c 155 § 527; 1982 1st ex.s. c 21 § 113. Formerly RCW 79.94.280.]

79.125.420 Tidelands and shorelands—Vacation by replat—Preference right of tideland or shoreland owner. If any platted street, alley, waterway, or other public place is vacated by a replat as provided for in RCW 79.125.080 and 79.125.090, or any new street, alley, waterway, or other public place is so laid out as to leave unsold tidelands or shorelands between a new street, alley, waterway, or other public place, and tidelands or shorelands previously sold, the owner of the adjacent tidelands or shorelands shall have the preference right for sixty days after the final approval of the plat to purchase the unsold tidelands or shorelands so intervening at the appraised value, if otherwise permitted under RCW 79.125.200 to be sold. [2005 c 155 § 511; 1982 1st ex.s. c 21 § 97. Formerly RCW 79.94.120.]

79.125.430 Tidelands or shorelands—Preference rights, time limit on exercise. All preference rights to purchase tidelands or shorelands, when otherwise permitted by RCW 79.125.200 to be purchased, awarded by the department, or by the superior court in case of appeal from the award of the department, shall be exercised by the parties to whom the award is made within thirty days from the date of the service of notice of the award by registered mail, by the payment to the department of the sums required by law to be paid for a contract, or deed, as in the case of the sale of state lands, other than capitol building lands, and upon failure to make the payment the preference rights shall expire. [2005 c 155 § 529; 1982 1st ex.s. c 21 § 115. Formerly RCW 79.94.300.]

79.125.440 Tidelands or shorelands—Accretions—Lease. Any accretions that may be added to any tract or tracts of tidelands or shorelands previously sold, or that may be sold, by the state, shall belong to the state and shall not be sold, or offered for sale, unless otherwise permitted by this chapter to be sold, and unless the accretions are surveyed under the direction of the department. However, the owner of the adjacent tidelands or shorelands shall have the preference right to purchase the lands produced by accretion, when otherwise permitted by RCW 79.125.200 to be sold, for thirty days after the owner of the adjacent tidelands or shorelands shall have been notified by registered mail of the owner's preference right to purchase the accreted lands. [2005 c 155 § 530; 1982 1st ex.s. c 21 § 116. Formerly RCW 79.94.310.]

79.125.450 Second-class shorelands on navigable lakes—Sale. (1) The legislature finds that maintaining public lands in public ownership is often in the public interest. However, when second-class shorelands on navigable lakes have minimal public value, the sale of those shorelands to the abutting upland owner may not be contrary to the public interest. However, the purpose of this section is to remove the prohibition contained in RCW 79.125.200 regarding the sale of second-class shorelands to abutting owners, whose uplands front on the shorelands. Nothing contained in this section shall be construed to otherwise affect the rights of interested parties relating to public or private ownership of shorelands within the state.

(2) Notwithstanding the provisions of RCW 79.125.200, the department may sell second-class shorelands on navigable lakes to abutting owners whose uplands front upon the

shorelands in cases where the board has determined that these sales would not be contrary to the public interest. These shorelands shall be sold at fair market value, but not less than five percent of the fair market value of the abutting upland, less improvements, to a maximum distance of one hundred and fifty feet landward from the line of ordinary high water.

(3) Review of the decision of the department regarding the sale price established for a shoreland to be sold pursuant to this section may be obtained by the upland owner by filing a petition with the board of tax appeals created in accordance with chapter 82.03 RCW within thirty days after the mailing of notification by the department to the owner regarding the price. The board of tax appeals shall review the cases in an adjudicative proceeding as described in chapter 34.05 RCW, the administrative procedure act, and the board's review shall be de novo. Decisions of the board of tax appeals regarding fair market values determined pursuant to this section shall be final unless appealed to the superior court pursuant to RCW 34.05.510 through 34.05.598. [2005 c 155 § 520. Prior: 1989 c 378 § 3; 1989 c 175 § 171; 1982 1st ex.s. c 21 § 106. Formerly RCW 79.94.210.]

Additional notes found at www.leg.wa.gov

79.125.460 Second-class shorelands—Sale or lease when in best public interest—Preference right of upland owner—Procedure upon determining sale or lease not in best public interest or where transfer made for public use—Platting. (1) If application is made to purchase or lease any second-class shorelands and the department deems it for the best public interest to offer second-class shorelands for sale or lease, the department shall cause a notice to be served upon the abutting upland owner if the owner is a resident of the state, or if the upland owner is a nonresident of the state, shall mail to the owner's last known post office address, as reflected in the county records a copy of a notice notifying the owner that the state is offering the shorelands for sale or lease, giving a description of the department's appraised fair market value of the shorelands for sale or lease, and notifying the upland owner that he or she has a preference right to purchase, if the purchase is otherwise permitted under RCW 79.125.200, or lease the shorelands at the appraised value for a period of thirty days from the date of the service or mailing of the notice. If at the expiration of the thirty days from the service or mailing of the notice, as provided in this section, the abutting upland owner has failed to exercise the preference right to purchase, as otherwise permitted under RCW 79.125.200, or lease, or to pay to the department the appraised value for sale or lease of the shorelands described in the notice, then in that event, except as otherwise provided in this section, the shorelands may be offered for sale, when otherwise permitted under RCW 79.125.200, or offered for lease, and sold or leased in the manner provided for the sale or lease of state lands, as otherwise permitted under this chapter.

(2) The department shall authorize the sale or lease, whether to abutting upland owners or others, only if the sale or lease would be in the best public interest and is otherwise permitted under RCW 79.125.200. It is the intent of the legislature that whenever it is in the best public interest, the second-class shorelands managed by the department shall not be

sold but shall be maintained in public ownership for the use and benefit of the people of the state.

(3) In all cases where application is made for the lease of any second-class shorelands adjacent to upland, under the provisions of this section, the shorelands shall be leased per lineal chain frontage.

(4) If, following an application by the abutting upland owner to either purchase as otherwise permitted under RCW 79.125.200 or to obtain an exclusive lease at appraised full market value or rental, the department deems that the sale or lease is not in the best public interest, or if property rights in state-owned second-class shorelands are at any time withdrawn, sold, or assigned in any manner authorized by law to a public agency for a use by the general public, the department shall within one hundred and eighty days from receipt of the application to purchase or lease, or on reaching a decision to withdraw, sell, or assign such shorelands to a public agency, and: (a) Make a formal finding that the body of water adjacent to the shorelands is navigable; (b) find that the state or the public has an overriding interest inconsistent with a sale or exclusive lease to a private person, and specifically identify the interest and the factor or factors amounting to the inconsistency; and (c) provide for the review of the decision in accordance with the procedures prescribed by chapter 34.05 RCW.

(5) Notwithstanding subsections (1) through (4) of this section, the department may cause any of the shorelands to be platted as is provided for the platting of first-class shorelands, and when so platted the lands shall be sold, when otherwise permitted under RCW 79.125.200 to be sold, or leased in the manner provided for the sale or lease of first-class shorelands. [2005 c 155 § 525; 1982 1st ex.s. c 21 § 111. Formerly RCW 79.94.260.]

SECOND-CLASS SHORELANDS— SPECIAL PLATTING AND SELECTION PROVISIONS

79.125.500 Second-class shorelands—Boundary of shorelands when water lowered—Certain shorelands granted to city of Seattle. In every case where the state of Washington had prior to June 13, 1913, sold to any purchaser from the state any second-class shorelands bordering upon navigable waters of this state by description where the water boundary of the purchased shorelands is not defined, the water boundary shall be the line of ordinary navigation in the water; and whenever the waters have been or shall be lowered by any action done or authorized either by the state of Washington or the United States, the water boundary shall be the line of ordinary navigation as the water boundary shall be found in the waters after the lowering, and there is granted and confirmed to every purchaser, the purchaser's heirs and assigns, all the lands. However, this section and RCW 79.125.510 shall not apply to the portions of the second-class shorelands which shall, as provided by RCW 79.125.510, be selected by the department for harbor areas, slips, docks, wharves, warehouses, streets, avenues, parkways and boulevards, alleys, or other public purposes. Further, all shorelands and the bed of Lake Washington from the southerly margin of the plat of Lake Washington shorelands southerly along the westerly shore of the lake to a line three hundred feet south of and parallel with the east and west center line of section 35,

township 24 north, range 4 east, W.M., are reserved for public uses and are granted and donated to the city of Seattle for public park, parkway, and boulevard purposes, and as a part of its public park, parkway, and boulevard system and any diversion or attempted diversion of the lands so donated from such purposes shall cause the title to the lands to revert to the state. [2005 c 155 § 521; 1982 1st ex.s. c 21 § 107. Formerly RCW 79.94.220.]

79.125.510 Second-class shorelands—Survey/platting—Selection for slips, docks, wharves, etc.—Filing of plat. It is the duty of the department to survey the second-class shorelands and in platting the survey to designate for public use all of the shorelands as in the opinion of the department is available, convenient, or necessary to be selected for the use of the public as harbor areas, sites for slips, docks, wharves, warehouses, streets, avenues, parkways and boulevards, alleys, and other public purposes.

Upon the filing of the plat in the department's Olympia office, the title to all harbor areas so selected shall remain in the state, the title to all selections for streets, avenues, and alleys shall vest in any city or town within the corporate limits of which they are situated, otherwise in the county in which they are situated, the title to and control of any lands so selected and designated upon the plat for parkways and boulevard purposes shall, if the lands lie outside of the corporate limits of any city or town and if the lands form a part of the general parkway and boulevard system of a first-class city lie in the city, and the title to all selections for slips, docks, wharves, warehouses, and other public purposes shall vest in the port district if they are situated in a port district, otherwise in the county in which they are situated. [2005 c 155 § 522; 1982 1st ex.s. c 21 § 108. Formerly RCW 79.94.230.]

79.125.520 Second-class shorelands—Platting of certain shorelands of Lake Washington for use as harbor area—Effect. It is the duty of the department to plat for the public use harbor area in front of the portions of the shorelands of Lake Washington sold as second-class shorelands by the state of Washington as in the opinion of the department are necessary for the use of the public as harbor area. However, this section and RCW 79.125.530 shall not be construed to authorize the department to change the location of any inner or outer harbor line or the boundaries or location of, or to replat any harbor area platted under and by virtue of sections 1 and 2, chapter 183, Laws of 1913, and the title to all shorelands purchased from the state as second-class shorelands is confirmed to the purchaser, the purchaser's heirs and assigns, out to the inner harbor line established and platted under sections 1 and 2, chapter 183, Laws of 1913, or which shall be established and platted under RCW 79.125.510 and 79.125.530, and all reservations shown upon the plat made and filed pursuant to sections 1 and 2, chapter 183, Laws of 1913, are declared null and void, except reservations shown for harbor area, and reservations in the harbor area, and reservations across shorelands for traversed streets which were extensions of streets existing across shorelands at the time of filing of such plat. The department shall in platting the harbor area make a new plat showing all the harbor area on Lake Washington already platted under sections 1 and 2, chapter 183, Laws of 1913, and under sections 1 and 2, chapter 150,

Laws of 1917, and upon the adoption of any new plat by the board acting as the harbor line commission, and the filing of the plat in the department's Olympia office, the title to all the harbor areas so selected shall remain in the state of Washington, and the harbor areas shall not be sold, but may be leased as provided for by law relating to the leasing of the harbor area. [2005 c 155 § 523; 1982 1st ex.s. c 21 § 109. Formerly RCW 79.94.240.]

79.125.530 Platting of certain shorelands of Lake Washington for use as harbor area—Selection for slips, docks, wharves, etc.—Vesting of title. Immediately after establishing the harbor area provided for in RCW 79.125.520, it is the duty of the department to make a plat designating all first and second-class shorelands, not sold by the state of Washington, and to select for the use of the public out of the shorelands, or out of harbor areas, sites for slips, docks, wharves, warehouses, streets, avenues, parkways, boulevards, alleys, commercial waterways, and other public purposes, insofar as the shorelands may be available for any or all public purposes.

Upon the filing of the plat of shorelands with the reservations and selections in the department's Olympia office, the title to all selections for streets, avenues, and alleys shall vest in any city or town within the corporate limits of which they are situated, otherwise in the county in which they are situated. The title to and control of any land so selected and designated upon the plat for parkway and boulevard purposes shall, if the lands lie outside the corporate limits of any city or town, and if the lands form a part of the general parkway and boulevard system of the first-class city, be in the city. The title to all selections for commercial waterway purposes shall vest in the commercial waterway district in which they are situated, or for which selected, and the title to all selections for slips, docks, wharves, warehouses, and other purposes shall vest in the port district if they are situated in a port district, otherwise in the county in which they are situated, and any sales of the shorelands when otherwise permitted by law shall be made subject to the selection and reservation for public use. [2005 c 155 § 524; 1982 1st ex.s. c 21 § 110. Formerly RCW 79.94.250.]

SALES OF TIDELANDS AND SHORELANDS

79.125.600 Sale procedure—Fixing date, place, and time of sale—Notice—Publication and posting. (1) When the department decides to sell any state-owned tidelands or shorelands, otherwise permitted by RCW 79.125.200 to be sold, it shall be the duty of the department to fix the date, place, and the time of sale, and no sale shall be had on any day which is a legal holiday.

(2) The department shall give notice of the sale by advertisement published once a week for four consecutive weeks immediately preceding the date fixed for sale in the notice, in at least one newspaper published and of general circulation in the county in which the whole or any part of any lot, block, or tract of land to be sold is situated, and by causing a copy of the notice to be posted in a conspicuous place in the department's Olympia office and the region headquarters administering the sale.

(3) The notice shall: (a) Specify the place and time of sale; (b) specify the appraised value; (c) describe with particularity each parcel of land to be sold; and (d) specify that the terms of sale will be posted in the region headquarters and the department's Olympia office. [2005 c 155 § 112; 1982 1st ex.s. c 21 § 23. Formerly RCW 79.90.170.]

79.125.610 List of state-owned tidelands and shorelands permitted to be sold. The department shall print a list of all state-owned tidelands and shorelands otherwise permitted by RCW 79.125.200 to be sold, giving appraised value, character of the land, and other information as may be of interest to prospective buyers. The lists must be issued at least four weeks prior to the date of any sale. The department shall retain for free distribution in its office in Olympia and the regional offices sufficient copies of the lists, to be kept in a conspicuous place or receptacle on the counter of the general and regional office of the department, and, when requested to do so, shall mail copies of the list as issued to any applicant. [2005 c 155 § 113; 1982 1st ex.s. c 21 § 24. Formerly RCW 79.90.180.]

79.125.620 Sale procedure—Additional advertising expense. The department is authorized to expend any sum in additional advertising of the sale as shall be determined to be in the best interests of the state. [2005 c 155 § 114; 1982 1st ex.s. c 21 § 25. Formerly RCW 79.90.190.]

79.125.630 Reoffer—Continuance. Any sale that has been offered, and for which there are no bids received shall not be reoffered until it has been readvertised as specified in RCW 79.125.600, 79.125.610, and 79.125.620. If all sales cannot be offered within the specified time on the advertised date, the sale shall continue on the following day between the hours of ten o'clock a.m. and four o'clock p.m. [2005 c 155 § 115; 1982 1st ex.s. c 21 § 26. Formerly RCW 79.90.200.]

79.125.640 Sale at public auction—Minimum price—Sales by leaseholder. All sales of state-owned tidelands and shorelands otherwise permitted by RCW 79.125.200 to be sold, shall be sold at public auction to the highest responsible bidder, on the terms prescribed by law and as specified in the notice provided, and no land shall be sold for less than the appraised value. Sales of aquaculture products by a leaseholder shall be as specified in RCW 79.135.040. [2005 c 155 § 116; 2005 c 113 § 2; 1990 c 163 § 1; 1982 1st ex.s. c 21 § 27. Formerly RCW 79.90.210.]

Reviser's note: This section was amended by 2005 c 113 § 2 and by 2005 c 155 § 116, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

79.125.650 Highest responsible bidder—Determination. (1) To determine the "highest responsible bidder" under RCW 79.125.640, the department shall be entitled to consider, in addition to price, the following:

- (a) The financial and technical ability of the bidder to perform the contract;
- (b) Whether the bid contains material defects;
- (c) Whether the bidder has previously or is currently complying with terms and conditions of any other contracts

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with the state or relevant contracts with entities other than the state;

(d) Whether the bidder was the "highest responsible bidder" for a sale within the previous five years but failed to complete the sale, such as by not entering into a resulting contract or by not paying the difference between the deposit and the total amount due. However, sales that were bid prior to January 1, 2003, may not be considered for the purposes of this subsection (1)(d);

(e) Whether the bidder has been convicted of a crime relating to the public lands or natural resources of the state of Washington, the United States, or any other state, tribe, or country, where "conviction" shall include a guilty plea, or unvacated forfeiture of bail;

(f) Whether the bidder is owned, controlled, or managed by any person, partnership, or corporation that is not responsible under this statute; and

(g) Whether the subcontractors of the bidder, if any, are responsible under this statute.

(2) Whenever the department has reason to believe that the apparent high bidder is not a responsible bidder, the department may award the sale to the next responsible bidder or the department may reject all bids pursuant to RCW 79.125.680. [2005 c 155 § 117; 2003 c 28 § 1; 1990 c 163 § 2. Formerly RCW 79.90.215.]

79.125.660 Sale procedure—Conduct of sales—Deposits—Bid bonds—Memorandum of purchase. (1) Sales by public auction under this chapter shall be conducted under the direction of the department or by its authorized representative. The department's representatives are referred to as auctioneers.

(2) On or before the time specified in the notice of sale each bidder shall deposit with the auctioneer, in cash or by certified check, cashier's check, or postal money order payable to the order of the department, or by bid guarantee in the form of bid bond acceptable to the department, an amount equal to the deposit specified in the notice of sale. The deposit shall include a specified amount of the appraised price for the valuable materials offered for sale, together with any fee required by law for the issuance of contracts or bills of sale. The deposit may, when prescribed in the notice of sale, be considered an opening bid of an amount not less than the minimum appraised price established in the notice of sale. The successful bidder's deposit will be retained by the auctioneer and the difference, if any, between the deposit and the total amount due shall on the day of the sale be paid in cash, certified check, cashier's check, draft, postal money order, or by personal check made payable to the department. If a bid bond is used, the share of the total deposit due guaranteed by the bid bond shall, within ten days of the day of sale, be paid in cash, certified check, cashier's check, draft, or postal money order payable to the department. Other deposits, if any, shall be returned to the respective bidders at the conclusion of each sale.

(3) The auctioneer shall deliver to the purchaser a memorandum of the purchase containing a description of the land or materials purchased, the price bid, and the terms of the sale.

(4) The auctioneer shall at once send to the department the cash, certified check, cashier's check, draft, postal money

order, or bid guarantee received from the purchaser, and a copy of the memorandum delivered to the purchaser, together with such additional report of the auctioneer's proceedings with reference to the sales as may be required by the department. [2005 c 155 § 118; 1982 1st ex.s. c 21 § 28. Formerly RCW 79.90.220.]

79.125.670 Sale procedure—Readvertisement of lands not sold. If any tideland or shoreland, when otherwise permitted under RCW 79.125.200, offered for sale is not sold, it may again be advertised for sale, as provided in this chapter, whenever in the opinion of the department it is expedient to do so. Whenever any person applies to the department in writing to have the land offered for sale and agrees to pay at least the appraised value of the land and deposits with the department at the time of making the application a sufficient sum of money to pay the cost of advertising the sale, the land may be advertised again and offered for sale as provided in this chapter. [2005 c 155 § 119; 1982 1st ex.s. c 21 § 29. Formerly RCW 79.90.230.]

79.125.680 Sale procedure—Confirmation of sale. (1) A sale of tidelands or shorelands otherwise permitted by RCW 79.125.200 to be sold shall be confirmed if:

(a) No affidavit showing that the interest of the state in such sale was injuriously affected by fraud or collusion, is filed with the department's Olympia office within ten days from the receipt of the report of the auctioneer conducting the sale;

(b) It appears from the report that the sale was fairly conducted, that the purchaser was the highest responsible bidder at the sale, and that the sale price is not less than the appraised value of the property sold;

(c) The department is satisfied that the lands sold would not, upon being readvertised and offered for sale, sell for a substantially higher price; and

(d) The payment required by law to be made at the time of making the sale has been made, and that the best interests of the state are being served.

(2) Upon confirming a sale, the department shall enter upon its records the confirmation of sale and issue to the purchaser a contract of sale or bill of sale as the case may be, as is provided for in this chapter. [2005 c 155 § 120; 1990 c 163 § 3; 1982 1st ex.s. c 21 § 30. Formerly RCW 79.90.240.]

CONVEYANCE TO PUBLIC ENTITIES/PUBLIC USE

79.125.700 Sale of state-owned tidelands or shorelands to municipal corporation or state agency—Authority to execute agreements, deeds, etc. The department may with the advice and approval of the board sell state-owned tidelands or shorelands at the appraised market value to any municipal corporation or agency of the state of Washington when the land is to be used solely for municipal or state purposes. However, the department shall with the advice and approval of the attorney general, execute agreements, writings, or relinquishments and certify to the governor such deeds as are necessary or proper to affect the sale or exchange. [2005 c 155 § 515; 1982 1st ex.s. c 21 § 101. Formerly RCW 79.94.160.]

79.125.710 Grant of lands for city park or playground purposes. Whenever application is made to the department by any incorporated city or town or metropolitan park district for the use of any state-owned tidelands or shorelands within the corporate limits of the city or town or metropolitan park district for municipal park and/or playground purposes, the department shall cause the application to be entered in the records of its office, and shall then forward the application to the governor, who shall appoint a committee of five representative citizens of the city or town, in addition to the commissioner and the director of ecology, both of whom shall be ex officio members of the committee, to investigate the lands and determine whether they are suitable and needed for park or playground purposes; and, if they so find, the commissioner shall certify to the governor that the property shall be deeded, when in accordance with RCW 79.125.200 and 79.125.700, to the city or town or metropolitan park district and the governor shall then execute a deed in the name of the state of Washington, attested by the secretary of state, conveying the use of the lands to the city or town or metropolitan park district for park or playground purposes for so long as it shall continue to hold, use, and maintain the lands for park or playground purposes. [2005 c 155 § 517; 2003 c 334 § 447; 1988 c 127 § 33; 1939 c 157 § 1; RRS § 7993-1. Formerly RCW 79.94.175, 79.08.080.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.125.720 Exchange of lands to secure city parks and playgrounds. In the event there are no state-owned tidelands or shorelands in any city or town or metropolitan park district suitable for the purposes of RCW 79.125.710 and the committee finds other lands which are suitable and needed for parks or playgrounds, the department is authorized to secure the lands by exchanging state-owned tidelands or shorelands of equal value in the same county, and the use of the lands so secured shall be conveyed to any city or town or metropolitan park district as provided for in RCW 79.125.710. In all exchanges the department is authorized and directed, with the assistance of the attorney general, to execute agreements, writings, relinquishments, and deeds as are necessary or proper for the purpose of carrying the exchanges into effect. Upland owners shall be notified of the state-owned tidelands or shorelands to be exchanged. [2005 c 155 § 518; 2003 c 334 § 448; 1939 c 157 § 2; RRS § 7993-2. Formerly RCW 79.94.181, 79.08.090.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.125.730 Director of ecology to assist city parks. The director of ecology, in addition to serving as an ex officio member of the committee, is authorized and directed to assist the city or town or metropolitan park district in the development and decoration of any lands so conveyed and to furnish trees, grass, flowers, and shrubs therefor. [2005 c 155 § 519; 1988 c 127 § 34; 1939 c 157 § 3; RRS § 7993-3. Formerly RCW 79.94.185, 79.08.100.]

79.125.740 Certain tidelands reserved for recreational use and taking of fish and shellfish. The following described tidelands, being public lands of the state, are withdrawn from sale or lease and reserved as public areas for rec-

reational use and for the taking of fish and shellfish for personal use as defined in RCW 77.08.010:

Parcel No. 1. (Point Whitney) The second-class tidelands, owned by the state of Washington, situate in front of, adjacent to or abutting upon lots 3, 4, and 5, section 7, township 26 north, range 1 west, W.M., with a frontage of 72.45 lineal chains, more or less.

Excepting, however, those portions of the above-described second-class tidelands conveyed to the state of Washington, department of fish and wildlife through deed issued May 14, 1925, under application No. 8136, records of department of public lands.

Parcel No. 2. (Point Whitney) The second-class tidelands lying below the line of mean low tide, owned by the state of Washington, situate in front of lot 1, section 6, township 26 north, range 1 west, W.M., with a frontage of 21.00 lineal chains, more or less; also

The second-class tidelands, owned by the state of Washington, situate in front of, adjacent to, or abutting upon lots 6 and 7, and that portion of lot 5, section 1, township 26 north, range 1 west, W.M., lying south of a line running due west from a point on the government meander line which is S 22° E 1.69 chains from an angle point in said meander line which is S 15° W 1.20 chains, more or less, from the point of intersection of the north line of said lot 5 and the meander line, with a frontage of 40.31 lineal chains, more or less.

Parcel No. 3. (Toandos Peninsula) The second-class tidelands, owned by the state of Washington, situate in front of, adjacent to, or abutting upon lots 1, 2, and 3, section 5, lots 1, 2, and 3, section 4, and lot 1, section 3, all in township 25 north, range 1 west, W.M., with a frontage of 158.41 lineal chains, more or less.

Parcel No. 4. (Shine) The second-class tidelands, owned by the state of Washington, situate in front of, adjacent to, or abutting upon lots 1, 2, 3 and that portion of lot 4 lying north of the south 8.35 chains as measured along the government meander line, all in section 35, township 28 north, range 1 east, W.M., with a frontage of 76.70 lineal chains, more or less.

Subject to an easement for right-of-way for county road granted to Jefferson county December 8, 1941, under application No. 1731, records of department of public lands.

Parcel No. 5. (Lilliwaup) The second-class tidelands, owned by the state of Washington, lying easterly of the east line of vacated state oyster reserve plat No. 133 produced southerly and situate in front of, adjacent to, or abutting upon lot 9, section 30, lot 8, section 19 and lot 5 and the south 20 acres of lot 4, section 20, all in township 23 north, range 3 west, W.M., with a frontage of 62.46 lineal chains, more or less.

Subject to easements for rights-of-way for state road granted through the filing of state road plats No. 374 December 15, 1930, No. 661, March 29, 1949, and No. 666 August 25, 1949, records of department of public lands.

Parcel No. 6. (Nemah) Those portions of the second-class tidelands, owned by the state of Washington, situate in front of, adjacent to, or abutting upon lots 5, 6, and 7, section 3 and lots 1, 2, and 3, section 4, township 12 north, range 10 west, W.M., lots 1, 2, 3, and 4, section 34, section 27 and lots 1, 2, 3 and 4, section 28, township 13 north, range 10 west, W.M., lying easterly of the easterly line of the Nemah Oyster

reserve and easterly of the easterly line of a tract of second-class tidelands conveyed through deed issued July 28, 1938, pursuant to the provisions of chapter 24, Laws of 1895, under application No. 9731, with a frontage of 326.22 lineal chains, more or less.

Parcels No. 7 and 8. (Penn Cove) The unplatted first and second-class tidelands, owned by the state of Washington, situate in front of, adjacent to, or abutting upon lots 1 and 2, section 33, lots 1, 2, 3, and 4, section 32, lots 2 and 3 and the B.P. Barstow D.L.C. No. 49, sections 30 and 31 and that portion of the R.H. Lansdale D.L.C. No. 54 in section 30, lying west of the east 3.00 chains thereof as measured along the government meander line, all in township 32 north, range 1 east, W.M., with a frontage of 260.34 lineal chains, more or less.

Excepting, however, the tidelands above the line of mean low tide in front of said lot 1, section 32 which were conveyed as second-class tidelands through deed issued December 29, 1908, application No. 4957, records of department of public lands.

Subject to an easement for right-of-way for transmission cable line granted to the United States of America Army Engineers June 7, 1943, under application No. 17511, records of department of public lands.

Parcel No. 9. (South of Penn Cove) The second-class tidelands, owned by the state of Washington, situate in front of, adjacent to, or abutting upon lots 2, 3 and 4, section 17 and lots 1, 2 and 3, section 20, township 31 north, range 2 east, W.M., with a frontage of 129.97 lineal chains, more or less.

Parcel No. 10. (Mud Bay—Lopez Island) The second-class tidelands, owned by the state of Washington situate in front of, adjacent to, or abutting upon lots 5, 6 and 7, section 18, lot 5, section 7 and lots 3, 4, and 5, section 8, all in township 34 north, range 1 west, W.M., with a frontage of 172.11 lineal chains, more or less.

Excepting, however, any second-class tideland in front of said lot 3, section 8 conveyed through deeds issued April 14, 1909, pursuant to the provisions of chapter 24, Laws of 1895, under application No. 4985, records of department of public lands.

Parcel No. 11. (Cattle Point) The second-class tidelands, owned by the state of Washington, situate in front of, adjacent to, or abutting upon lot 1, section 6, lots 1, 3, 4, 5, 6, 7, 8, 9, and 10, section 7, lots 1, 2, 3, 4, 5, 6 and 7, section 8 and lot 1, section 5, all in township 34 north, range 2 west, W.M., with a frontage of 463.88 lineal chains, more or less.

Excepting, however, any second-class tidelands in front of said lot 10, section 7 conveyed through deed issued June 1, 1912, under application No. 6906, records of department of public lands.

Parcel No. 12. (Spencer Spit) The second-class tidelands, owned by the state of Washington, situate in front of, adjacent to, or abutting upon lots 1, 3, and 4, section 7, and lot 5, section 18 all in township 35 north, range 1 west, W.M., with a frontage of 118.80 lineal chains, more or less. [2005 c 155 § 533; 2003 c 39 § 42; 1994 c 264 § 66; 1983 1st ex.s. c 46 § 181; 1982 1st ex.s. c 21 § 124. Formerly RCW 79.94.390.]

Tidelands—Upland owner use: "The state department of fisheries is authorized to permit designated portions of the following described tidelands to be used by the upland owners thereof for the purpose of building and

maintaining docks: Tidelands of the second class owned by the state of Washington situated in front of, adjacent to, or abutting upon, the entire west side of lot 1, section 5, Township 34 North, Range 2 West, W.M., to the northernmost tip of said lot, and lots 2 and 3, section 8, Township 34 North, Range 2 West, W.M. (Cattle Point)." [1967 ex.s. c 128 § 1.]

79.125.750 Access to and from tidelands reserved for recreational use and taking of fish and shellfish. The director of fish and wildlife may take appropriate action to provide public and private access, including roads and docks, to and from the tidelands described in RCW 79.125.740. [2005 c 155 § 534; 1994 c 264 § 67; 1982 1st ex.s. c 21 § 125. Formerly RCW 79.94.400.]

79.125.760 Use of certain tidelands, shorelands, and abutting bedlands—Grant to the United States—Purposes—Limitations. The use of any tidelands, shorelands, and abutting bedlands covered with less than four fathoms of water at ordinary low tide belonging to the state, and adjoining and bordering on any tract, piece, or parcel of land, which may have been reserved or acquired, or which may be reserved or acquired, by the government of the United States, for the purposes of erecting and maintaining forts, magazines, arsenals, dockyards, navy yards, prisons, penitentiaries, lighthouses, fog signal stations, aviation fields, or other aids to navigation, may be granted to the United States, upon payment for the rights, so long as the upland adjoining the tidelands or shorelands shall continue to be held by the government of the United States for any of the public purposes above mentioned. However, this grant shall not extend to or include any aquatic lands covered by more than four fathoms of water at ordinary low tide; and shall not be construed to prevent any citizen of the state from using the lands for the taking of food fishes so long as the fishing does not interfere with the public use of them by the United States. [2005 c 155 § 535; 1982 1st ex.s. c 21 § 126. Formerly RCW 79.94.410.]

79.125.770 Tidelands and shorelands—Use of lands granted to United States—Application—Proof of upland use—Conveyance. Whenever application is made to the department by any department of the United States government for the use of any state-owned tidelands or shorelands and adjoining and bordering on any upland held by the United States for any of the purposes mentioned in RCW 79.125.760, upon proof being made to the department, that the uplands are so held by the United States for such purposes, and upon payment for the land, it shall cause the fact to be entered in the records of the department and the department shall certify the fact to the governor who will execute a deed in the name of the state, attested by the secretary of state, conveying the use of the lands, for such purposes, to the United States, so long as it shall continue to hold for the public purposes the uplands adjoining the tidelands and shorelands. [2005 c 155 § 536; 1982 1st ex.s. c 21 § 127. Formerly RCW 79.94.420.]

79.125.780 Tidelands and shorelands—Use of lands granted to United States—Easements over tidelands or shorelands to United States. Whenever application is made to the department, by any department of the United States government, for the use of any state-owned tidelands or shorelands, for any public purpose, and the department shall

be satisfied that the United States requires or may require the use of the tidelands or shorelands for the public purposes, the department may reserve the tidelands or shorelands from public sale and grant the use of them to the United States, upon payment for the land, so long as it may require the use of them for the public purposes. In such a case, the department shall execute an easement to the United States, which grants the use of the tidelands or shorelands to the United States, so long as it shall require the use of them for the public purpose. [2005 c 155 § 537; 1982 1st ex.s. c 21 § 128. Formerly RCW 79.94.430.]

79.125.790 Tidelands and shorelands—Use of lands granted to United States—Reversion on cessation of use. Whenever the United States shall cease to hold and use any uplands for the use and purposes mentioned in RCW 79.125.760, or shall cease to use any tidelands or shorelands for the purpose mentioned in RCW 79.125.780, the grant or easement of the tidelands or shorelands shall be terminated, and the tidelands or shorelands shall revert to the state without resort to any court or tribunal. [2005 c 155 § 538; 1982 1st ex.s. c 21 § 129. Formerly RCW 79.94.440.]

79.125.800 United States Navy base—Exchange of property—Procedure. The department is authorized to deed, by exchanges of property, to the United States Navy those tidelands necessary to facilitate the location of the United States Navy base in Everett. In carrying out this authority, the department shall request that the governor execute the deed in the name of the state attested to by the secretary of state. The department will follow the requirements outlined in RCW 79.17.050 in making the exchange. The department must exchange the state's tidelands for lands of equal value, and the land received in the exchange must be suitable for natural preserves, recreational purposes, or have commercial value. The lands must not have been previously used as a waste disposal site. Choice of the site must be made with the advice and approval of the board. [2003 c 334 § 615; 1987 c 271 § 4. Formerly RCW 79.94.450.]

Intent—2003 c 334: See note following RCW 79.02.010.

Additional notes found at www.leg.wa.gov

Chapter 79.130 RCW

AQUATIC LANDS—BEDS OF NAVIGABLE WATERS

Sections

- 79.130.001 Intent—2005 c 155.
- 79.130.010 Lease of beds of navigable waters.
- 79.130.020 Lease of beds of navigable waters—Terms and conditions of lease—Forfeiture for nonuser.
- 79.130.030 Lease of beds of navigable waters—Improvements—Federal permit—Forfeiture—Plans and specifications.
- 79.130.040 Lease of beds of navigable waters—Preference right to release.
- 79.130.050 United States Navy base—Legislative findings and declaration.
- 79.130.060 Lease of bedlands in Port Gardner Bay for dredge spoil site—Conditions.
- 79.130.070 Exchange of bedlands—Cowlitz river.

79.130.001 Intent—2005 c 155. See RCW 79.105.001.

79.130.010 Lease of beds of navigable waters. (1) Except as provided in RCW 79.130.060, the department may lease to the abutting tidelands or shorelands owner or lessee, the beds of navigable waters lying below the line of extreme low tide in waters where the tide ebbs and flows, and below the line of navigability in lakes and rivers claimed by the state and defined in Article XVII, section 1 of the state Constitution.

(2) In case the abutting tidelands or shorelands or the abutting uplands are not improved or occupied for residential or commercial purposes, the department may lease the beds to any person for a period not exceeding ten years for booming purposes.

(3) Nothing in this chapter shall change or modify any of the provisions of the state Constitution or laws of the state which provide for the leasing of harbor areas and the reservation of lands lying in front of harbor areas. [2005 c 155 § 601; 1987 c 271 § 2; 1982 1st ex.s. c 21 § 130. Formerly RCW 79.95.010.]

Additional notes found at www.leg.wa.gov

79.130.020 Lease of beds of navigable waters—Terms and conditions of lease—Forfeiture for nonuser.

(1) The department shall, prior to the issuance of any lease under the provisions of this chapter, fix the annual rental and prescribe the terms and conditions of the lease. However, in fixing the rental, the department shall not take into account the value of any improvements placed upon the lands by the lessee.

(2) No lease issued under the provisions of this chapter shall be for a term longer than thirty years from the date thereof if in front of second-class tidelands or shorelands; or a term longer than ten years if in front of unplatted first-class tidelands or shorelands leased under the provisions of RCW 79.125.410, in which case the lease shall be subject to the same terms and conditions as provided for in the lease of the unplatted first-class tidelands or shorelands. Failure to use those beds leased under the provisions of this chapter for booming purposes, for a period of two years shall work a forfeiture of the lease and the land shall revert to the state without notice to the lessee upon the entry of a declaration of forfeiture in the records of the department. [2005 c 155 § 602; 1982 1st ex.s. c 21 § 131. Formerly RCW 79.95.020.]

79.130.030 Lease of beds of navigable waters—Improvements—Federal permit—Forfeiture—Plans and specifications. The applicant for a lease under the provisions of this chapter shall first obtain from the United States army corps of engineers or other federal regulatory agency, a permit to place structures or improvements in the navigable waters and file with the department a copy of the permit. No structures or improvements shall be constructed beyond a point authorized by the army corps of engineers or the department and any construction beyond authorized limits will work a forfeiture of all rights granted by the terms of any lease issued under the provisions of this chapter. The applicant shall also file plans and specifications of any proposed improvements to be placed upon the areas with the department, the plans and specifications to be the same as provided for in the case of the lease of harbor areas. [2005 c 155 § 603; 1982 1st ex.s. c 21 § 132. Formerly RCW 79.95.030.]

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79.130.040 Lease of beds of navigable waters—Preference right to re-lease. At the expiration of any lease issued under the provisions of this chapter, the lessee or the lessee's successors or assigns, shall have a preference right to re-lease all or part of the area covered by the original lease if the department deems it to be in the best interest of the state to re-lease the area. Such re-lease shall be for the term as specified by the provisions of this chapter, and at the rental and upon the conditions as may be prescribed by the department. However, if the preference right is not exercised, the rights and obligations of the lessee, the department, and any subsequent lessee shall be the same as provided in RCW 79.125.300 relating to failure to re-lease tidelands or shorelands. Any person who prior to June 11, 1953, had occupied and improved an area subject to lease under this chapter and has secured a permit for the improvements from the United States army corps of engineers, or other federal regulatory agency, shall have the rights and obligations of a lessee under this section upon the filing of a copy of the permit together with plans and specifications of the improvements with the department. [2005 c 155 § 604; 1982 1st ex.s. c 21 § 133. Formerly RCW 79.95.040.]

79.130.050 United States Navy base—Legislative findings and declaration. The legislature recognizes the importance of economic development in the state of Washington, and finds that the location of a United States Navy base in Everett, Washington will enhance economic development. The legislature finds that the state should not assume liability or risks resulting from any action taken by the United States Navy, now or in the future associated with the dredge disposal program for that project known as confined aquatic disposal (CAD). The legislature also recognizes the importance of improving water quality and cleaning up pollution in Puget Sound. The legislature declares these actions to be a public purpose necessary to protect the health, safety, and welfare of its citizens, and to promote economic growth and improve environmental quality in the state of Washington. The United States Navy proposes to commence the Everett home port project immediately. [2005 c 155 § 605; 1987 c 271 § 1. Formerly RCW 79.95.050.]

Additional notes found at www.leg.wa.gov

79.130.060 Lease of bedlands in Port Gardner Bay for dredge spoil site—Conditions. (1) Upon application by the United States Navy, and upon verification of the legal description and compliance with the intent of this chapter, the commissioner is authorized to lease bedlands in Port Gardner Bay for a term of thirty years so the United States Navy can utilize a dredge spoil site solely for purposes related to construction of the United States Navy base at Everett.

(2) The lease shall reserve for the state uses of the property and associated waters which are not inconsistent with the use of the bed by the Navy as a disposal site. The lease shall include conditions under which the Navy:

(a) Will agree to hold the state of Washington harmless for any damage and liability relating to, or resulting from, the use of the property by the Navy; and

(b) Will agree to comply with all terms and conditions included in the applicable state of Washington section 401 water quality certification issued under the authority of the

federal clean water act (33 U.S.C. Sec. 1251, et seq.), all terms and conditions of the army corps of engineers section 404 permit (33 U.S.C. Sec. 1344), and all requirements of statutes, regulations, and permits relating to water quality and aquatic life in Puget Sound and Port Gardner Bay, including all reasonable and appropriate terms and conditions of any permits issued under the authority of the Washington state shoreline management act (chapter 90.58 RCW) and any applicable shoreline master program.

(3) The ability of the state of Washington to enforce the terms and conditions specified in subsection (2)(b) of this section shall include, but not be limited to: (a) The terms and conditions of the lease; (b) the section 401 water quality certification under the clean water act, 33 U.S.C. Sec. 1251, et seq.; (c) the comprehensive environmental response, compensation, and liability act, 42 U.S.C. Sec. 9601, et seq.; (d) the resource conservation and recovery act, 42 U.S.C. Sec. 6901, et seq.; or (e) any other applicable federal or state law. [2005 c 155 § 606; 1987 c 271 § 3. Formerly RCW 79.95.060.]

Additional notes found at www.leg.wa.gov

79.130.070 Exchange of bedlands—Cowlitz river. (1)

The department is authorized to exchange bedlands abandoned through rechanneling of the Cowlitz river near the confluence of the Columbia river so that the state obtains clear title to the Cowlitz river as it now exists or where it may exist in the future through the processes of erosion and accretion.

(2) The department is also authorized to exchange bedlands and enter into boundary line agreements to resolve any disputes that may arise over the location of state-owned lands now comprising the dike that was created in the 1920s.

(3) For purposes of chapter 150, Laws of 2001, "Cowlitz river near the confluence of the Columbia river" means those tidelands and bedlands of the Cowlitz river fronting and abutting sections 10, 11, and 14, township 7 north, range 2 west, Willamette Meridian and fronting and abutting the Huntington Donation Land Claim No. 47 and the Blakeny Donation Land Claim No. 43, township 7 north, range 2 west, Willamette Meridian.

(4) Nothing in chapter 150, Laws of 2001 shall be deemed to convey to the department the power of eminent domain. [2003 c 334 § 454; 2001 c 150 § 2. Formerly RCW 79.90.458, 79.08.260.]

Intent—2003 c 334: See note following RCW 79.02.010.

Findings—2001 c 150: "(1) The legislature finds that in the 1920s the Cowlitz river near the confluence of the Columbia river in Longview, Washington was diverted from its original course by dredging and construction of a dike. As a result, a portion of the original bed of the Cowlitz river became a nonnavigable body of shallow water. Another portion of the original bed of the Cowlitz river became part of a dike and is indistinguishable from existing islands. The main channel of the Cowlitz river was diverted over uplands to the south of the original bed and has continued as a navigable channel.

(2) The legislature finds that continued ownership of the nonnavigable portion of the original bed of the Cowlitz river near the confluence of the Columbia river no longer serves the state's interest in navigation. Ownership of the existing navigable bed of the Cowlitz river would better serve the state's interest in navigation. It is also in the state's interest to resolve any disputes that have arisen because state-owned land is now indistinguishable from privately owned land within the dike." [2001 c 150 § 1.]

Additional notes found at www.leg.wa.gov

Chapter 79.135 RCW AQUATIC LANDS—OYSTERS, GEODUCKS, SHELLFISH, OTHER AQUACULTURAL USES, AND MARINE AQUATIC PLANTS

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79.135.903 Effective date—1982 1st ex.s. c 21 §§ 176 and 179.

79.135.904 Effective date—1982 1st ex.s. c 21.

79.135.001 Intent—2005 c 155. See RCW 79.105.001.

GENERAL PROVISIONS

79.135.010 Bush act/Callow act lands. (1) A person in possession of real property conveyed by the state of Washington pursuant to the authority of chapter 24, Laws of 1895 (Bush act) or chapter 25, Laws of 1895 (Callow act), wherein such lands are subject to a possibility of reversion, shall heretofore have and are granted the further right to use all of the property for the purpose of cultivating and propagating clams and any shellfish.

(2) The rights granted under subsection (1) of this section do not include the right to use subtidal portions of Bush

act and Callow act lands for the harvest and cultivation of any species of shellfish that had not commenced prior to December 31, 2001.

(3) For the purposes of this section, harvest and cultivation of any species of shellfish shall not be deemed to have commenced unless the subtidal portions of the land had been planted with that species of shellfish prior to December 31, 2001.

(4) No vested rights in shellfish cultivation may be impaired by any of the provisions of chapter 123, Laws of 2002, nor is anything other than what is stated in subsection (2) of this section intended to grant any further rights in the subtidal lands than what was originally included under the intent of the Bush and Callow acts. [2002 c 123 § 2. Formerly RCW 79.90.570.]

Findings—2002 c 123: "The legislature declares that shellfish farming provides a consistent source of quality food, offers opportunities of new jobs, increases farm income stability, and improves balance of trade. The legislature also finds that many areas of the state of Washington are scientifically and biologically suitable for shellfish farming, and therefore the legislature has encouraged and promoted shellfish farming activities, programs, and development with the same status as other agricultural activities, programs, and development within the state. It being the policy of this state to encourage the development and expansion of shellfish farming within the state and to promote the development of a diverse shellfish farming industry, the legislature finds that the uncertainty surrounding reversionary clauses contained in Bush act and Callow act deeds is interfering with this policy. The legislature finds that uncertainty of the grant of rights for the claim and other shellfish culture as contained in chapter 166, Laws of 1919 must be fully and finally resolved. It is not the intent of this act to impair any vested rights in shellfish cultivation or current shellfish aquaculture activities to which holders of Bush act and Callow act lands are entitled." [2002 c 123 § 1.]

79.135.020 Sale of reserved or reversionary rights in tidelands. Upon an application to purchase the reserved and reversionary rights of the state in any tidelands sold under the provisions of chapter 24, Laws of 1895, or chapter 25, Laws of 1895, or chapter 165, Laws of 1919, or either the reserved or reversionary right if only one exists, being filed in the department's Olympia office by the owner of the tidelands, accompanied by an abstractor's certificate, or other evidence of the applicant's title to the lands, the department, if it finds the applicant is the owner of the tidelands, is authorized to inspect, appraise, and sell, if otherwise permitted under RCW 79.125.200, for not less than the appraised value, such reserved or reversionary rights of the state to the applicant, and upon payment of the purchase price to cause a deed to be issued as in the case of the sale of state lands, or upon the payment of one-fifth of the purchase price, to issue a contract of sale, providing that the remainder of the purchase price may be paid in four equal annual installments, with interest on deferred payments at the rate of six percent per annum, or sooner at the election of the contract holder, which contract shall be subject to cancellation by the department for failure to comply with its provisions, and upon the completion of the payments as provided in the contract to cause a deed to the lands described in the contract to be issued to the holder as in the case of the sale of state lands. [2005 c 155 § 713; 1982 1st ex.s. c 21 § 145. Formerly RCW 79.96.120.]

79.135.030 Wrongful taking of shellfish from public lands—Civil remedies. (1) If a person wrongfully takes shellfish or causes shellfish to be wrongfully taken from the public lands and the wrongful taking is intentional and know-

ing, the person is liable for damages of treble the fair market retail value of the amount of shellfish wrongfully taken. If a person wrongfully takes shellfish from the public lands under other circumstances, the person is liable for damages of double the fair market value of the amount of shellfish wrongfully taken.

(2) For purposes of this section, a person "wrongfully takes" shellfish from public lands if the person takes shellfish: (a) Above the limits of any applicable laws that govern the harvest of shellfish from public lands; (b) without reporting the harvest to the department of fish and wildlife or the department where the reporting is required by law or contract; (c) outside the area or above the limits that an agreement or contract from the department allows the harvest of shellfish from public lands; or (d) without a lease or purchase of the shellfish where the lease or purchase is required by law prior to harvest of the shellfish.

(3) The remedies in this section are for civil damages and shall be proved by a preponderance of the evidence. The department may file a civil action in Thurston county superior court or the county where the shellfish were taken against any person liable under this section. Damages recovered under this section shall be applied in the same way as received under geoduck harvesting agreements authorized by RCW 79.135.210.

(4) For purposes of the remedies created by this section, the amount of shellfish wrongfully taken by a person may be established either:

(a) By surveying the aquatic lands to reasonably establish the amount of shellfish taken from the immediate area where a person is shown to have been wrongfully taking shellfish;

(b) By weighing the shellfish on board any vessel or in possession of a person shown to be wrongfully taking shellfish; or

(c) By any other evidence that reasonably establishes the amount of shellfish wrongfully taken.

The amount of shellfish established by (a) or (b) of this subsection shall be presumed to be the amount wrongfully taken unless the defendant shows by a preponderance of evidence that the shellfish were lawfully taken or that the defendant did not take the shellfish presumed to have been wrongfully taken. Whenever there is reason to believe that shellfish in the possession of any person were wrongfully taken, the department or the department of fish and wildlife may require the person to proceed to a designated off-load point and to weigh all shellfish in possession of the person or on board the person's vessel.

(5) This civil remedy is supplemental to the state's power to prosecute any person for theft of shellfish, for other crimes where shellfish are involved, or for violation of rules of the department of fish and wildlife. [2005 c 155 § 714; 1994 c 264 § 73; 1990 c 163 § 9. Formerly RCW 79.96.130.]

79.135.040 Aquaculture products—Sale by leaseholder. Aquaculture products produced on leased state-owned aquatic land may be sold by the leaseholder as prescribed by the department without competitive bid or public auction and consistent with statutes governing aquaculture leases on state-owned aquatic land. [2005 c 113 § 1.]

LEASING FOR SHELLFISH
CULTIVATION/AQUACULTURE USE

79.135.100 Aquatic lands used for aquaculture production and harvesting—Rents and fees—Limitations on leases. (1) If state-owned aquatic lands are used for aquaculture production or harvesting, rents and fees shall be established through competitive bidding or negotiation.

(2) After an initial twenty-three acres are leased, the department is prohibited from offering leases that would permit the intertidal commercial aquaculture of geoducks on more than fifteen acres of state-owned aquatic lands a [per] year until December 1, 2014.

(3) Any intertidal leases entered into by the department for geoduck aquaculture must be conditioned in such a way that the department can engage in monitoring of the environmental impacts of the lease's execution, without unreasonably diminishing the economic viability of the lease, and that the lease tracts are eligible to be made part of the studies conducted under RCW 28B.20.475.

(4) The department must notify all abutting landowners and any landowner within three hundred feet of the lands to be leased of the intent of the department to lease any intertidal lands for the purposes of geoduck aquaculture. [2007 c 216 § 3; 1984 c 221 § 10. Formerly RCW 79.90.495.]

79.135.110 Leasing beds of tidal waters for shellfish cultivation or other aquaculture use. (1) The beds of all navigable tidal waters in the state lying below extreme low tide, except as prohibited by Article XV, section 1 of the state Constitution shall be subject to lease for the purposes of planting and cultivating oyster beds, or for the purpose of cultivating clams or other edible shellfish, or for other aquaculture use, for periods not to exceed thirty years.

(2) Nothing in this section shall prevent any person from leasing more than one parcel, as offered by the department. [2005 c 155 § 701; 1993 c 295 § 1; 1982 1st ex.s. c 21 § 134. Formerly RCW 79.96.010.]

79.135.120 Leasing lands for shellfish cultivation or other aquaculture use—Who may lease—Application—Deposit. Any person desiring to lease tidelands or beds of navigable waters for the purpose of planting and cultivating oyster beds, or for the purpose of cultivating clams and other edible shellfish, shall file with the department, on a proper form, an application in writing signed by the applicant and accompanied by a map of the lands desired to be leased, describing the lands by metes and bounds tied to at least two United States government corners, and by the reference to local geography as shall suffice to convey a knowledge of the location of the lands with reasonable accuracy to persons acquainted with the vicinity, and accompanied by a deposit of ten dollars. The deposit shall be returned to the applicant in case a lease is not granted. [2005 c 155 § 702; 1982 1st ex.s. c 21 § 135. Formerly RCW 79.96.020.]

79.135.130 Leasing lands for shellfish cultivation or other aquaculture use—Inspection and report by director of fish and wildlife—Rental and term—Commercial harvest of subtidal hardshell clams by hydraulic escalating. (1) The department, upon the receipt of an application for a

lease for the purpose of planting and cultivating oyster beds or for the purpose of cultivating clams or other edible shellfish, shall notify the director of fish and wildlife of the filing of the application describing the tidelands or beds of navigable waters applied for. The director of fish and wildlife shall cause an inspection of the lands applied for to be made and shall make a full report to the department of the director's findings as to whether it is necessary, in order to protect existing natural oyster beds, and to secure adequate seeding of the lands, to retain the lands described in the application for lease or any part of the lands, and in the event the director deems it advisable to retain the lands or any part of the lands for the protection of existing natural oyster beds or to guarantee the continuance of an adequate seed stock for existing natural oyster beds, the lands shall not be subject to lease. However, if the director determines that the lands applied for or any part of the lands may be leased, the director shall so notify the department and the director shall cause an examination of the lands to be made to determine the presence, if any, of natural oysters, clams, or other edible shellfish on the lands, and to fix the rental value of the lands for use for oyster, clam, or other edible shellfish cultivation. In the report to the department, the director shall recommend a minimum rental for the lands and an estimation of the value of the oysters, clams, or other edible shellfish, if any, then present on the lands applied for. The lands approved by the director for lease may then be leased to the applicant for a period of not less than five years nor more than ten years at a rental not less than the minimum rental recommended by the director of fish and wildlife. In addition, before entering upon possession of the land, the applicant shall pay the value of the oysters, clams, or other edible shellfish, if any, then present on the land as determined by the director, plus the expense incurred by the director in investigating the quantity of oysters, clams, or other edible shellfish, present on the land applied for.

(2) When issuing new leases or reissuing existing leases the department shall not permit the commercial harvest of subtidal hardshell clams by means of hydraulic escalating when the upland within five hundred feet of any lease tract is zoned for residential development. [2005 c 155 § 703; 1994 c 264 § 68; 1987 c 374 § 1; 1982 1st ex.s. c 21 § 136. Formerly RCW 79.96.030.]

79.135.140 Leasing lands for shellfish cultivation or other aquaculture use—Survey and boundary markers. Before entering into possession of any leased tidelands or beds of navigable waters, the applicant shall have the lands surveyed by a registered land surveyor, and the applicant shall furnish to the department and to the director of fish and wildlife, a map of the leased premises signed and certified by the registered land surveyor. The lessee shall also mark the boundaries of the leased premises by piling monuments or other markers of a permanent nature as the director of fish and wildlife may direct. [2005 c 155 § 704; 1994 c 264 § 69; 1982 1st ex.s. c 21 § 137. Formerly RCW 79.96.040.]

79.135.150 Renewal lease—Application. The department may, upon the filing of an application for a renewal lease, inspect the tidelands or beds of navigable waters, and if the department deems it in the best interests of the state to release the lands, the department shall issue to the applicant a

renewal lease for a further period not exceeding thirty years and under the terms and conditions as may be determined by the department. However, in the case of an application for a renewal lease it shall not be necessary for the lands to be inspected and reported upon by the director of fish and wildlife. [2005 c 155 § 705; 1994 c 264 § 70; 1993 c 295 § 2; 1982 1st ex.s. c 21 § 138. Formerly RCW 79.96.050.]

79.135.160 Leasing lands for shellfish cultivation or other aquaculture use—Reversion for use other than cultivation of shellfish. All leases of tidelands and beds of navigable waters for the purpose of planting and cultivating oysters, clams, or other edible shellfish shall expressly provide that if at any time after the granting of the lease, the described lands shall cease to be used for the purpose of oyster beds, clam beds, or other edible shellfish beds, they shall revert to and become the property of the state and that the lands are leased only for the purpose of cultivating oysters, clams, or other edible shellfish thereon, and that the state reserves the right to enter upon and take possession of the lands if at any time the lands are used for any other purpose than the cultivation of oysters, clams, or other edible shellfish. [2005 c 155 § 706; 1982 1st ex.s. c 21 § 139. Formerly RCW 79.96.060.]

79.135.170 Leasing lands for shellfish cultivation or other aquaculture use—Abandonment—Application for other lands. If from any cause any lands leased for the purpose of planting and cultivating oysters, clams, or other edible shellfish become unfit and valueless for any such purposes, the lessee or the lessee's assigns, upon certifying the fact under oath to the department, together with the fact that the lessee has abandoned the land, shall be entitled to make application for other lands for such purposes. [2005 c 155 § 707; 1982 1st ex.s. c 21 § 140. Formerly RCW 79.96.070.]

GEODUCK HARVEST/CULTIVATION

79.135.200 Geoduck harvest/cultivation—Survey of navigable waters by private party—Record of survey. Beds of navigable waters held under contract or deed from the state of Washington upon which a private party is harvesting or cultivating geoduck shall be surveyed by the private party and a record of survey filed in compliance with chapter 58.09 RCW prior to harvest. Property corners will be placed in sufficient quantity and location to aid in relocation of the oyster tract lines occurring or extending below extreme low tide. Buoys on anchors must be placed intervisibly along and at angle points on any ownership boundaries that extend below extreme low tide, for the harvest term. The survey of privately owned beds of navigable waters will be established on the Washington coordinate system in compliance with chapter 58.20 RCW and property corners labeled with their coordinates on the record of survey. [2002 c 123 § 3. Formerly RCW 79.96.140.]

Findings—2002 c 123: See note following RCW 79.135.010.

79.135.210 Geoduck harvesting—Agreements, regulation—Geoduck diver safety program. (1) Except as provided in RCW 79.135.040, geoducks shall be sold as valuable materials under the provisions of *chapter 79.90 RCW. After confirmation of the sale, the department may enter into an

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agreement with the purchaser for the harvesting of geoducks. The department may place terms and conditions in the harvesting agreements as the department deems necessary. The department may enforce the provisions of any harvesting agreement by suspending or canceling the harvesting agreement or through any other means contained in the harvesting agreement. Any geoduck harvester may terminate a harvesting agreement entered into pursuant to this subsection if actions of a governmental agency, beyond the control of the harvester, its agents, or its employees, prohibit harvesting, for a period exceeding thirty days during the term of the harvesting agreement, except as provided within the agreement. Upon termination of the agreement by the harvester, the harvester shall be reimbursed by the department for the cost paid to the department on the agreement, less the value of the harvest already accomplished by the harvester under the agreement.

(2) Harvesting agreements under this title for the purpose of harvesting geoducks shall require the harvester and the harvester's agent or representatives to comply with all applicable commercial diving safety standards and regulations promulgated and implemented by the federal occupational safety and health administration established under the federal occupational safety and health act of 1970 as the law exists or as amended (84 Stat. 1590 et seq.; 29 U.S.C. Sec. 651 et seq.). However, for the purposes of this section and RCW 77.60.070, all persons who dive for geoducks are deemed to be employees as defined by the federal occupational safety and health act. All harvesting agreements shall provide that failure to comply with these standards is cause for suspension or cancellation of the harvesting agreement. Further, for the purposes of this subsection if the harvester contracts with another person or entity for the harvesting of geoducks, the harvesting agreement shall not be suspended or canceled if the harvester terminates its business relationship with such an entity until compliance with this subsection is secured.

(3) Beginning January 1, 2015, geoduck divers licensed under RCW 77.65.410 must annually complete the geoduck diver safety program established in RCW 43.30.560 in order to be maintained on a department of natural resources' harvest agreement plan of operation. [2013 c 204 § 6. Prior: 2005 c 155 § 708; 2005 c 113 § 3; 2003 c 39 § 43; 1990 c 163 § 4; 1982 1st ex.s. c 21 § 141. Formerly RCW 79.96.080.]

***Reviser's note:** Chapter 79.90 RCW was recodified and/or repealed in its entirety by 2005 c 155.

79.135.220 Geoduck harvesting—Designation of aquatic lands. The department shall designate the areas of state-owned aquatic lands that are available for geoduck harvesting by licensed geoduck harvesters in accordance with *chapter 79.90 RCW. [2005 c 155 § 709; 1990 c 163 § 5; 1983 1st ex.s. c 46 § 129; 1979 ex.s. c 141 § 5. Formerly RCW 79.96.085, 75.28.286.]

***Reviser's note:** Chapter 79.90 RCW was recodified and/or repealed in its entirety by 2005 c 155.

Commercial harvesting of geoducks: RCW 77.60.070, 77.65.410.

79.135.230 Intensive management plan for geoducks. The department may enter into agreements with the department of fish and wildlife for the development of an intensive management plan for geoducks including the development

and operation of a geoduck hatchery. [2005 c 155 § 718; 1994 c 264 § 74; 1984 c 221 § 26. Formerly RCW 79.96.906.]

Additional notes found at www.leg.wa.gov

OYSTER RESERVES

79.135.300 Lease of tidelands set aside as oyster reserves. The department is authorized to lease first or second-class tidelands which have been or that are set aside as state oyster reserves in the same manner as provided elsewhere in this chapter for the lease of those lands. [2005 c 155 § 710; 1982 1st ex.s. c 21 § 142. Formerly RCW 79.96.090.]

79.135.310 Inspection by director of fish and wildlife. The department, upon the receipt of an application for the lease of any first or second-class state-owned tidelands that are set aside as state oyster reserves, shall notify the director of fish and wildlife of the filing of the application describing the lands applied for. It is the duty of the director of fish and wildlife to inspect the reserve for the purpose of determining whether the reserve or any part of the reserve should be retained as a state oyster reserve or vacated. [2005 c 155 § 711; 1994 c 264 § 71; 1982 1st ex.s. c 21 § 143. Formerly RCW 79.96.100.]

79.135.320 Vacation of reserve—Lease of lands—Designated state oyster reserve lands. (1) In the event that the fish and wildlife commission approves the vacation of the whole or any part of a reserve, the department may vacate and offer for lease the parts or all of the reserve as it deems to be for the best interest of the state, and all moneys received for the lease of the lands shall be paid to the department.

(2) Notwithstanding RCW 77.60.020, subsection (1) of this section, or any other provision of state law, the state oyster reserves in Eld Inlet, Hammersley Inlet, or Totten Inlet, situated in Mason or Thurston counties shall permanently be designated as state oyster reserve lands. [2005 c 155 § 712; 2001 c 273 § 4; 2000 c 11 § 30; 1994 c 264 § 72; 1982 1st ex.s. c 21 § 144. Formerly RCW 79.96.110.]

MARINE AQUATIC PLANTS

79.135.400 Seaweed—Marine aquatic plants defined. Unless the context clearly requires otherwise, the definition in this section applies throughout this chapter.

"Marine aquatic plants" means saltwater marine plant species that are dependent upon the marine aquatic or tidal environment, and exist in either an attached or free-floating state. Marine aquatic plants include but are not limited to seaweed of the classes Chlorophyta, Phaeophyta, and Rhodophyta. [1993 c 283 § 2. Formerly RCW 79.96.200, 79.01.800.]

Findings—1993 c 283: "The legislature finds that the plant resources of marine aquatic ecosystems have inherent value and provide essential habitat. These resources are also becoming increasingly valuable as economic commodities and may be declining. The legislature further finds that the regulation of harvest of these resources is currently inadequate to afford necessary protection." [1993 c 283 § 1.]

[Title 79 RCW—page 122]

79.135.410 Seaweed—Personal use limit—Commercial harvesting prohibited—Exception—Import restriction. (1) The maximum daily wet weight harvest or possession of seaweed for personal use from all state-owned aquatic lands and all privately owned tidelands is ten pounds per person. The department in cooperation with the department of fish and wildlife may establish seaweed harvest limits of less than ten pounds for conservation purposes. This section shall in no way affect the ability of any state agency to prevent harvest of any species of marine aquatic plant from lands under its control, ownership, or management.

(2) Except as provided under subsection (3) of this section, commercial harvesting of seaweed from state-owned aquatic lands, and all privately owned tidelands is prohibited. This subsection shall in no way affect commercial seaweed aquaculture.

(3) Upon mutual approval by the department and the department of fish and wildlife, seaweed species of the genus *Macrocystis* may be commercially harvested for use in the herring spawn-on-kelp fishery.

(4) Importation of seaweed species of the genus *Macrocystis* into Washington state for the herring spawn-on-kelp fishery is subject to the fish and shellfish disease control policies of the department of fish and wildlife. *Macrocystis* shall not be imported from areas with fish or shellfish diseases associated with organisms that are likely to be transported with *Macrocystis*. The department shall incorporate this policy on *Macrocystis* importation into its overall fish and shellfish disease control policies. [2005 c 155 § 715; 2003 c 334 § 442; 1996 c 46 § 1; 1994 c 286 § 1; 1993 c 283 § 3. Formerly RCW 79.96.210, 79.01.805.]

Intent—2003 c 334: See note following RCW 79.02.010.

Findings—1993 c 283: See note following RCW 79.135.400.

Additional notes found at www.leg.wa.gov

79.135.420 Seaweed—Harvest and possession violations—Penalties and damages. (1) It is unlawful to exceed the harvest and possession restrictions imposed under RCW 79.135.410.

(2) A violation of this section is a misdemeanor, and a violation taking place on state-owned aquatic lands is subject to the provisions of RCW 79.02.300.

(3) A person committing a violation of this section on private tidelands which he or she owns is liable to the state for treble the amount of damages to the seaweed resource, and a person trespassing on privately owned tidelands and committing a violation of this section is liable to the private tideland owner for treble the amount of damages to the seaweed resource. Damages recoverable include, but are not limited to, damages for the market value of the seaweed, for injury to the aquatic ecosystem, and for the costs of restoration. In addition, the person is liable for reimbursing the injured party for the party's reasonable costs, including but not limited to investigative costs and reasonable attorneys' fees and other litigation-related costs. [2005 c 155 § 716. Prior: 2003 c 334 § 443; 2003 c 53 § 380; 1994 c 286 § 2; 1993 c 283 § 4. Formerly RCW 79.96.220, 79.01.810.]

Intent—2003 c 334: See note following RCW 79.02.010.

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Findings—1993 c 283: See note following RCW 79.135.400.

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Additional notes found at www.leg.wa.gov

79.135.430 Seaweed—Enforcement. The department of fish and wildlife and law enforcement authorities may enforce the provisions of RCW 79.135.410 and 79.135.420. [2005 c 155 § 717; 2003 c 334 § 444; 1994 c 286 § 3; 1993 c 283 § 5. Formerly RCW 79.96.230, 79.01.815.]

Intent—2003 c 334: See note following RCW 79.02.010.

Findings—1993 c 283: See note following RCW 79.135.400.

Additional notes found at www.leg.wa.gov

79.135.900 Savings—1982 1st ex.s. c 21. The enactment of this act including all repeals, decodifications, and amendments shall not be construed as affecting any existing right acquired under the statutes repealed, decodified, or amended or under any rule, regulation, or order issued pursuant thereto; nor as affecting any proceeding instituted thereunder. [1982 1st ex.s. c 21 § 181. Formerly RCW 79.96.901.]

79.135.901 Captions—1982 1st ex.s. c 21. Chapter and section headings as used in this act do not constitute any part of the law. [1982 1st ex.s. c 21 § 182. Formerly RCW 79.96.902.]

79.135.903 Effective date—1982 1st ex.s. c 21 §§ 176 and 179. Sections 176 (amending RCW 79.01.525) and 179 (creating a new section providing for an aquatic lands joint legislative committee) 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. [1982 1st ex.s. c 21 § 185. Formerly RCW 79.96.904.]

79.135.904 Effective date—1982 1st ex.s. c 21. Except as provided in *RCW 79.96.904, this act shall take effect July 1, 1983. [1982 1st ex.s. c 21 § 186. Formerly RCW 79.96.905.]

***Reviser's note:** RCW 79.96.904 was recodified as RCW 79.135.903 pursuant to 2005 c 155 § 1010.

**Chapter 79.140 RCW
AQUATIC LANDS—VALUABLE MATERIALS**

Sections

79.140.001 Intent—2005 c 155.

SALE PROCEDURE

- 79.140.010 Manner of sale—Notice.
- 79.140.020 List of valuable materials.
- 79.140.030 Expenditures for advertising.
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- 79.140.180 Contract for sale of rock, gravel, etc.—Royalties—Consideration of flood protection value.
- 79.140.190 Leases and permits for prospecting and contracts for mining valuable minerals and specific materials from aquatic lands.
- 79.140.200 Option contracts for prospecting and leases for mining and extraction of coal from aquatic lands.
- 79.140.210 Mount St. Helens dredge spoils or materials.

79.140.001 Intent—2005 c 155. See RCW 79.105.001.

SALE PROCEDURE

79.140.010 Manner of sale—Notice. (1) When the department decides to sell any valuable materials situated within or upon any state-owned aquatic lands, it is the duty of the department to fix the date, place, and time of sale, and no sale shall be had on any day that is a legal holiday.

(2) The department shall give notice of the sale by advertisement published once a week for four consecutive weeks immediately preceding the date fixed for sale in the notice, in at least one newspaper published and of general circulation in the county in which the whole or any part of any lot, block, or tract of land containing the valuable material to be sold is situated, and by causing a copy of the notice to be posted in a conspicuous place in the department's Olympia office and the region headquarters administering the sale.

(3) The notice shall: (a) Specify the place and time of sale; (b) estimate the volume of valuable materials; (c) state the appraised value; (d) describe with particularity each parcel of land from which valuable materials are to be sold; and (e) specify that the terms of sale will be posted in the area headquarters and the department's Olympia office. [2005 c 155 § 801. FORMERLY PART OF RCW 79.90.170.]

79.140.020 List of valuable materials. The department shall print a list of valuable materials contained within or upon state-owned aquatic lands, giving appraised value, character of the land, and such other information as may be of interest to prospective buyers. The lists must be issued at least four weeks prior to the date of any sale. The department shall retain for free distribution in its office in Olympia and the regional offices sufficient copies of the lists, to be kept in a conspicuous place or receptacle on the counter of the general and regional office of the department, and, when requested, shall mail copies of the list as issued to any applicant. [2005 c 155 § 802. FORMERLY PART OF RCW 79.90.180.]

79.140.030 Expenditures for advertising. The department is authorized to expend any sum in additional advertising of the sale as is determined to be in the best interests of the state. [2005 c 155 § 803. FORMERLY PART OF RCW 79.90.190.]

79.140.040 Reoffer of sale—Readvertised. Any sale that has been offered, and for which there are no bids received, shall not be reoffered until it has been readvertised as specified in RCW 79.140.010 through 79.140.030. If all sales cannot be offered within the specified time on the advertised date, the sale shall continue on the following day between the hours of ten o'clock a.m. and four o'clock p.m.

[2005 c 155 § 804. FORMERLY PART OF RCW 79.90.200.]

79.140.050 Sale by public auction/sealed bid—Exception. All sales of valuable materials shall be at public auction or by sealed bid to the highest responsible bidder, on the terms prescribed by law and as specified in the notice provided, and no land or materials shall be sold for less than their appraised value. However:

(1) When valuable material has been appraised at an amount not exceeding one hundred thousand dollars, the department, when authorized by the board, may arrange for the sale at public auction of said valuable material and for its removal under such terms and conditions as the department may prescribe, after the department shall have caused to be published not less than ten days prior to sale a notice of such sale in a newspaper of general circulation located nearest to the property to be sold;

(2) Any sale of valuable material on state-owned aquatic lands of an appraised value of ten thousand dollars or less may be sold directly to the applicant for cash without notice or advertising. [2005 c 155 § 805. FORMERLY PART OF RCW 79.90.210.]

Sales of aquaculture products by a leaseholder: RCW 79.135.040.

79.140.060 Determination of highest responsible bidder. (1) To determine the "highest responsible bidder" under RCW 79.140.050, the department shall be entitled to consider, in addition to price, the following:

(a) The financial and technical ability of the bidder to perform the contract;

(b) Whether the bid contains material defects;

(c) Whether the bidder has previously or is currently complying with terms and conditions of any other contracts with the state or relevant contracts with entities other than the state;

(d) Whether the bidder was the "highest responsible bidder" for a sale within the previous five years but failed to complete the sale, such as by not entering into a resulting contract or by not paying the difference between the deposit and the total amount due. However, sales that were bid prior to January 1, 2003, may not be considered for the purposes of this subsection (1)(d);

(e) Whether the bidder has been convicted of a crime relating to the public lands or natural resources of the state of Washington, the United States, or any other state, tribe, or country, where "conviction" includes a guilty plea, or unvacated forfeiture of bail;

(f) Whether the bidder is owned, controlled, or managed by any person, partnership, or corporation that is not responsible under this statute; and

(g) Whether the subcontractors of the bidder, if any, are responsible under this statute.

(2) Whenever the department has reason to believe that the apparent high bidder is not a responsible bidder, the department may award the sale to the next responsible bidder or the department may reject all bids pursuant to RCW 79.140.080. [2005 c 155 § 806. FORMERLY PART OF RCW 79.90.215.]

79.140.070 Sales by public auction—Procedure. (1) Sales by public auction under this chapter shall be conducted under the direction of the department, by its authorized representative. The department's representatives are referred to as auctioneers.

(2) On or before the time specified in the notice of sale each bidder shall deposit with the auctioneer, in cash or by certified check, cashier's check, or postal money order payable to the order of the department, or by bid guarantee in the form of bid bond acceptable to the department, an amount equal to the deposit specified in the notice of sale. The deposit shall include a specified amount of the appraised price for the valuable materials offered for sale, together with any fee required by law for the issuance of contracts or bills of sale. The deposit may, when prescribed in the notice of sale, be considered an opening bid of an amount not less than the minimum appraised price established in the notice of sale. The successful bidder's deposit will be retained by the auctioneer and the difference, if any, between the deposit and the total amount due shall on the day of the sale be paid in cash, certified check, cashier's check, draft, postal money order, or by personal check made payable to the department. If a bid bond is used, the share of the total deposit due guaranteed by the bid bond shall, within ten days of the day of sale, be paid in cash, certified check, cashier's check, draft, or postal money order payable to the department. Other deposits, if any, shall be returned to the respective bidders at the conclusion of each sale.

(3) The auctioneer shall deliver to the purchaser a memorandum of purchase containing a description of the materials purchased, the price bid, and the terms of the sale.

(4) The auctioneer shall at once send to the department the cash, certified check, cashier's check, draft, postal money order, or bid guarantee received from the purchaser, and a copy of the memorandum delivered to the purchaser, together with such additional report of the auctioneer's proceedings with reference to the sales as may be required by the department. [2005 c 155 § 807. FORMERLY PART OF RCW 79.90.220.]

79.140.080 Confirmation of sale. (1) A sale of valuable materials shall be confirmed if:

(a) No affidavit showing that the interest of the state in such a sale was injuriously affected by fraud or collusion, is filed with the department's Olympia office within ten days from the receipt of the report of the auctioneer conducting the sale;

(b) It appears from the report that the sale was fairly conducted, that the purchaser was the highest responsible bidder at the sale, and that the sale price is not less than the appraised value of the property sold;

(c) The department is satisfied that the material sold would not, upon being readvertised and offered for sale, sell for a substantially higher price; and

(d) The payment required by law to be made at the time of making the sale has been made, and that the best interests of the state are being served.

(2) Upon confirming a sale, the department shall enter upon its records the confirmation of sale and issue to the purchaser a contract of sale or bill of sale as the case may be, as

is provided for in this chapter. [2005 c 155 § 808. FORMERLY PART OF RCW 79.90.240.]

SPECIAL PROVISIONS AND LEASES

79.140.100 Valuable materials from Columbia river—Agreements with Oregon. The department is authorized and empowered to confer with and enter into any agreements with the public authorities of the state of Oregon, which in the judgment of the department will assist the state of Washington and the state of Oregon in securing the maximum revenues for sand, gravel, or other valuable materials taken from the bed of the Columbia river where the river forms the boundary line between the states. [2005 c 155 § 109; 1991 c 322 § 24; 1982 1st ex.s. c 21 § 19. Formerly RCW 79.90.130.]

Findings—Intent—1991 c 322: See note following RCW 86.12.200.

79.140.110 Material removed for channel or harbor improvement or flood control—Use for public purpose. When gravel, rock, sand, silt, or other material from any state-owned aquatic lands is removed by any public agency or under public contract for channel or harbor improvement, or flood control, use of the material may be authorized by the department for a public purpose on land owned or leased by the state or any municipality, county, or public corporation. However, when no public land site is available for deposit of the material, its deposit on private land with the landowner's permission is authorized and may be designated by the department to be for a public purpose. Prior to removal and use, the state agency, municipality, county, or public corporation contemplating or arranging the use shall first obtain written permission from the department. No payment of royalty shall be required for the gravel, rock, sand, silt, or other material used for the public purpose, but a charge will be made if the material is subsequently sold or used for some other purpose. Further, the department may authorize the public agency or private landowner to dispose of the material without charge when necessary to implement disposal of material. No charge shall be required for any use of the material obtained under the provisions of this chapter when used solely on an authorized site. No charge shall be required for any use of the material obtained under the provisions of this chapter if the material is used for public purposes by local governments. Public purposes include, but are not limited to, construction and maintenance of roads, dikes, and levies. Nothing in this section shall repeal or modify the provisions of *RCW 77.55.100 or eliminate the necessity of obtaining a permit for the removal from other state or federal agencies as otherwise required by law. [2005 c 155 § 110; 2003 c 39 § 41; 1991 c 337 § 1; 1982 1st ex.s. c 21 § 21. Formerly RCW 79.90.150.]

***Reviser's note:** RCW 77.55.100 was repealed by 2005 c 146 § 1006. For later enactment, see RCW 77.55.021.

79.140.130 Prior appraisal required. In no case shall any valuable materials situated within or upon any tidelands, shorelands, or beds of navigable waters belonging to the state, be offered for sale unless the same shall have been appraised by the department of natural resources within

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ninety days prior to the date fixed for the sale. [2005 c 155 § 809. FORMERLY PART OF RCW 79.90.110.]

79.140.140 Bill of sale for valuable material sold separately. When valuable materials are sold separate from state-owned aquatic lands and the purchase price is paid in full, the department shall cause a bill of sale, signed by the commissioner and attested by the seal of the commissioner's office, setting forth the time within which the material shall be removed. The bill of sale shall be issued to the purchaser and shall be recorded in the department's Olympia office, upon the payment of the fee provided for in this chapter. [2005 c 155 § 126; 1982 1st ex.s. c 21 § 35. Formerly RCW 79.90.290.]

79.140.150 Sale of rock, gravel, sand, silt, and other valuable materials. The department, upon application by any person or when determined by the department to be in the best interest of the state, may enter into a contract or lease providing for the removal and sale of rock, gravel, sand, and silt, or other valuable materials located within or upon beds of navigable waters, or upon any state-owned tidelands or shorelands and providing for payment to be made by such royalty as the department may fix, by negotiation, by sealed bid, or at public auction. If application is made for the purchase of any valuable material situated within or upon state-owned aquatic lands the department shall inspect and appraise the value of the material in the application. [2005 c 155 § 127; 1991 c 322 § 26; 1982 1st ex.s. c 21 § 36. Formerly RCW 79.90.300.]

Findings—Intent—1991 c 322: See note following RCW 86.12.200.

79.140.160 Sale of rock, gravel, sand, and silt—Application—Terms of lease or contract—Bond—Payment—Reports. Each application made pursuant to RCW 79.140.150 shall set forth the estimated quantity and kind of materials desired to be removed and shall be accompanied by a map or plat showing the area from which the applicant wishes to remove the materials. The department may in its discretion include in any lease or contract entered into pursuant to RCW 79.140.150 through 79.140.170, terms and conditions deemed necessary by the department to protect the interests of the state. In each lease or contract the department shall provide for a right of forfeiture by the state, upon a failure to operate under the lease or contract or pay royalties or rent for periods therein stipulated, and the department shall require a bond with a surety company authorized to transact a surety business in this state, as surety to secure the performance of the terms and conditions of the contract or lease including the payment of royalties. The right of forfeiture shall be exercised by entry of a declaration of forfeiture in the records of the department. The amount of rock, gravel, sand, or silt taken under the contract or lease shall be reported monthly by the purchaser to the department and payment made on the basis of the royalty provided in the lease or contract. [2005 c 155 § 128; 1982 1st ex.s. c 21 § 37. Formerly RCW 79.90.310.]

79.140.170 Sale of rock, gravel, sand, and silt—Investigation, audit of books of person removing. The department may inspect and audit books, contracts, and

accounts of each person removing rock, gravel, sand, or silt pursuant to any lease or contract under RCW 79.140.150 and 79.140.160 and make such other investigation and secure or receive any other evidence necessary to determine whether or not the state is being paid the full amount payable to it for the removal of the materials. [2005 c 155 § 129; 1982 1st ex.s. c 21 § 38. Formerly RCW 79.90.320.]

79.140.180 Contract for sale of rock, gravel, etc.—Royalties—Consideration of flood protection value. Whenever, pursuant to RCW 79.15.300, the department enters into a contract for the sale and removal of rock, gravel, sand, or silt out of a riverbed, the department shall, when establishing a royalty, take into consideration flood protection value to the public that will arise as a result of the removal. [2005 c 155 § 130; 2003 c 334 § 602; 1984 c 212 § 10. Formerly RCW 79.90.325, 79.01.135.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.140.190 Leases and permits for prospecting and contracts for mining valuable minerals and specific materials from aquatic lands. The department may issue permits and leases for prospecting, placer mining contracts, and contracts for the mining of valuable minerals and specific materials, except rock, gravel, sand, silt, coal, or hydrocarbons, upon and from any state-owned aquatic lands, or which have been sold and the minerals reserved by the state in tracts not to exceed six hundred forty acres or an entire government-surveyed section. The procedures contained at RCW 79.14.300 through 79.14.450, inclusive, shall apply. [2005 c 155 § 131; 2003 c 334 § 603; 1987 c 20 § 16; 1982 1st ex.s. c 21 § 39. Formerly RCW 79.90.330.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.140.200 Option contracts for prospecting and leases for mining and extraction of coal from aquatic lands. The department is authorized to execute option contracts for prospecting purposes and leases for the mining and extraction of coal from any state-owned aquatic lands or from which it may acquire title, or from any aquatic lands sold or leased by the state the minerals of which have been reserved by the state. The procedures contained at RCW 79.14.470 through 79.14.580, inclusive, shall apply. [2005 c 155 § 132; 2003 c 334 § 604; 1982 1st ex.s. c 21 § 40. Formerly RCW 79.90.340.]

Intent—2003 c 334: See note following RCW 79.02.010.

79.140.210 Mount St. Helens dredge spoils or materials. (1)(a) The legislature finds and declares that an extraordinary volume of material washed down onto beds of navigable waters and shorelands in the Toutle river, Coweeman river, and portions of the Cowlitz river following the eruption of Mount St. Helens in 1980.

(b) The legislature further finds that the owners of private lands located near the impacted rivers were authorized to sell, transfer, or otherwise dispose of any dredge spoils removed from the river between the years of 1980 and 1995 without the necessity of any charge by the department.

(c) The legislature further finds that the dredging activities following the eruption of Mount St. Helens are no longer adequate to protect engineered structures on the affected riv-

ers or the public health and safety of the communities located in proximity to the affected rivers. Future river dredging will be necessary as part of managing the post-eruption state of the rivers, and with the commencement of new dredging activities, the underlying conditions leading to the previous authority for private landowners to dispose of the dredged materials without the necessity of any charge by the department are replicated.

(d) The legislature further finds that just as between the years of 1980 and 1995, the dredge spoils placed upon adjacent publicly and privately owned property in the affected areas, if further disposed, will be of nominal value to the state and that it is in the best interests of the state to allow further disposal without charge.

(2) All dredge spoil or materials removed from the state-owned beds and shores of the Toutle river, Coweeman river, and that portion of the Cowlitz river from two miles above the confluence of the Toutle river to its mouth deposited on adjacent public and private lands before December 31, 2035, as a result of dredging the affected rivers for navigation and flood control purposes that as of June 10, 2010, have not been sold, transferred, or otherwise disposed of by owners of the lands, may be sold, transferred, or otherwise disposed of by owners of the lands without the necessity of any charge by the department and free and clear of any interest of the department. [2010 c 57 § 1; 2009 c 426 § 1.]

Retroactive application—2010 c 57: "This act applies to all dredge spoil or materials removed from the state-owned beds and shores of the Toutle river, Coweeman river, and that portion of the Cowlitz river from two miles above the confluence of the Toutle river to its mouth deposited on adjacent public and private lands as a result of dredging the affected rivers for navigation and flood control purposes following the eruption of Mount St. Helens in 1980 that, as of June 10, 2010, have not been sold, transferred, or otherwise disposed of by owners of the lands. To this extent, this act applies retroactively, but in all other respects it applies prospectively." [2010 c 57 § 2.]

Chapter 79.145 RCW MARINE PLASTIC DEBRIS

Sections

79.145.001	Intent—2005 c 155.
79.145.010	Intent.
79.145.020	Definitions.
79.145.030	Coordinating implementation—Rules.
79.145.040	Agreements with other entities.
79.145.050	Employees—Information clearinghouse contracts.
79.145.060	Grants, funds, or gifts.

79.145.001 Intent—2005 c 155. See RCW 79.105.001.

79.145.010 Intent. The legislature finds that the public health and safety is threatened by an increase in the amount of plastic garbage being deposited in the waters and on the shores of the state. To address this growing problem, the commissioner appointed the marine plastic debris task force which presented a state action plan in October 1988. It is necessary for the state of Washington to implement the action plan in order to:

- (1) Cleanup and prevent further pollution of the state's waters and aquatic lands;
- (2) Increase public awareness;
- (3) Coordinate federal, state, local, and private efforts;

(4) Foster the stewardship of the aquatic lands of the state. [2005 c 155 § 901; 1989 c 23 § 1. Formerly RCW 79.97.010, 79.81.010.]

79.145.020 Definitions. As used in this chapter:

(1) "Department" means the department of natural resources.

(2) "Action plan" means the marine plastic debris action plan of October 1988 as presented to the commissioner by the marine plastic debris task force. [2005 c 155 § 902; 1989 c 23 § 2. Formerly RCW 79.97.020, 79.81.020.]

79.145.030 Coordinating implementation—Rules.

The department shall have the authority to coordinate implementation of the action plan with appropriate state agencies including the parks and recreation commission and the departments of ecology and fish and wildlife. The department is authorized to adopt, in consultation with affected agencies, the necessary rules to provide for the cleanup and to prevent pollution of the waters of the state and aquatic lands by plastic and other marine debris. [2005 c 155 § 903; 1994 c 264 § 65; 1989 c 23 § 3. Formerly RCW 79.97.030, 79.81.030.]

79.145.040 Agreements with other entities.

The department may enter into intergovernmental agreements with federal or state agencies and agreements with private parties deemed necessary by the department to carry out the provisions of this chapter. [1989 c 23 § 4. Formerly RCW 79.97.040, 79.81.040.]

79.145.050 Employees—Information clearinghouse contracts.

The department is the designated agency to coordinate implementation of the action plan and is authorized to hire such employees as are necessary to coordinate the action plan among state and federal agencies, the private sector, and interested public groups and organizations. The department is authorized to contract, through an open bidding process, with interested parties to act as the information clearinghouse for marine plastic debris related issues. [2005 c 155 § 904; 1989 c 23 § 5. Formerly RCW 79.97.050, 79.81.050.]

79.145.060 Grants, funds, or gifts.

The department is authorized to accept, receive, disburse, and administer grants or funds or gifts from any source including private individuals, public entities, and the federal government to supplement the funds appropriated to carry out the purposes of this chapter. [2005 c 155 § 905; 1989 c 23 § 6. Formerly RCW 79.97.060, 79.81.060.]

Chapter 79.150 RCW

FOREST BIOMASS MATERIALS LOCATED ON STATE LANDS

Sections

79.150.010	Findings.
79.150.020	List of potential sources of forest biomass on state lands.
79.150.030	Forest biomass supply contracts.
79.150.040	Lease of state land for resource use derived from biomass.
79.150.050	Evaluation of supply agreements under RCW 79.150.030 and 79.150.040—Report to the legislature—Demonstration project authorized.

79.150.010 Findings. The legislature finds that the utilization of forest biomass materials located on state lands will assist in achieving the purposes of the forest biomass energy demonstration project under RCW 43.30.835, facilitate and support the emerging forest biomass market and clean energy economy, and enable the department to encourage biomass energy development on state trust lands for the trust land's potential long-term benefits to trust beneficiaries. The legislature finds that biomass utilization on state forestlands must be accomplished in a manner that retains organic components of the forest necessary to restore or sustain forest ecological functions. [2010 c 126 § 1.]

79.150.020 List of potential sources of forest biomass on state lands.

(1) The department may maintain a list of all potential sources of forest biomass on state lands for the purposes of identifying and making forest biomass, as defined in RCW 79.02.010, available for sale, exploration, collection, processing, storage, stockpiling, and conversion into energy, biofuels, for use in a biorefinery, or any other similar use. Prior to entering an agreement authorized by RCW 79.150.030(1) or 79.150.040, the department shall complete an inventory of the available biomass in the area that will be subject to the agreement, except that no inventory will be required as a prerequisite for demonstration projects authorized pursuant to RCW 43.30.835. The inventory must contain, at a minimum, an estimated amount of the forest biomass available in the area that will be subject to the agreement and a determination of the ecological and operational sustainability of the volumetric limit established by the agreement under RCW 79.150.030(5).

(2) The data developed for each inventoried area will be compiled for the list authorized by this section. In order to utilize the list to limit or terminate any agreement authorized under chapter 126, Laws of 2010, the department must determine that the overall supply of forest biomass in a region or watershed has been reduced to a point such that further exploration and collection of forest biomass may not be ecologically or operationally sustainable or might otherwise threaten long-term forest health. [2010 c 126 § 2.]

79.150.030 Forest biomass supply contracts.

(1) The department is authorized to enter forest biomass supply contracts on terms and conditions acceptable to the department for terms of up to five years, except as provided in subsection (4) of this section, for the purpose of providing a supply of forest biomass during the term of the contract except as the term of the contract may be limited under subsection (2) of this section, provided that such a contract must terminate automatically upon the removal of the agreed volume of biomass and the completion of other conditions of the contract.

(2) The department may authorize the sale of forest biomass in a contract for the sale of valuable materials under chapter 79.15 RCW provided that the department complies with the provisions of this chapter and: (a) Requires a separate bid and selects an apparent highest bidder for the forest biomass separately from the sale of valuable materials; (b) expressly includes forest biomass as an element of the sale of the valuable materials to be sold in the sales contract; or (c) a combination of (a) and (b) of this subsection. The term of the contract for the removal of biomass, if the sale is made in

conformance with this subsection, must not exceed the term of the contract for valuable materials sold under chapter 79.15 RCW.

(3) The department may: (a) Enter into direct sales contracts for forest biomass, without public auction, based upon procedures adopted by the board to ensure competitive market prices and accountability; or (b) enter into contracts for forest biomass at public auction or by sealed bid to the highest bidder in a manner consistent with the sale procedures established for the sale of valuable materials in chapter 79.15 RCW or as may be adopted by the board.

(4) In the event a contracting entity makes a qualifying capital investment of fifty million dollars or more, the department may enter into an agreement for up to fifteen years. Such an agreement must include provisions that are periodically adjusted for market conditions. In addition, the conditions of the contract must include provisions that allow the department, when in the best interest of trust beneficiaries, to maintain the availability of biomass resources on state lands to existing pulp and paper operations or other existing biomass processing operations that are using such resources, in quantities typical for the period of five years preceding June 10, 2010. For the purposes of this section, "qualifying capital investment" means a planned and committed investment at the time the contract is set with the requirement that at least fifty million dollars be invested before the removal of any biomass under the contract.

(5) The department must specify in each contract an annual volumetric limit of the total cubic volume or tons of forest biomass to be supplied from a specific unit, geographically delineated area, or region within a watershed or watersheds on an ecologically and operationally sustainable basis. The department shall adopt general procedures for making the biomass supply availability determinations under this subsection. The procedures must be written to ensure that biomass utilization on forestlands managed by the department is accomplished in a manner that retains organic components of the forest necessary to restore or sustain forest ecological functions. The department shall develop utilization standards and operational methods in recognition of the variability of on-site conditions. The department may unilaterally amend the volume to be supplied by providing the contracting party with a minimum of six months notice prior to reducing the contract volume to be supplied if the department determines, under RCW 79.150.020, that the available supply has been reduced to a point such that further removal of forest biomass may not be ecologically or operationally sustainable or may adversely affect long-term forest health.

(6) At the expiration of the contract term, the department may renew the contract for up to three additional five year periods on terms and conditions acceptable to the department, if the department finds: (a) An ecologically and operationally sustainable supply of forest biomass is available for the term of the contract; (b) the payment under the contract represents the fair market value at the time of the renewal; and (c) the purchaser agrees to the estimated amount of biomass material available.

(7) Where the department sells forest biomass in a contract for sale of valuable materials under subsection (2) of this section, any valuable material conveyed as timber in such a contract must count toward the achievement of annual or

decadal targets developed in the sustainable timber harvest calculation required by RCW 79.10.320, or similar targets for timber harvest volume, even where the purchaser uses that material as a biomass energy feedstock. All other biomass volume conveyed as authorized in this chapter must not be counted toward such sustainable timber harvest targets.

(8) All contractors and their operations authorized under this section shall comply with all applicable state and federal laws and regulations. [2010 c 126 § 3.]

79.150.040 Lease of state land for resource use derived from biomass. The department is authorized to lease state lands for the purpose of the sale, exploration, collection, processing, storage, stockpiling, and conversion of biomass into energy or biofuels, the development of a biorefinery, or for any other resource use derived from biomass if the department is able to obtain a fair market rental return to the state or the appropriate constitutional or statutory trust and if the lease is in the best interest of the state and the affected trust, as follows:

(1) Leases authorized under this chapter may be entered into by public auction, in accordance with the provisions of RCW 79.13.140, or by negotiation.

(2) All leases must contain such terms and conditions as may be prescribed by the department in accordance with the provision of chapter 126, Laws of 2010 and to ensure that removal of forest biomass is ecologically and operationally sustainable. Leases authorized under chapter 126, Laws of 2010 may be for a term of no more than fifty years.

(3) For leases that involve the development of biomass processing, biofuel manufacturing, or biomass energy production facilities, the department may include provisions for reduced rent until an approved plan of development is completed and the facility is operational, provided that provisions are included to require: (a) Adequate assurances to protect the department's interest in a future rental income stream; (b) the demonstration of reasonable progress consistent with an approved plan of development; and (c) a lump sum payment to the department in the amount of the difference between the fair market rent and the reduced rent, if the approved plan of development is not completed in the time required in the plan.

(4) The department may require the payment of production rent or other compensation for the use of the land and biomass materials on the land. If the department is not entering a supply contract under RCW 79.150.030 for any forest biomass to be supplied for the lease purposes from the leased land, then the department must require a royalty payment for the contribution to value of any product created by the lessee that is associated with forest biomass removed from the leased land in an amount fixed by the board.

(5) All lessees and their operations authorized under this section shall comply with all applicable state and federal laws and regulations. [2010 c 126 § 4.]

79.150.050 Evaluation of supply agreements under RCW 79.150.030 and 79.150.040—Report to the legislature—Demonstration project authorized. (1) For the purpose of improving forest health on state trust lands, and to better clarify the relationship of forest biomass with the by-products of forest health and fuel reduction treatments that

have been traditionally utilized for other products, the department of natural resources shall evaluate how the supply agreements in RCW 79.150.030 and 79.150.040 could be utilized to sustain or create rural jobs and timber manufacturing infrastructure, and to sell state timber to traditional types of timber purchasers. The department shall report its findings to the appropriate committees of the legislature by December 15, 2010, and the evaluation must at a minimum identify how such supply agreements could:

- (a) Ensure the department of natural resources meets its fiduciary responsibility to the state's trust beneficiaries;
- (b) Restore or sustain a competitive market for state timber sales;
- (c) Generate returns for the trust that are commensurate with fluctuating market prices; and
- (d) Ensure environmental compliance with all pertinent state and federal laws, and provide for ecologically and operationally sustainable biomass removal.

(2) For the purposes of proving the concepts evaluated in this section, the department may, in addition to the authorities granted in RCW 79.150.030, establish a five-year forest health and fuel reduction supply agreement demonstration project. Solicitation of private industry partners for such a project must be competitive, must focus on areas where traditional forest products manufacturing infrastructure and rural jobs have been lost, and should consider prioritizing partners utilizing materials for both traditional forest products and biomass energy conversion. [2010 c 126 § 5.]

Chapter 79.155 RCW COMMUNITY FOREST TRUSTS

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79.155.010 Findings. (1) The legislature finds that since the 1980s, about seventeen percent of Washington's commercial forests have been converted to other land uses.

(2) The legislature further finds that as these forests vanish, so do the multiple benefits they provide to our communities such as local timber jobs, clean air and water, carbon storage, fish and wildlife habitat, recreation areas, and open space.

(3) The legislature further finds that it has provided policy direction to the department of natural resources to protect

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working forest and natural resource lands at risk of conversion, while maintaining the department's obligation to manage the state's fiduciary trust lands and financial assets in the interest of the beneficiaries of the respective trust lands and assets.

(4) The legislature further finds that there are numerous tools available to acquire open space and recreation lands, but limited tools to protect working forestlands.

(5) The legislature further finds that currently the department of natural resources lacks a full complement of policy and management tools necessary to protect or manage working forestlands at high risk of conversion.

(6) The legislature further finds that through modest enhancements to existing department of natural resources' programs and authorities, the legislature can expand Washington's ability to protect communities' working forestlands, while simultaneously improving the revenue generating performance of fiduciary trust lands managed by the department of natural resources.

(7) The legislature further finds that there has been past and present legislative intent to ensure continued public access for recreation compatible with the purposes of the lands involved.

(8) The legislature further finds that there exists an interest by local communities, governments, and conservation organizations in cooperating in the establishment of working community forests. [2011 c 216 § 1.]

79.155.020 Community forestland trust—Department authorized to create and manage. (1) If deemed practicable by the commissioner, the department is authorized to create and manage, consistent with the provisions of this chapter, a discrete category of natural resource lands in a nonfiduciary community forestland trust. The department is authorized to assemble, hold title to, and manage directly or through mutual agreement with other landowners land suitable for sustainable forest management, to be held in the community forest trust.

(2) All land held in the community forest trust must be held by the department and actively managed, consistent with a community working forest management plan developed under RCW 79.155.080, to generate financial support for the management of the community forest trust and to advance and sustain the working forest conservation objectives established in the management plan. [2011 c 216 § 2.]

79.155.030 Identification of lands—Minimum program management principles. (1) The department must identify lands for inclusion into the community forest trust, and manage the resulting community forest trust lands, in furtherance of goals that must be identified by the department prior to the creation of a community forest.

(2) In addition to any goals for a community forest identified by the department, the community forest trust program must satisfy the following minimum program management principles:

(a) Protecting in perpetuity working forestlands that are at a significant risk of conversion to another land use;

(b) Securing financial and social viability through sound management plans and objectives that are consistent with the values of the local community;

(c) Maintaining the land in a working status, through traditional forestry, management of specialized forest products harvest consistent with chapter 76.48 RCW, land leases, renewable energy opportunities, ecosystem services such as clean water protection or carbon storage, and other sources of revenue appropriate for the community forest to generate;

(d) Generating revenue at levels that are, at a minimum, capable of reimbursing the department for management costs and providing for some reinvestment into the management objectives of the community forest;

(e) Providing for ongoing, sustainable public recreational access, local timber jobs, clean air and water, carbon storage, fish and wildlife habitat, and open space in a manner that is compatible with management plans and objectives adopted for the community forest; and

(f) Providing educational opportunities for local communities regarding the benefits that working forests provide to Washington's economy, communities, environment, and quality of life. [2011 c 216 § 3.]

79.155.040 Department's authority. (1)(a) Except as limited by RCW 79.155.070, the department is authorized to acquire by purchase, gift, donation, grant, transfer, or other means other than eminent domain fee interest or a partial interest, including conservation easements, in lands or other real property suitable for management as part of the community forest trust and that are appropriate to further the goals of the community forest trust.

(b) The fair market value of any real property, and the associated valuable materials, of any land transferred into the community forest trust from state lands must be provided to the beneficiaries of the transferee [transferor] trust or used for the furtherance of the transferee [transferor] trust.

(2) The department is authorized to receive funds for purposes of establishing the community forest trust from grants, gifts, bequests, or loans, whether public or private, as well as from legislative appropriation.

(3) All acquisitions of real property for the community forest trust must be approved by the board. [2011 c 216 § 4.]

79.155.050 Criteria for identification and prioritization of forestlands suitable for potential inclusion in the community forest trust. (1) The department shall, if it establishes a community forest trust program, develop criteria to be used for the identification and prioritization of forestland that is suitable for potential inclusion in the community forest trust due to its ability to most closely satisfy the goals of the community forest trust outlined in RCW 79.155.030.

(2) In prioritizing forestland for inclusion in the community forest trust, the department shall give priority consideration to lands that are:

(a) The subject of established management and revenue production objectives of potential local community partners;

(b) At greatest risk of conversion;

(c) Helping buffer commercial public or private forestlands from encroaching development;

(d) Helping to block up other community forest assets to be managed consistently with the community forest trust acquisition;

(e) Able to be managed, considering surrounding current or expected future land use, as economically sustainable working forestland either alone or in combination with adjacent and nearby working forestland, including other lands incorporated into a community forest by the department, a local governmental entity, or a not-for-profit conservation organization managing forestlands;

(f) Eligible for trust land transfer capital appropriations;

(g) Available for acquisition through existing or new programs or funding;

(h) Supporting existing or expanded forest product manufacturing infrastructure;

(i) Useful in leveraging funds to match available acquisition moneys;

(j) Positioned to have their development rights extinguished through transfer, purchase, conservation easement, lease, or by some other comparable mechanism; or

(k) Enhancing state fiduciary trust land revenues by repositioning underperforming state trust lands to provide short and long-term revenues to that trust. [2011 c 216 § 5.]

79.155.060 Prioritized list identifying nominated parcels of state land or state forestland. (1) The department shall, if it establishes a community forest trust program, submit biennially to the office of financial management and the appropriate committees of the legislature a prioritized list that identifies nominated parcels of state land or state forestland that are suitable for transfer into the community forest trust, where such a transfer is also in the best interest of the respective trust. The department shall solicit and consider input from the board on a draft list before submitting a final prioritized list.

(2) The list of nominated parcels must reflect consideration of local nominations and the priorities outlined in RCW 79.155.050 and be delivered to the required recipients by November 1st of each even-numbered year. [2011 c 216 § 6.]

79.155.070 Local community must commit to preserving land as a working forest—Financial contribution. (1) The department must, prior to using the authority provided in RCW 79.155.040 to acquire land for inclusion in a community forest, obtain from the local community a commitment to preserving the land as a working forest.

(2) Following initial agreement between potential local community partners and the department regarding management and revenue production objectives for the lands in question, the local commitment to preserving the land as a working forest must be demonstrated by the county, city, or other local entity providing a financial contribution to the specific community forest of at least fifty percent of the difference between the parcel's appraised fair market value and the parcel's timber and forestland value. The local community contribution may be provided through any means deemed acceptable by the department and the local contributor, including:

(a) Traditional financing or bonding;

(b) The purchase of conservation easements; or

(c) The purchase or transfer of development rights.

(3) The local financial contribution must be deposited into the parkland trust revolving fund created in RCW 43.30.385 and used solely for acquisition of the community

forest trust land parcel or parcels for which it is intended. [2011 c 216 § 7.]

79.155.080 Postacquisition management plan. (1) All lands transferred into community forest trust status must be managed in accordance with a postacquisition management plan developed by the department consistent with this section.

(2) After exercising the authority provided in RCW 79.155.040 to acquire land for inclusion in a community forest, the department must establish a local advisory committee in cooperation with any interested and affected local government.

(3) The department must use the local advisory committee as a source of advice and comment on a postacquisition management plan. Comments and advice should, at a minimum, include plans for how the department will maintain the land's working status and economic viability objectives through revenue-generating activities that are sufficient to generate ongoing revenue at a level that reimburses administrative costs, while satisfying, or contributing to, identified community conservation and recreation objectives.

(4)(a) If, after a good faith effort by all parties, the department and the local advisory committee fail to reach a consensus on a conceptual postacquisition management plan for the parcel in question, the department may either adopt a management plan informed by the community or recommend to the board that the parcel be divested through the existing authority of the department and the board. If the parcel is divested, then, except as otherwise provided in this subsection, proceeds must return to the parkland trust revolving fund created in RCW 43.30.385.

(b) Prior to depositing the proceeds of a land divestiture under this subsection to the parkland trust revolving fund, the department must first reimburse local entities that have made financial contributions to the parcel's acquisition as provided in RCW 79.155.070(2). However, local entities are only eligible for reimbursement upon divestiture under this subsection if the board determines that:

(i) The subsequent parcel use is likely to remain a working forest, the department secures full fair market value for the parcel, and the local entity's contribution was not provided by a state or federal grant; or

(ii) The funds used as part of the local contribution were originally provided through a grant that requires, as a condition of the grant, the repayment of granted dollars if the purposes of the grant are not or cannot be fulfilled and the decision to divest the land creates an inability for the purposes of the grant to be fulfilled. [2011 c 216 § 8.]

79.155.090 Use of revenue produced on community forest trust lands. (1) Any revenue produced on community forest trust lands must be allocated as follows:

(a) All costs incurred by the department in managing the parcel must be fully reimbursed; and

(b) After the department's management costs are reimbursed, any remaining revenue must then be prioritized to fulfill the management objectives for the specific parcel as identified in the postacquisition management plan developed under RCW 79.155.080 consistent with the management principles outlined in RCW 79.155.030.

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(2)(a) If, by the determination of the board, there is revenue remaining in any given biennium after fulfilling the requirements of subsection (1) of this section, then the board has the discretion to reimburse any local entities' eligible financial contributions for acquisition of the parcel under RCW 79.155.070(2) and any state contribution to the acquisition of the parcel up to an amount that represents fifty percent of the difference between the parcel's original appraised fair market value and the parcel's timber and forestland value. However, any funds used as part of the local contribution may not be reimbursed if the funds were originally provided through a state or federal grant, provided through a fully compensated transfer of development rights at fair market value, or provided by a donation of funds or property.

(b) If the board decides to reimburse the state and local contribution, then it must allocate the reimbursement so that fifty percent is provided to the state general fund and fifty percent is provided to any eligible partnering local entities.

(c) Nothing in this section creates an expectation, requirement, or fiduciary duty for the board or the associated community forest trust lands to generate revenue in excess of amounts as provided in subsection (1)(a) of this section. [2014 c 32 § 5; 2011 c 216 § 9.]

79.155.100 Periodic review and update of community forest trust program. By September 1, 2014, and periodically, but at least once every ten years thereafter, the department shall provide to the board a review and update of the community forest trust program. The review must include updates on the performance of the community forest trust statewide and notification of any community forest trust parcels not performing according to their management plan. The department is authorized to, consistent with this chapter, recommend to the board action to divest itself of nonperforming community forest trust parcels using existing policies and mechanisms available to the department and the board. [2011 c 216 § 10.]

79.155.110 Statewide advisory committee. (1) The commissioner may establish and maintain a statewide advisory committee to assist the department in the implementation of this chapter.

(2) If a statewide advisory committee is established, the commissioner shall appoint a balanced representation of interests on the committee, including representatives of state fiduciary trust land beneficiaries, tribal governments, local governments, relevant state agencies, commercial forest landowners, land trusts, and conservation organizations.

(3) The statewide advisory committee shall provide consultation on issues and questions presented by the commissioner and may be dissolved by the commissioner at any time.

(4) Participation on the statewide advisory committee is voluntary and members are not eligible for any form of compensation nor for reimbursement for expenses incurred due to service on the committee. [2011 c 216 § 11.]

79.155.120 Establishing community forest districts/local working forest districts—Technical assistance grants. (1) The commissioner may, if deemed practicable and beneficial by the commissioner, cooperate with inter-

ested local governments in establishing community forest districts or local working forest districts that are compatible with the goals identified in this chapter for the community forest trust. Cooperative districts would attempt to voluntarily synchronize the management of community forest trust lands, other public lands, and private lands located within a certain geographic area to further a common set of community goals. If a working forest district encompasses state lands or state forestlands, then their voluntary management to further a common set of community goals must be consistent with the department's fiduciary and other legal obligations to the trust, including the multiple use act in chapter 79.10 RCW.

(2)(a) The department may, in its sole discretion and if it deems sufficient funding to be available, provide technical assistance grants to local communities for the purpose of enabling or furthering the development of community forest management plans consistent with this chapter.

(b) This subsection does not create a private right of action. [2011 c 216 § 12.]

79.155.130 Authority to manage state lands— Authority to develop management procedures. The authorities granted under Title 79 RCW for the management of state lands apply to the community forest trust to the extent consistent with the purposes of chapter 216, Laws of 2011. The department may develop management procedures deemed necessary by the department to implement chapter 216, Laws of 2011. [2011 c 216 § 18.]

79.155.140 Distribution of an amount in lieu of real property taxes. The state treasurer, on behalf of the department, must distribute to counties for all lands acquired from private landowners for the purposes of this chapter an amount in lieu of real property taxes equal to the amount of tax that would be due if the land were taxable as open space land under chapter 84.34 RCW except taxes levied for any state purpose, plus an additional amount equal to the amount of weed control assessment that would be due if such lands were privately owned. The county assessor and county legislative authority shall assist in determining the appropriate calculation of the amount of tax that would be due. The county shall distribute the amount received under this section in lieu of real property taxes to all property taxing districts except the state in appropriate tax code areas the same way it would distribute local property taxes from private property. The county shall distribute the amount received under this section for weed control to the appropriate weed district. [2013 2nd sp.s. c 11 § 14.]

79.155.150 Community forest trust account. The community forest trust account is created in the state treasury. All moneys received for the acquisition, sale, management, and administration of the department's duties under this chapter for community forest trust lands including, but not limited to, proceeds from the sale of valuable materials from community forest trust lands, interest earned on investments in the account, and all other revenue related to community forest trust lands created or acquired pursuant to this chapter must be deposited into the account. The account is authorized to receive fund transfers and appropriations from the general

fund, as well as gifts, grants, and endowments from public or private sources as may be made from time to time. Moneys in the account may be spent only after appropriation. Expenditures from the account may be used by the commissioner to reimburse management costs incurred by the department on community forest trust lands, for the acquisition of interests in land or other real property to be managed as community forest trust lands, for technical assistance grants pursuant to RCW 79.155.120, and for all other purposes consistent with this chapter. However, the board may authorize any expenditures made to: (1) Reimburse state and local governmental entities' eligible financial contributions for the acquisition of community forest trust lands under RCW 79.155.090; or (2) acquire real property for the community forest trust under RCW 79.155.040(3). [2014 c 32 § 1.]