

Title 81

TRANSPORTATION

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81.01.010 Adoption of provisions of chapter 80.01 RCW. The provisions of chapter 80.01 RCW, as now or hereafter amended, apply to Title 81 RCW as fully as though they were set forth herein. [1961 c 14 § 81.01.010.]

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81.04.010 Definitions. As used in this title, unless specially defined otherwise or unless the context indicates otherwise:

(1) "Commission" means the utilities and transportation commission.

(2) "Commissioner" means one of the members of such commission.

(3) "Corporation" includes a corporation, company, association, or joint stock association.

(4) "Low-level radioactive waste site operating company" includes every corporation, company, association, joint stock association, partnership, and person, their lessees, trustees, or receivers appointed by any court whatsoever, owning, operating, controlling, or managing a low-level radioactive waste disposal site or sites located within the state of Washington.

(5) "Low-level radioactive waste" means low-level waste as defined by RCW 43.145.010.

(6) "Person" includes an individual, a firm, or copartnership.

(7) "Street railroad" includes every railroad by whatsoever power operated, or any extension or extensions, branch or branches thereof, for public use in the conveyance of persons or property for hire, being mainly upon, along, above, or below any street, avenue, road, highway, bridge, or public place within any one city or town, and includes all equipment, switches, spurs, tracks, bridges, right of trackage, subways, tunnels, stations, terminals, and terminal facilities of every kind used, operated, controlled, or owned by or in connection with any such street railroad, within this state.

(8) "Street railroad company" includes every corporation, company, association, joint stock association, partnership, and person, their lessees, trustees, or receivers appointed by any court whatsoever, and every city or town, owning, controlling, operating, or managing any street rail-

road or any cars or other equipment used thereon or in connection therewith within this state.

(9) "Railroad" includes every railroad, other than street railroad, by whatsoever power operated for public use in the conveyance of persons or property for hire, with all facilities and equipment, used, operated, controlled, or owned by or in connection with any such railroad.

(10) "Railroad company" includes every corporation, company, association, joint stock association, partnership, or person, their lessees, trustees, or receivers appointed by any court whatsoever, owning, operating, controlling, or managing any railroad or any cars or other equipment used thereon or in connection therewith within this state.

(11) "Common carrier" includes all railroads, railroad companies, street railroads, street railroad companies, commercial ferries, motor freight carriers, auto transportation companies, charter party carriers and excursion service carriers, private nonprofit transportation providers, solid waste collection companies, household goods carriers, hazardous liquid pipeline companies, and every corporation, company, association, joint stock association, partnership, and person, their lessees, trustees, or receivers appointed by any court whatsoever, and every city or town, owning, operating, managing, or controlling any such agency for public use in the conveyance of persons or property for hire within this state.

(12) "Vessel" includes every species of watercraft, by whatsoever power operated, for public use in the conveyance of persons or property for hire over and upon the waters within this state, excepting all towboats, tugs, scows, barges, and lighters, and excepting rowboats and sailing boats under twenty gross tons burden, open steam launches of five tons gross and under, and vessels under five tons gross propelled by gas, fluid, naphtha, or electric motors.

(13) "Commercial ferry" includes every corporation, company, association, joint stock association, partnership, and person, their lessees, trustees, or receivers, appointed by any court whatsoever, owning, controlling, leasing, operating, or managing any vessel over and upon the waters of this state.

(14) "Transportation of property" includes any service in connection with the receiving, delivery, elevation, transfer in transit, ventilation, refrigeration, icing, storage, and handling of the property transported, and the transmission of credit.

(15) "Transportation of persons" includes any service in connection with the receiving, carriage, and delivery of persons transported and their baggage and all facilities used, or necessary to be used in connection with the safety, comfort, and convenience of persons transported.

(16) "Public service company" includes every common carrier.

(17) The term "service" is used in this title in its broadest and most inclusive sense. [2007 c 234 § 4; 1993 c 427 § 9; 1991 c 272 § 3; 1981 c 13 § 2; 1961 c 14 § 81.04.010. Prior: 1955 c 316 § 3; prior: 1929 c 223 § 1, part; 1923 c 116 § 1, part; 1911 c 117 § 8, part; RRS § 10344, part.]

Additional notes found at www.leg.wa.gov

81.04.020 Procedure before commission and courts. Each commissioner shall have power to administer oaths, certify to all official acts, and to issue subpoenas for the attendance of witnesses and the production of papers, waybills,

books, accounts, documents, and testimony in any inquiry, investigation, hearing, or proceeding in any part of the state.

The superior court of the county in which any such inquiry, investigation, hearing, or proceeding may be had, shall have power to compel the attendance of witnesses and the production of papers, waybills, books, accounts, documents, and testimony as required by such subpoena. The commission or the commissioner before which the testimony is to be given or produced, in case of the refusal of any witness to attend or testify or produce any papers required by the subpoena, shall report to the superior court in and for the county in which the proceeding is pending by petition, setting forth that due notice has been given of the time and place of attendance of said witnesses, or the production of said papers, and that the witness has been summoned in the manner prescribed in this chapter, and that the fees and mileage of the witness have been paid or tendered to the witness for his or her attendance and testimony, and that the witness has failed and refused to attend or produce the papers required by the subpoena, before the commission, in the cause or proceedings named in the notice and subpoena, or has refused to answer questions propounded to him or her in the course of such proceeding, and ask an order of said court, compelling the witness to attend and testify before the commission. The court, upon the petition of the commission, shall enter an order directing the witness to appear before said court at a time and place to be fixed by the court in such order, and then and there show cause why he or she has not responded to said subpoena. A copy of said order shall be served upon said witness. If it shall appear to the court that said subpoena was regularly issued by the commission, the court shall thereupon enter an order that said witness appear before the commission at said time and place as fixed in said order, and testify or produce the required papers, and upon failing to obey said order, said witness shall be dealt with as for contempt of court. [2013 c 23 § 284; 1961 c 14 § 81.04.020. Prior: 1911 c 117 § 75, part; RRS § 10413, part.]

81.04.030 Number of witnesses may be limited. In all proceedings before the commission the commission shall have the right, in their discretion, to limit the number of witnesses testifying upon any subject or proceeding to be inquired of before the commission. [1961 c 14 § 81.04.030. Prior: 1911 c 117 § 75, part; RRS § 10413, part.]

81.04.040 Witness fees and mileage. Each witness who appears under subpoena shall receive for his or her attendance four dollars per day and ten cents per mile traveled by the nearest practicable route in going to and returning from the place of hearing. No witness shall be entitled to fees or mileage from the state when summoned at the instance of the public service companies affected. [2013 c 23 § 285; 1961 c 14 § 81.04.040. Prior: 1955 c 79 § 3; 1911 c 117 § 76, part; RRS § 10414, part.]

81.04.050 Protection against self-incrimination. The claim by any witness that any testimony sought to be elicited may tend to incriminate him or her shall not excuse such witness from testifying, but such evidence or testimony shall not be used against such person on the trial of any criminal proceeding, excepting in a prosecution for perjury. The commis-

sioner shall have power to compel the attendance of witnesses at any place within the state. [2013 c 23 § 286; 1961 c 14 § 81.04.050. Prior: 1911 c 117 § 76, part; RRS § 10414, part.]

81.04.060 Deposition—Service of process. The commission shall have the right to take the testimony of any witness by deposition, and for that purpose the attendance of witnesses and the production of books, waybills, documents, papers and accounts may be enforced in the same manner as in the case of hearings before the commission, or any member thereof. Process issued under the provisions of this chapter shall be served as in civil cases. [1961 c 14 § 81.04.060. Prior: 1911 c 117 § 76, part; RRS § 10414, part.]

81.04.070 Inspection of books, papers, and documents. The commission and each commissioner, or any person employed by the commission, shall have the right, at any and all times, to inspect the accounts, books, papers, and documents of any public service company, and the commission, or any commissioner, may examine under oath any officer, agent, or employee of such public service company in relation thereto, and with reference to the affairs of such company: PROVIDED, That any person other than a commissioner who shall make any such demand shall produce his or her authority from the commission to make such inspection. [2013 c 23 § 287; 1961 c 14 § 81.04.070. Prior: 1911 c 117 § 77; RRS § 10415.]

81.04.075 Manner of serving papers. All notices, applications, complaints, findings of fact, opinions and orders required by this title to be served may be served by mail and service thereof shall be deemed complete when a true copy of such paper or document is deposited in the post office properly addressed and stamped. [1961 c 14 § 81.04.075. Prior: 1933 c 165 § 7; RRS § 10458-1. Formerly RCW 81.04.370.]

81.04.080 Annual report—Other reports. (1) Every public service company shall annually furnish to the commission a report in such form as the commission may require, and shall specifically answer all questions posed to it by the commission. The commission may prescribe a uniform system of accounts, and the manner in which the accounts must be kept. The detailed report must contain all the required statistics for the period of twelve months ending on the last day of any particular month prescribed by the commission for any public service company. The reports must be made out under oath and filed with the commission at its office in Olympia on a date the commission specifies by rule, unless additional time is granted by the commission.

(2) Any public service company that fails to file an annual report in the form and within the time required by the commission, including payment of any regulatory fee due, is subject to the following:

- (a) Monetary penalties of:
 - (i) Two hundred fifty dollars for reports filed one to thirty days past the due date;
 - (ii) Five hundred dollars for reports filed thirty-one to sixty days past the due date;

(iii) One thousand dollars for reports filed sixty-one to ninety days past the due date; or

(b) Upon notice by the commission, cancellation or revocation of its operating authority and additional penalties pursuant to RCW 81.04.380 and 81.04.405.

(3) The commission may waive penalties when a public service company is able to sufficiently demonstrate that its failure to file an annual report in the form and within the time required was due to circumstances beyond its control. Requests for any such waiver must be received within fifteen days of the date a penalty is assessed.

(4) The commission may require any public service company to file monthly reports of earnings and expenses, and to file periodical or special reports, or both, concerning any matter the commission is authorized or required, by this or any other law, to inquire into or keep itself informed about, or which it is required to enforce, the periodical or special reports to be under oath whenever the commission so requires. [2018 c 104 § 2; 2007 c 234 § 5; 1989 c 107 § 2; 1961 c 14 § 81.04.080. Prior: 1911 c 117 § 78, part; RRS § 10416, part.]

81.04.090 Forms of records to be prescribed. The commission may, in its discretion, prescribe the forms of any and all accounts, records and memoranda to be kept by public service companies, including the accounts, records and memoranda of the movement of traffic, sales of its product, the receipts and expenditures of money. The commission shall at all times have access to all accounts, records and memoranda kept by public service companies, and may employ special agents or examiners, who shall have power to administer oaths and authority, under the order of the commission, to examine witnesses and to inspect and examine any and all accounts, records and memoranda kept by such companies. The commission may, in its discretion, prescribe the forms of any and all reports, accounts, records and memoranda to be furnished and kept by any public service company whose line or lines extend beyond the limits of this state, which are operated partly within and partly without the state, so that the same shall show any information required by the commission concerning the traffic movement, receipts and expenditures appertaining to those parts of the line within the state. [1961 c 14 § 81.04.090. Prior: 1911 c 117 § 78, part; RRS § 10416, part.]

81.04.100 Production of out-of-state books and records. The commission may by order with or without hearing require the production within this state, at such time and place as it may designate, of any books, accounts, papers or records kept by any public service company in any office or place without this state, or at the option of the company verified copies thereof, so that an examination thereof may be made by the commission or under its direction. [1961 c 14 § 81.04.100. Prior: 1933 c 165 § 2; 1911 c 117 § 79; RRS § 10421.]

81.04.110 Complaint—Hearing. Complaint may be made by the commission of its own motion or by any person or corporation, chamber of commerce, board of trade, or any commercial, mercantile, agricultural or manufacturing society, or any body politic or municipal corporation, by petition

or complaint in writing, setting forth any act or thing done or omitted to be done by any public service company or any person, persons, or entity acting as a public service company in violation, or claimed to be in violation, of any provision of law or of any order or rule of the commission.

When two or more public service companies or a person, persons, or entity acting as a public service company, (meaning to exclude municipal and other public corporations) are engaged in competition in any locality or localities in the state, either may make complaint against the other or others that the rates, charges, rules, regulations or practices of such other or others with or in respect to which the complainant is in competition, are unreasonable, unremunerative, discriminatory, illegal, unfair or intending or tending to oppress the complainant, to stifle competition, or to create or encourage the creation of monopoly, and upon such complaint or upon complaint of the commission upon its own motion, the commission shall have power, after notice and hearing as in other cases, to, by its order, subject to appeal as in other cases, correct the abuse complained of by establishing such uniform rates, charges, rules, regulations or practices in lieu of those complained of, to be observed by all of such competing public service companies in the locality or localities specified as shall be found reasonable, remunerative, nondiscriminatory, legal, and fair or tending to prevent oppression or monopoly or to encourage competition, and upon any such hearing it shall be proper for the commission to take into consideration the rates, charges, rules, regulations and practices of the public service company or companies complained of in any other locality or localities in the state.

All matters upon which complaint may be founded may be joined in one hearing, and no motion shall be entertained against a complaint for misjoinder of complaints or grievances or misjoinder of parties; and in any review of the courts of orders of the commission the same rule shall apply and pertain with regard to the joinder of complaints and parties as herein provided: PROVIDED, All grievances to be inquired into shall be plainly set forth in the complaint. No complaint shall be dismissed because of the absence of direct damage to the complainant.

Upon the filing of a complaint, the commission shall cause a copy thereof to be served upon the person or company complained of, which shall be accompanied by a notice fixing the time when and place where a hearing will be had upon such complaint. The time fixed for such hearing shall not be less than ten days after the date of the service of such notice and complaint, excepting as herein provided. Rules of practice and procedure not otherwise provided for in this title may be prescribed by the commission. [1994 c 37 § 2; 1961 c 14 § 81.04.110. Prior: 1913 c 145 § 1; 1911 c 117 § 80; RRS § 10422.]

Intent—1994 c 37: "It is the intent of the legislature to clarify that the utilities and transportation commission has the authority to make more efficient use of its resources, provide quicker resolution of complaints regarding transportation tariff matters, eliminate duplicative hearings on classification and violation matters, and to make certain that criminal proceedings involving alleged violations of transportation tariffs not be dismissed because of confusion regarding whether a defendant has received a classification by the commission." [1994 c 37 § 1.]

81.04.120 Hearing—Order—Record. At the time fixed for the hearing mentioned in RCW 81.04.110, the com-

plainant and the person or corporation complained of shall be entitled to be heard and introduce such evidence as he or she or it may desire. The commission shall issue process to enforce the attendance of all necessary witnesses. At the conclusion of such hearing, the commission shall make and render findings concerning the subject matter and facts inquired into and enter its order based thereon. A copy of such order, certified under the seal of the commission, shall be served upon the person or corporation complained of, or his or her or its attorney, which order shall, of its own force, take effect and become operative twenty days after the service thereof, except as otherwise provided. Where an order cannot, in the judgment of the commission, be complied with within twenty days, the commission may prescribe such additional time as in its judgment is reasonably necessary to comply with the order, and may, on application and for good cause shown, extend the time for compliance fixed in its order. A full and complete record of all proceedings had before the commission, or any member thereof, on any formal hearing had, and all testimony shall be taken down by a stenographer appointed by the commission, and the parties shall be entitled to be heard in person or by attorney. In case of an action to review any order of the commission, a transcript of such testimony, together with all exhibits introduced, and of the record and proceedings in the cause, shall constitute the record of the commission. [2013 c 23 § 288; 1961 c 14 § 81.04.120. Prior: 1911 c 117 § 81; RRS § 10423.]

81.04.130 Suspension of tariff change—Waiver of provisions during state of emergency. Whenever any public service company, subject to regulation by the commission as to rates and service, files with the commission any schedule, classification, rule, or regulation, the effect of which is to change any rate, fare, charge, rental, or toll previously charged, the commission may, either upon its own motion or upon complaint, upon notice, hold a hearing concerning the proposed change and the reasonableness and justness of it. Pending the hearing and the decision, the commission may suspend the operation of the rate, fare, charge, rental, or toll, if the change is proposed by a common carrier other than a solid waste collection company, for a period not exceeding seven months, and, if proposed by a solid waste collection company, for a period not exceeding ten months from the time the change would otherwise go into effect. After a full hearing the commission may make the order in reference to the change as would be provided in a hearing initiated after the change had become effective.

At any hearing involving any change in any schedule, classification, rule, or regulation the effect of which is to increase any rate, fare, charge, rental, or toll theretofore charged, the burden of proof to show that the increase is just and reasonable is upon the public service company. When any common carrier files any tariff, classification, rule, or regulation the effect of which is to decrease any rate, fare, or charge, the burden of proof to show that such decrease is just and reasonable is upon the common carrier.

During a state of emergency declared under RCW 43.06.010(12), the governor may waive or suspend the operation or enforcement of this section or any portion of this section or under any administrative rule, and issue any orders to facilitate the operation of state or local government or to pro-

mote and secure the safety and protection of the civilian population. [2008 c 181 § 404; 2007 c 234 § 6; 1993 c 300 § 1; 1984 c 143 § 1; 1961 c 14 § 81.04.130. Prior: 1941 c 162 § 1; 1937 c 169 § 2; 1933 c 165 § 3; 1915 c 133 § 1; 1911 c 117 § 82; Rem. Supp. 1941 § 10424.]

Part headings not law—2008 c 181: See note following RCW 43.06.220.

81.04.140 Order requiring joint action. Whenever any order of the commission shall require joint action by two or more public service companies, such order shall specify that the same shall be made at their joint cost, and the companies affected shall have thirty days, or such further time, as the commission may prescribe, within which to agree upon the part or division of cost which each shall bear, and costs of operation and maintenance in the future, or the proportion of charges or revenue each shall receive from such joint service and the rules to govern future operations. If at the expiration of such time such companies shall fail to file with the commission a statement that an agreement has been made for the division or apportionment of such cost, the division of costs of operation and maintenance to be incurred in the future and the proportion of charges or revenue each shall receive from such joint service and the rules to govern future operations, the commission shall have authority, after further hearing, to enter a supplemental order fixing the proportion of such cost or expense to be borne by each company, and the manner in which the same shall be paid and secured. [1961 c 14 § 81.04.140. Prior: 1911 c 117 § 83; RRS § 10425.]

81.04.150 Remunerative rate—Change without authorization prohibited—Waiver of provisions during state of emergency. Whenever the commission finds, after a hearing upon its own motion or upon complaint as provided in this chapter, that any rate, toll, rental, or charge that has been the subject of complaint and inquiry is sufficiently remunerative to the public service company subject to regulation by the commission as to rates and service affected by it, the commission may order that the rate, toll, rental, or charge must not be changed, altered, abrogated, or discontinued, nor must there be any change in the classification that will change or alter the rate, toll, rental, or charge without first obtaining the consent of the commission authorizing the change to be made.

During a state of emergency declared under RCW 43.06.010(12), the governor may waive or suspend the operation or enforcement of this section or any portion of this section or under any administrative rule, and issue any orders to facilitate the operation of state or local government or to promote and secure the safety and protection of the civilian population. [2008 c 181 § 405; 2007 c 234 § 7; 1984 c 143 § 2; 1961 c 14 § 81.04.150. Prior: 1911 c 117 § 84; RRS § 10426.]

Part headings not law—2008 c 181: See note following RCW 43.06.220.

81.04.160 Rules. The commission may adopt rules that pertain to the comfort and convenience of the public using the services of public service companies that are subject to regulation by the commission as to services provided. [2007 c 234 § 8; 1961 c 14 § 81.04.160. Prior: 1911 c 117 § 85; RRS § 10427.]

81.04.200 Rehearing before commission. Any public service company affected by any order of the commission, and deeming itself aggrieved, may, after the expiration of two years from the date of such order taking effect, petition the commission for a rehearing upon the matters involved in such order, setting forth in such petition the grounds and reasons for such rehearing, which grounds and reasons may comprise and consist of changed conditions since the issuance of such order, or by showing a result injuriously affecting the petitioner which was not considered or anticipated at the former hearing, or that the effect of such order has been such as was not contemplated by the commission or the petitioner, or for any good and sufficient cause which for any reason was not considered and determined in such former hearing. Upon the filing of such petition, such proceedings shall be had thereon as are provided for hearings upon complaint, and such orders may be reviewed as are other orders of the commission: PROVIDED, That no order superseding the order of the commission denying such rehearing shall be granted by the court pending the review. In case any order of the commission shall not be reviewed, but shall be complied with by the public service company, such petition for rehearing may be filed within six months from and after the date of the taking effect of such order, and the proceedings thereon shall be as in this section provided. The commission, may, in its discretion, permit the filing of a petition for rehearing at any time. No order of the commission upon a rehearing shall affect any right of action or penalty accruing under the original order unless so ordered by the commission. [1961 c 14 § 81.04.200. Prior: 1911 c 117 § 89; RRS § 10431.]

81.04.210 Commission may change orders. The commission may at any time, upon notice to the public service company affected, and after opportunity to be heard as provided in the case of complaints rescind, alter or amend any order or rule made, issued or promulgated by it, and any order or rule rescinding, altering or amending any prior order or rule shall, when served upon the public service company affected, have the same effect as herein provided for original orders and rules. [1961 c 14 § 81.04.210. Prior: 1911 c 117 § 90; RRS § 10432.]

81.04.220 Reparations. After a complaint is made to the commission concerning the reasonableness of any rate, fare, toll, rental or charge for any service performed by any public service company subject to regulation by the commission as to rates and service, and the complaint is investigated by the commission, and the commission determines both that the public service company has charged an excessive or exorbitant amount for the service and that any party complainant is entitled to an award of damages, the commission shall order the public service company to pay the complainant the excess amount found to have been charged, whether the excess amount was charged and collected before or after the filing of the complaint, with interest from the date of the collection of the excess amount. [2007 c 234 § 9; 1961 c 14 § 81.04.220. Prior: 1943 c 258 § 1; 1937 c 29 § 1; Rem. Supp. 1943 § 10433.]

81.04.230 Overcharges—Refund. When complaint has been made to the commission that any public service

company has charged an amount for any service rendered in excess of the lawful rate in force at the time such charge was made, and the same has been investigated and the commission has determined that the overcharge allegation is true, the commission may order that the public service company pay to the complainant the amount of the overcharge so found, whether such overcharge was made before or after the filing of said complaint, with interest from the date of collection of such overcharge. [1961 c 14 § 81.04.230. Prior: 1937 c 29 § 2; RRS § 10433-1.]

81.04.235 Limitation of actions. All complaints against public service companies for recovery of overcharges shall be filed with the commission within two years from the time the cause of action accrues, and not after, except as hereinafter provided, and except that if claim for the overcharge has been presented in writing to the public service company within the two-year period of limitation, said period shall be extended to include six months from the time notice in writing is given by the public service company to the claimant of disallowance of the claim, or any part or parts thereof, specified in the notice.

If on or before expiration of the two-year period of limitation for the recovery of overcharges, a public service company begins action under RCW 81.28.270 for recovery of charges in respect of the same transportation service, or, without beginning action, collects charges in respect of that service, said period of limitation shall be extended to include ninety days from the time such action is begun or such charges are collected by the carrier.

All complaints against public service companies for the recovery of damages not based on overcharges shall be filed with the commission within six months from the time the cause of action accrues except as hereinafter provided.

The six-month period of limitation for recovery of damages not based on overcharges shall be extended for a like period and under the same conditions as prescribed for recovery of overcharges. If the six-month period for recovery of damages not based on overcharges has expired at the time action is commenced under RCW 81.28.270 for recovery of charges with respect to the same transportation service, or, without beginning such action, charges are collected with respect to that service, complaints therefor shall be filed with the commission within ninety days from the commencement of such action or the collection of such charges by the carrier. [1963 c 59 § 4; 1961 c 14 § 81.04.235. Prior: 1955 c 79 § 5.]

81.04.236 When cause of action deemed to accrue. The cause of action for the purposes of RCW 81.04.235, 81.04.240, and 81.28.270 shall be deemed to accrue: (a) In respect of a shipment of property, upon delivery or tender of delivery thereof by the carrier, and not after; (b) in respect of goods or service or services other than a shipment of property, upon the rendering of an invoice or statement of charges by the public service company, and not after.

The provisions of this section shall extend to and embrace cases in which the cause of action has heretofore accrued as well as cases in which the cause of action may hereafter accrue. [1961 c 14 § 81.04.236. Prior: 1955 c 79 § 6.]

81.04.240 Action in court on reparations and overcharges—Procedure. If the public service company subject to regulation by the commission as to rates and service does not comply with the order of the commission for the payment of damages or overcharges within the time limited in the order, action may be brought in any superior court where service may be had upon the company to recover the amount of damages or overcharges with interest. The commission shall certify and file its record in the case, including all exhibits, with the clerk of the court within thirty days after the action is started. The action must be heard on the evidence and exhibits introduced before and certified by the commission.

If the complainant prevails in the action, the court shall enter judgment for the amount of damages or overcharges with interest and award the complainant reasonable attorney's fees, and the cost of preparing and certifying the record for the benefit of and to be paid to the commission by complainant, and deposited by the commission in the public service revolving fund, the sums to be fixed and collected as a part of the costs of the action.

If the order of the commission is found contrary to law or erroneous by the rejection of testimony properly offered, the court shall remand the cause to the commission with instructions to receive the testimony so proffered and rejected and enter a new order based upon the evidence theretofore taken and such as it is directed to receive.

The court may remand any action it reverses to the commission for further action.

Appeals to the supreme court shall lie as in other civil cases. Action to recover damages or overcharges must be filed in the superior court within one year from the date of the order of the commission.

The procedure provided in this section is exclusive, and neither the supreme court nor any superior court has jurisdiction except as provided. [2007 c 234 § 10; 1961 c 14 § 81.04.240. Prior: 1955 c 79 § 4; 1943 c 258 § 2; 1937 c 29 § 3; Rem. Supp. 1943 § 10433-2.]

81.04.250 Determination of rates. The commission may, upon complaint or upon its own motion, prescribe and authorize just and reasonable rates for the transportation of persons or property for any public service company subject to regulation by the commission as to rates and service, whenever and as often as it deems necessary or proper. The commission shall, before any hearing upon the complaint or motion, notify the complainants and the carrier concerned of the time and place of the hearing by giving at least ten days' written notice thereof, specifying that at the time and place designated a hearing will be held for the purpose of prescribing and authorizing the rates. The notice is sufficient to authorize the commission to inquire into and pass upon the matters designated in this section.

In exercising this power, the commission may use any standard, formula, method, or theory of valuation reasonably calculated to arrive at the objective of prescribing and authorizing just and reasonable rates.

In the exercise of this power, the commission may consider, in addition to other factors, the following:

(1) The effect of the rates upon movement of traffic by the carriers;

(2) The public need for adequate transportation facilities, equipment, and service at the lowest level of charges consistent with the provision, maintenance, and renewal of the facilities, equipment, and service; and

(3) The carrier need for revenue of a level that under honest, efficient, and economical management is sufficient to cover the cost, including all operating expenses, depreciation accruals, rents, and taxes of every kind, of providing adequate transportation service, plus an amount equal to the percentage of that cost as is reasonably necessary for the provision, maintenance, and renewal of the transportation facilities or equipment and a reasonable profit to the carrier. The relation of carrier expenses to carrier revenues may be deemed the proper test of a reasonable profit. [2007 c 234 § 11; 1984 c 143 § 3; 1961 c 14 § 81.04.250. Prior: 1951 c 75 § 1; 1933 c 165 § 4; 1913 c 182 § 1; 1911 c 117 § 92; RRS § 10441.]

81.04.260 Summary proceedings. Whenever the commission shall be of opinion that any public service company is failing or omitting, or about to fail or omit, to do anything required of it by law, or by order, direction or requirement of the commission, or is doing anything, or about to do anything, or permitting anything, or about to permit anything to be done contrary to or in violation of law or of any order, direction or requirement of the commission authorized by this title, it shall direct the attorney general to commence an action or proceeding in the superior court of the state of Washington for Thurston county, or in the superior court of any county in which such company may do business, in the name of the state of Washington on the relation of the commission, for the purpose of having such violations or threatened violations stopped and prevented, either by mandamus or injunction. The attorney general shall thereupon begin such action or proceeding by petition to such superior court, alleging the violation complained of, and praying for appropriate relief by way of mandamus or injunction. It shall thereupon be the duty of the court to specify a time, not exceeding twenty days after the service of the copy of the petition, within which the public service company complained of must answer the petition. In case of default in answer or after answer, the court shall immediately inquire into the facts and circumstances in such manner as the court shall direct, without other or formal pleadings, and without respect to any technical requirement. Such persons or corporations as the court may deem necessary or proper to be joined as parties, in order to make its judgment, order or writ effective, may be joined as parties. The final judgment in any such action or proceeding shall either dismiss the action or proceeding or direct that the writ of mandamus or injunction, or both, issue as prayed for in the petition, or in such other modified form as the court may determine will afford appropriate relief. Appellate review of the final judgment may be sought in the same manner and with the same effect as review of judgments of the superior court in actions to review orders of the commission. All provisions of this chapter relating to the time of review, the manner of perfecting the same, the filing of briefs, hearings and supersedeas, shall apply to appeals to the supreme court or the court of appeals under the provisions of this section. [1988 c 202 § 64; 1971 c 81 § 143; 1961 c 14 § 81.04.260. Prior: 1911 c 117 § 93; RRS § 10442.]

Additional notes found at www.leg.wa.gov

81.04.270 Accounts to be kept separate. Any public service company, subject to regulation by the commission as to rates and services [service], that engages in the sale of merchandise or appliances or equipment shall keep separate accounts, as prescribed by the commission, of its capital employed in such business and of its revenues therefrom and operating expenses thereof. The capital employed in such business is not a part of the fair value of the company's property for rate making purposes, and the revenues from or operating expenses of such business are not a part of the operating revenues and expenses of the company as a public service company. [2007 c 234 § 12; 1961 c 14 § 81.04.270. Prior: 1933 c 165 § 8; RRS § 10458-2.]

81.04.280 Purchase and sale of stock by employees. A public service company subject to regulation by the commission as to rates and service shall not: (1) Permit any employee to sell, offer for sale, or solicit the purchase of any security of any other person or corporation during such hours as such employee is engaged to perform any duty of such public service company; (2) by any means or device, require any employee to purchase or contract to purchase any of its securities or those of any other person or corporation; or (3) require any employee to permit the deduction from his or her wages or salary of any sum as a payment or to be applied as a payment of any purchase or contract to purchase any security of such public service company or of any other person or corporation. [2013 c 23 § 289; 2007 c 234 § 13; 1961 c 14 § 81.04.280. Prior: 1933 c 165 § 9; RRS § 10458-3.]

81.04.290 Sale of stock to employees and patrons. A corporate public service company, either heretofore or hereafter organized under the laws of this state, may sell to its employees and patrons any increase of its capital stock, or part thereof, without first offering it to existing stockholders: PROVIDED, That such sale is approved by the holders of a majority of the capital stock, at a regular or special meeting held after notice given as to the time, place, and object thereof as provided by law and the bylaws of the company. Such sales shall be at prices and in amounts for each purchaser and upon terms and conditions as set forth in the resolution passed at the stockholders' meeting, or in a resolution passed at a subsequent meeting of the board of trustees if the resolution passed at the stockholders' meeting shall authorize the board to determine prices, amounts, terms, and conditions, except that in either event a minimum price for the stock must be fixed in the resolution passed at the stockholders' meeting. [1961 c 14 § 81.04.290. Prior: 1955 c 79 § 7; 1923 c 110 § 1; RRS § 10344-1.]

81.04.300 Budgets to be filed—Supplementary budgets. The commission may regulate, restrict, and control the budgets of expenditures of public service companies subject to regulation by the commission as to rates and service. The commission may require each company to prepare a budget showing the amount of money which, in its judgment, is needed during the ensuing year for maintenance, operation, and construction, classified by accounts as prescribed by the commission, and shall within ten days of the date it is approved by the company file it with the commission for its investigation and approval or rejection. When a budget has

been filed, the commission shall examine into and investigate it to determine whether the expenditures therein proposed are fair and reasonable and not contrary to public interest.

Adjustments or additions to budget expenditures may be made from time to time during the year by filing a supplementary budget with the commission for its investigation and approval or rejection. [2007 c 234 § 14; 1961 c 14 § 81.04.300. Prior: 1959 c 248 § 15; prior: 1933 c 165 § 10, part; RRS § 10458-4, part.]

81.04.310 Commission's control over expenditures. The commission may, both as to original and supplementary budgets, prior to the making or contracting for the expenditure of any item therein, and after notice to the company and a hearing thereon, reject any item of the budget. The commission may require any company to furnish further information, data, or detail as to any proposed item of expenditure.

Failure of the commission to object to any item of expenditure within sixty days of the filing of any original budget or within thirty days of the filing of any supplementary budget shall constitute authority to the company to proceed with the making of or contracting for such expenditure, but such authority may be terminated at any time by objection made thereto by the commission prior to the making of or contracting for such expenditure.

Examination, investigation, and determination of the budget by the commission shall not bar or estop it from later determining whether any of the expenditures made thereunder are fair, reasonable, and commensurate with the service, material, supplies, or equipment received. [1961 c 14 § 81.04.310. Prior: 1959 c 248 § 16; prior: 1933 c 165 § 10, part; RRS § 10458-4, part.]

81.04.320 Budget rules and regulations. The commission may prescribe the necessary rules and regulations to place RCW 81.04.300 through 81.04.330 in operation. It may by general order, exempt in whole or in part from the operation thereof companies whose gross operating revenues are less than twenty-five thousand dollars a year. The commission may upon request of any company withhold from publication during such time as the commission may deem advisable, any portion of any original or supplementary budget relating to proposed capital expenditures. [1961 c 14 § 81.04.320. Prior: 1959 c 248 § 17; prior: 1933 c 165 § 10, part; RRS § 10458-4, part.]

81.04.330 Effect of unauthorized expenditure—Emergencies. Any public service company subject to regulation by the commission as to rates and service may make or contract for any rejected item of expenditure, but in such case the rejected item of expenditure shall not be allowed as an operating expense, or as to items of construction, as a part of the fair value of the company's property used and useful in serving the public: PROVIDED, That such items of construction may at any time thereafter be so allowed in whole or in part upon proof that they are used and useful. Any company may upon the happening of any emergency caused by fire, flood, explosion, storm, earthquake, riot, or insurrection, or for the immediate preservation or restoration to condition of usefulness of any of its property, the usefulness of which has been destroyed by accident, make the necessary expenditure

therefor free from the operation of RCW 81.04.300 through 81.04.330.

Any finding and order entered by the commission is effective until vacated and set aside in proper proceedings for review thereof. [2007 c 234 § 15; 1961 c 14 § 81.04.330. Prior: 1959 c 248 § 18; prior: 1933 c 165 § 10, part; RRS § 10458-4, part.]

81.04.350 Depreciation and retirement accounts.

The commission may after hearing require any public service company subject to regulation by the commission as to rates and service to carry proper and adequate depreciation or retirement accounts in accordance with such rules, regulations, and forms of accounts as the commission may prescribe. The commission may from time to time ascertain and by order fix the proper and adequate rates of depreciation or retirement of the several classes of property of each public service company. Each public service company shall conform its depreciation or retirement accounts to the rates so prescribed. In fixing the rate of the annual depreciation or retirement charge, the commission may consider the rate and amount theretofore charged by the company for depreciation or retirement.

The commission may exercise like power and authority over all other reserve accounts of public service companies. [2007 c 234 § 16; 1961 c 14 § 81.04.350. Prior: 1937 c 169 § 4; 1933 c 165 § 13; RRS § 10458-7.]

81.04.360 Excessive earnings to reserve fund. If any public service company subject to regulation by the commission as to rates and service earns in the period of five consecutive years immediately preceding the commission order fixing rates for such company a net utility operating income in excess of a reasonable rate of return upon the fair value of its property used and useful in the public service, the commission shall take official notice of such fact and of whether any such excess earnings were invested in such company's plant or otherwise used for purposes beneficial to the consumers of such company and may consider such facts in fixing rates for such company. [2007 c 234 § 17; 1961 c 14 § 81.04.360. Prior: 1959 c 285 § 3; 1933 c 165 § 14; RRS § 10458-8.]

81.04.380 Penalties—Violations by public service companies. Every public service company, and all officers, agents and employees of any public service company, shall obey, observe and comply with every order, rule, direction or requirement made by the commission under authority of this title, so long as the same shall be and remain in force. Any public service company which shall violate or fail to comply with any provision of this title, or which fails, omits or neglects to obey, observe or comply with any order, rule, or any direction, demand or requirement of the commission, shall be subject to a penalty of not to exceed the sum of one thousand dollars for each and every offense. Every violation of any such order, direction or requirement of this title shall be a separate and distinct offense, and in case of a continuing violation every day's continuance thereof shall be and be deemed to be a separate and distinct offense. [1961 c 14 § 81.04.380. Prior: 1911 c 117 § 94; RRS § 10443.]

81.04.385 Penalties—Violations by officers, agents, and employees of public service companies and persons or entities acting as public service companies. Every officer, agent or employee of any public service company or any person, persons, or entity acting as a public service company, who shall violate or fail to comply with, or who procures, aids or abets any violation by any public service company of any provision of this title, or who shall fail to obey, observe or comply with any order of the commission, or any provision of any order of the commission, or who procures, aids or abets any such public service company in its failure to obey, observe and comply with any such order or provision, shall be guilty of a gross misdemeanor. [1994 c 37 § 3; 1961 c 14 § 81.04.385. Prior: 1911 c 117 § 95; RRS § 10444. Formerly RCW 81.04.390, part.]

Intent—1994 c 37: See note following RCW 81.04.110.

81.04.387 Penalties—Violations by other corporations. Every corporation, other than a public service company, which shall violate any provision of this title, or which shall fail to obey, observe or comply with any order of the commission under authority of this title, so long as the same shall be and remain in force, shall be subject to a penalty of not to exceed the sum of one thousand dollars for each and every offense. Every such violation shall be a separate and distinct offense, and the penalty shall be recovered in an action as provided in RCW 81.04.400. [1961 c 14 § 81.04.387. Prior: 1911 c 117 § 96; RRS § 10445. Formerly RCW 81.04.380, part.]

81.04.390 Penalties—Violations by persons. (1) Except as provided in subsection (2) of this section, every person who, either individually, or acting as an officer or agent of a corporation other than a public service company, violates any provision of this title, or fails to observe, obey, or comply with any order made by the commission under this title, so long as the same is or remains in force, or who procures, aids, or abets any such corporation in its violation of this title, or in its failure to obey, observe, or comply with any such order, is guilty of a gross misdemeanor.

(2) A violation pertaining to equipment on motor carriers transporting hazardous material is a misdemeanor. [2003 c 53 § 385; 1980 c 104 § 5; 1961 c 14 § 81.04.390. Prior: 1911 c 117 § 97; RRS § 10446.]

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

81.04.400 Actions to recover penalties—Disposition of fines, fees, penalties. Actions to recover penalties under this title shall be brought in the name of the state of Washington in the superior court of Thurston county, or in the superior court of any county in or through which such public service company may do business. In all such actions the procedure and rules of evidence shall be the same as in ordinary civil actions, except as otherwise herein provided. All fines and penalties recovered by the state under this title shall be paid into the treasury of the state and credited to the state general fund or such other fund as provided by law: PROVIDED, That all fees, fines, forfeitures and penalties collected or assessed by a district court because of the violation of a state law shall be remitted as provided in chapter 3.62 RCW as

now exists or is later amended. [1987 c 202 § 241; 1969 ex.s. c 199 § 38; 1961 c 14 § 81.04.400. Prior: 1911 c 117 § 98; RRS § 10447.]

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

81.04.405 Additional penalties—Violations by public service companies and officers, agents, and employees. In addition to all other penalties provided by law every public service company subject to the provisions of this title and every officer, agent or employee of any such public service company who violates or who procures, aids or abets in the violation of any provision of this title or any order, rule, regulation or decision of the commission, every person or corporation violating the provisions of any cease and desist order issued pursuant to RCW 81.04.510, and every person or entity found in violation pursuant to a complaint under RCW 81.04.110, shall incur a penalty of one hundred dollars for every such violation. Each and every such violation shall be a separate and distinct offense and in case of a continuing violation every day's continuance shall be and be deemed to be a separate and distinct violation. Every act of commission or omission which procures, aids or abets in the violation shall be considered a violation under the provisions of this section and subject to the penalty herein provided for.

The penalty herein provided for shall become due and payable when the person incurring the same receives a notice in writing from the commission describing such violation with reasonable particularity and advising such person that the penalty is due. The commission may, upon written application therefor, received within fifteen days, remit or mitigate any penalty provided for in this section or discontinue any prosecution to recover the same upon such terms as it in its discretion shall deem proper and shall have authority to ascertain the facts upon all such applications in such manner and under such regulations as it may deem proper. If the amount of such penalty is not paid to the commission within fifteen days after receipt of notice imposing the same or application for remission or mitigation has not been made within fifteen days after violator has received notice of the disposition of such application the attorney general shall bring an action in the name of the state of Washington in the superior court of Thurston county or of some other county in which such violator may do business, to recover such penalty. In all such actions the procedure and rules of evidence shall be the same as an ordinary civil action except as otherwise herein provided. All penalties recovered under this title shall be paid into the state treasury and credited to the public service revolving fund. [1994 c 37 § 4; 1973 c 115 § 2; 1963 c 59 § 3.]

Intent—1994 c 37: See note following RCW 81.04.110.

81.04.410 Orders and rules conclusive. In all actions between private parties and public service companies involving any rule or order of the commission, and in all actions for the recovery of penalties provided for in this title, or for the enforcement of the orders or rules issued and promulgated by the commission, the said orders and rules shall be conclusive unless set aside or annulled in a review as in this title provided. [1961 c 14 § 81.04.410. Prior: 1911 c 117 § 99; RRS § 10448.]

81.04.420 Commission intervention where order or rule is involved. In all court actions involving any rule or order of the commission, where the commission has not been made a party, the commission shall be served with a copy of all pleadings, and shall be entitled to intervene. Where the fact that the action involves a rule or order of the commission does not appear until the time of trial, the court shall immediately direct the clerk to notify the commission of the pendency of such action, and shall permit the commission to intervene in such action.

The failure to comply with the provisions of this section shall render void and of no effect any judgment in such action, where the effect of such judgment is to modify or nullify any rule or order of the commission. [1961 c 14 § 81.04.420. Prior: 1943 c 67 § 1; Rem. Supp. 1943 § 10448-1.]

81.04.430 Findings of department prima facie correct. Whenever the commission has issued or promulgated any order or rule, in any writ of review brought by a public service company to determine the reasonableness of such order or rule, the findings of fact made by the commission shall be prima facie correct, and the burden shall be upon said public service company to establish the order or rule to be unreasonable or unlawful. [1961 c 14 § 81.04.430. Prior: 1911 c 117 § 100; RRS § 10449.]

81.04.440 Companies liable for damages. In case any public service company shall do, cause to be done or permit to be done any act, matter or thing prohibited, forbidden or declared to be unlawful, or shall omit to do any act, matter or thing required to be done, either by any law of this state, by this title or by any order or rule of the commission, such public service company shall be liable to the persons or corporations affected thereby for all loss, damage or injury caused thereby or resulting therefrom, and in case of recovery if the court shall find that such act or omission was wilful, it may, in its discretion, fix a reasonable counsel or attorney's fee, which shall be taxed and collected as part of the costs in the case. An action to recover for such loss, damage or injury may be brought in any court of competent jurisdiction by any person or corporation. [1961 c 14 § 81.04.440. Prior: 1911 c 117 § 102; RRS § 10451.]

81.04.450 Certified copies of orders, rules, etc.—Evidentiary effect. Upon application of any person the commission shall furnish certified copies of any classification, rate, rule, regulation or order established by such commission, and the printed copies published by authority of the commission, or any certified copy of any such classification, rate, rule, regulation or order, with seal affixed, shall be admissible in evidence in any action or proceeding, and shall be sufficient to establish the fact that the charge, rate, rule, order or classification therein contained is the official act of the commission. When copies of any classification, rate, rule, regulation or order not contained in the printed reports, or copies of papers, accounts or records of public service companies filed with the commission shall be demanded from the commission for proper use, the commission shall charge a reasonable compensation therefor. [1961 c 14 § 81.04.450. Prior: 1911 c 117 § 103; RRS § 10452.]

81.04.460 Commission to enforce public service laws—Employees as peace officers. It shall be the duty of the commission to enforce the provisions of this title and all other acts of this state affecting public service companies, the enforcement of which is not specifically vested in some other officer or tribunal. Any employee of the commission may, without a warrant, arrest any person found violating in his or her presence any provision of this title, or any rule or regulation adopted by the commission: PROVIDED, That each such employee shall be first specifically designated in writing by the commission or a member thereof as having been found to be a fit and proper person to exercise such authority. Upon being so designated, such person shall be a peace officer and a police officer for the purposes herein mentioned. [2013 c 23 § 290; 1961 c 173 § 2; 1961 c 14 § 81.04.460. Prior: 1911 c 117 § 101; RRS § 10450.]

81.04.470 Right of action not released—Penalties cumulative. This title shall not have the effect to release or waive any right of action by the state or any person for any right, penalty or forfeiture which may have arisen or may hereafter arise under any law of this state; and all penalties accruing under this title shall be cumulative of each other, and a suit for the recovery of one penalty shall not be a bar to the recovery of any other: PROVIDED, That no contract, receipt, rule or regulation shall exempt any corporation engaged in transporting livestock by railway from liability of a common carrier, or carrier of livestock which would exist had no contract, receipt, rule or regulation been made or entered into. [1961 c 14 § 81.04.470. Prior: 1911 c 117 § 104; RRS § 10453. Formerly RCW 81.04.470 and 81.04.480.]

81.04.490 Application to municipal utilities—Safety regulation of municipal gas and hazardous liquid pipelines. Nothing in this title shall authorize the commission to make or enforce any order affecting rates, tolls, rentals, contracts or charges or service rendered, or the safety, adequacy or sufficiency of the facilities, equipment, instrumentalities or buildings, or the reasonableness of rules or regulations made, furnished, used, supplied or in force affecting any street railroad owned and operated by any city or town, but all other provisions enumerated herein shall apply to public utilities owned by any city or town. The commission shall regulate the safety of all hazardous liquid and gas pipelines constructed, owned, or operated by any city or town under chapter 81.88 RCW. [2007 c 142 § 10; 1961 c 14 § 81.04.490. Prior: 1911 c 117 § 105; RRS § 10454.]

81.04.500 Duties of attorney general. It shall be the duty of the attorney general to represent and appear for the people of the state of Washington and the commission in all actions and proceedings involving any question under this title, or under or in reference to any act or order of the commission; and it shall be the duty of the attorney general generally to see that all laws affecting any of the persons or corporations herein enumerated are complied with, and that all laws, the enforcement of which devolves upon the commission, are enforced, and to that end he or she is authorized to institute, prosecute, and defend all necessary actions and pro-

ceedings. [2013 c 23 § 291; 1961 c 14 § 81.04.500. Prior: 1911 c 117 § 5; RRS § 10341.]

81.04.510 Engaging in business or operating without approval or authority—Procedure. Whether or not any person or corporation is conducting business requiring operating authority, or has performed or is performing any act requiring approval of the commission without securing such approval, shall be a question of fact to be determined by the commission. Whenever the commission believes that any person or corporation is engaged in operations without the necessary approval or authority required by any provision of this title, it may institute a special proceeding requiring such person or corporation to appear before the commission at a location convenient for witnesses and the production of evidence and bring with him or her or it books, records, accounts, and other memoranda, and give testimony under oath as to his or her or its operations or acts, and the burden shall rest upon such person or corporation of proving that his or her or its operations or acts are not subject to the provisions of this chapter. The commission may consider any and all facts that may indicate the true nature and extent of the operations or acts and may subpoena such witnesses and documents as it deems necessary.

After having made the investigation herein described, the commission is authorized and directed to issue the necessary order or orders declaring the operations or acts to be subject to, or not subject to, the provisions of this title. In the event the operations or acts are found to be subject to the provisions of this title, the commission is authorized and directed to issue cease and desist orders to all parties involved in the operations or acts.

In proceedings under this section, no person or corporation shall be excused from testifying or from producing any book, waybill, document, paper, or account before the commission when ordered to do so, on the ground that the testimony or evidence, book, waybill, document, paper, or account required of him or her or it may tend to incriminate him or her or it or subject him or her or it to penalty or forfeiture; but no person or corporation shall be prosecuted, punished, or subjected to any penalty or forfeiture for or on account of any account, transaction, matter, or thing concerning which he or she or it shall under oath have testified or produced documentary evidence in proceedings under this section: PROVIDED, That no person so testifying shall be exempt from prosecution or punishment for any perjury committed by him or her in his or her testimony. [2013 c 23 § 292; 1973 c 115 § 15.]

81.04.530 Controlled substances, alcohol. A person or employer operating as a motor carrier shall comply with the requirements of the United States department of transportation federal motor carrier safety regulations as contained in Title 49 C.F.R. Part 382, controlled substances and alcohol use and testing. A person or employer who begins or conducts commercial motor vehicle operations without having a controlled substance and alcohol testing program that is in compliance with the requirements of Title 49 C.F.R. Part 382 is subject to a penalty, under the process set forth in RCW 81.04.405, of up to one thousand five hundred dollars and up to an additional five hundred dollars for each motor vehicle

driver employed by the person or employer who is not in compliance with the motor vehicle driver testing requirements. A person or employer having actual knowledge that a driver has tested positive for controlled substances or alcohol who allows a positively tested person to continue to perform a safety-sensitive function is subject to a penalty, under the process set forth in RCW 81.04.405, of one thousand five hundred dollars. [1999 c 351 § 6.]

81.04.540 Regulation of common carriers, railroad safety practices. (1) The commission shall cooperate with the federal government and the United States department of transportation, or its successor, or any other commission or agency delegated or authorized to regulate interstate or foreign commerce by common carriers, to the end that the transportation of property and passengers by common carriers in interstate or foreign commerce into and through the state of Washington may be regulated and that the laws of the United States and the state of Washington are enforced and administered cooperatively in the public interest.

(2) In addition to its authority concerning interstate commerce under this title, the commission may regulate common carriers in interstate commerce within the state under the authority of and in accordance with any act of congress that vests in or delegates to the commission such authority as an agency of the United States government or under an agreement with the United States department of transportation, or its successor, or any other commission or agency delegated or authorized to regulate interstate or foreign commerce by common carriers.

(3) For the purpose of participating with the United States department of transportation in investigation and inspection activities necessary to enforce federal railroad safety regulations, the commission has regulatory jurisdiction over the safety practices for railroad equipment, facilities, rolling stock, and operations in the state. [2007 c 234 § 2.]

81.04.550 Railroad safety administration. The commission shall administer the railroad safety provisions of this title to the fullest extent allowed under 49 U.S.C. Sec. 20106 and state law. [2007 c 234 § 3.]

81.04.560 Railroad companies that transport crude oil must submit information relating to the ability to pay damages in the event of a spill or accident—Adoption of rules. (1) The commission must require a railroad company that transports crude oil in Washington to submit information to the commission relating to the railroad company's ability to pay damages in the event of a spill or accident involving the transport of crude oil by the railroad company in Washington. The information submitted to the commission must include a statement of whether the railroad has the ability to pay for damages resulting from a reasonable worst case spill of oil, as calculated by multiplying the reasonable per barrel cleanup and damage cost of spilled oil times the reasonable worst case spill volume as measured in barrels. A railroad company must include the information in the annual report submitted to the commission pursuant to RCW 81.04.080.

(2) The commission may not use the information submitted by a railroad company under this section as a basis for engaging in economic regulation of a railroad company.

(3) The commission may not use the information submitted by a railroad company under this section as a basis for penalizing a railroad company.

(4) Nothing in this section may be construed as assigning liability to a railroad company or establishing liquidated damages for a spill or accident involving the transport of crude oil by a railroad company.

(5) The commission may adopt rules for implementing this section consistent with the requirements of RCW 81.04.080. [2015 c 274 § 10.]

Effective date—2015 c 274: See note following RCW 90.56.005.

Chapter 81.08 RCW SECURITIES

Sections

81.08.010	Definition.
81.08.012	"Evidence of indebtedness"—Limitation of term.
81.08.020	Control vested in state.
81.08.030	Authority to issue.
81.08.040	Prior to issuance—Filing required—Contents.
81.08.080	Capitalization of franchise or merger contract prohibited.
81.08.090	Accounting for disposition of proceeds.
81.08.100	Issuance made contrary to this chapter—Penalties.
81.08.110	Penalty against company.
81.08.120	Penalty against individual.
81.08.130	Assumption of obligation or liability—Compliance with filing requirements.
81.08.140	State not obligated.
81.08.150	Authority of commission—Not affected by requirements of this chapter.

81.08.010 Definition. "Public service company," as used in this chapter, means every common carrier subject to regulation as to rates and service by the utilities and transportation commission under this title, except any "household goods carrier" subject to chapter 81.80 RCW or any "solid waste collection company" subject to chapter 81.77 RCW. [2007 c 234 § 18; 1981 c 13 § 3; 1965 ex.s. c 105 § 3; 1961 c 14 § 81.08.010. Prior: 1959 c 248 § 3; 1957 c 205 § 2; 1953 c 95 § 9; prior: 1933 c 151 § 1, part; RRS § 10439-1, part.]

81.08.012 "Evidence of indebtedness"—Limitation of term. The term "evidence of indebtedness," as used in this chapter, shall not include conditional sales contracts or purchase money chattel mortgages. [1961 c 14 § 81.08.012. Prior: 1951 c 227 § 2.]

81.08.020 Control vested in state. The power of public service companies to issue stocks and stock certificates or other evidence of interest or ownership, and bonds, notes and other evidences of indebtedness and to create liens on their property situated within this state is a special privilege, the right of supervision, regulation, restriction, and control of which is and shall continue to be vested in the state, and such power shall be exercised as provided by law and under such rules and regulations as the commission may prescribe. [1961 c 14 § 81.08.020. Prior: 1933 c 151 § 2; RRS § 10439-2.]

81.08.030 Authority to issue. A public service company may issue stock and stock certificates or other evidence of interest or ownership, or bonds, notes or other evidence of indebtedness payable on demand or at periods of more than twelve months after the date thereof, for the following pur-

poses only: The acquisition of property, or the construction, completion, extension, or improvement of its facilities, or the improvement or maintenance of its service, or the issuance of stock dividends, or the discharge or refunding of its obligations, or the reimbursement of moneys actually expended from income or from any other moneys in the treasury of the company not secured by or obtained from the issue of stock or stock certificates or other evidence of interest or ownership, or bonds, notes or other evidence of indebtedness of the company for any of the aforesaid purposes except maintenance of service, in cases where the applicant keeps its accounts and vouchers for such expenditures in such manner as to enable the commission to ascertain the amount of money so expended and the purpose for which the expenditure was made. [1961 c 14 § 81.08.030. Prior: 1953 c 95 § 10; 1937 c 30 § 1; 1933 c 151 § 3; RRS § 10439-3.]

81.08.040 Prior to issuance—Filing required—Contents. Any public service company that undertakes to issue stocks, stock certificates, other evidence of interest or ownership, bonds, notes, or other evidences of indebtedness shall file with the commission before such issuance:

(1) A description of the purposes for which the issuance is made, including a certification by an officer authorized to do so that the proceeds from any such financing is for one or more of the purposes allowed by this chapter;

(2) A description of the proposed issuance including the terms of financing; and

(3) A statement as to why the transaction is in the public interest. [1994 c 251 § 8; 1961 c 14 § 81.08.040. Prior: 1933 c 151 § 4; RRS § 10439-4.]

81.08.080 Capitalization of franchise or merger contract prohibited. The commission shall have no power to authorize the capitalization of the right to be a corporation, or to authorize the capitalization of any franchise or permit whatsoever or the right to own, operate or enjoy any such franchise or permit in excess of the amount (exclusive of any tax or annual charge) actually paid to the state or to a political subdivision thereof as the consideration for the grant of such franchise, permit or right; nor shall any contract for consolidation or lease be capitalized, nor shall any public service company hereafter issue any bonds, notes or other evidences of indebtedness against or as a lien upon any contract for consolidation or merger. [1961 c 14 § 81.08.080. Prior: 1933 c 151 § 7; RRS § 10439-7.]

81.08.090 Accounting for disposition of proceeds. The commission shall have the power to require public service companies to account for the disposition of the proceeds of all sales of stocks and stock certificates or other evidence of interest or ownership, and bonds, notes and other evidences of indebtedness, in such form and detail as it may deem advisable, and to establish such rules and regulations as it may deem reasonable and necessary to insure the disposition of such proceeds for the purpose or purposes specified in its order. [1961 c 14 § 81.08.090. Prior: 1933 c 151 § 8; RRS § 10439-8.]

81.08.100 Issuance made contrary to this chapter—Penalties. If a public service company issues any stock,

stock certificate, or other evidence of interest or ownership, bond, note, or other evidence of indebtedness, contrary to the provisions of this chapter, the company may be subject to penalty under RCW 81.08.110 and 81.08.120. [1994 c 251 § 9; 1961 c 14 § 81.08.100. Prior: 1933 c 151 § 9; RRS § 10439-9.]

81.08.110 Penalty against company. Every public service company which, directly or indirectly, issues or causes to be issued, any stock or stock certificate or other evidence of interest or ownership, or bond, note, or other evidence of indebtedness, in nonconformity with the provisions of this chapter, or which applies the proceeds from the sale thereof, or any part thereof, to any purpose other than the purpose or purposes allowed by this chapter shall be subject to a penalty of not more than one thousand dollars for each offense. Every violation of any such order, rules, direction, demand, or requirement of the department, or of any provision of this chapter, shall be a separate and distinct offense and in case of a continuing violation every day's continuance thereof shall be deemed to be a separate and distinct offense.

The act, omission, or failure of any officer, agent, or employee of any public service company acting within the scope of his or her official duties or employment, shall in every case be deemed to be the act, omission, or failure of such public service company. [2013 c 23 § 293; 1994 c 251 § 10; 1961 c 14 § 81.08.110. Prior: 1933 c 151 § 11; RRS § 10439-11.]

81.08.120 Penalty against individual. Every officer, agent, or employee of a public service company, and every other person who knowingly authorizes, directs, aids in, issues or executes, or causes to be issued or executed, any stock or stock certificate or other evidence of interest or ownership, or bond, note or other evidence of indebtedness contrary to the provisions of this chapter, or who knowingly makes any false statement or representation or with knowledge of its falsity files or causes to be filed with the commission any false statement or representation or causes or assists to be applied the proceeds or any part thereof, from the sale of any stock or stock certificate or other evidence of interest or ownership, or bond, note or other evidence of indebtedness, to any purpose not allowed by this chapter or who, with knowledge that any stock or stock certificate or other evidence of interest or ownership, or bond, note or other evidence of indebtedness, has been issued or executed in violation of any of the provisions of this chapter negotiates, or causes the same to be negotiated, shall be guilty of a gross misdemeanor. [1994 c 251 § 11; 1961 c 14 § 81.08.120. Prior: 1933 c 151 § 12; RRS § 10439-12.]

81.08.130 Assumption of obligation or liability—Compliance with filing requirements. Any public service company that assumes any obligation or liability as guarantor, indorser, surety or otherwise in respect to the securities of any other person, firm or corporation, when such securities are payable at periods of more than twelve months after the date thereof, shall comply with the filing requirements of RCW 81.08.040. [1994 c 251 § 12; 1961 c 14 § 81.08.130. Prior: 1933 c 151 § 13; RRS § 10439-13.]

81.08.140 State not obligated. No provision of this chapter, and no deed or act done or performed under or in connection therewith, shall be held or construed to obligate the state of Washington to pay or guarantee, in any manner whatsoever, any stock or stock certificate or other evidence of interest or ownership, or bond, note or other evidence of indebtedness, authorized, issued or executed under the provisions of this chapter. [1961 c 14 § 81.08.140. Prior: 1933 c 151 § 14; RRS § 10439-14.]

81.08.150 Authority of commission—Not affected by requirements of this chapter. No action by a public service company in compliance with nor by the commission in conformance with the requirements of this chapter may in any way affect the authority of the commission over rates, service, accounts, valuations, estimates, or determinations of costs, or any matters whatsoever that may come before it. [1994 c 251 § 13.]

Chapter 81.12 RCW TRANSFERS OF PROPERTY

Sections

81.12.010	Definition.
81.12.020	Order required to sell, merge, etc.
81.12.030	Disposal without authorization void.
81.12.040	Authority required to acquire property or securities of company.
81.12.050	Rules and regulations.
81.12.060	Penalty.

81.12.010 Definition. "Public service company," as used in this chapter, means every common carrier subject to regulation as to rates and service by the utilities and transportation commission under the provisions of this title. It does not include common carriers subject to regulation by the federal energy regulatory commission or the United States department of transportation, household goods carriers subject to chapter 81.80 RCW, or solid waste collection companies subject to chapter 81.77 RCW. This section does not apply to transfers of permits or certificates. [2007 c 234 § 19; 1981 c 13 § 4; 1969 ex.s. c 210 § 4; 1965 ex.s. c 105 § 4; 1963 c 59 § 5; 1961 c 14 § 81.12.010. Prior: 1953 c 95 § 12; 1941 c 159 § 1, part; Rem. Supp. 1941 § 10440a.]

81.12.020 Order required to sell, merge, etc. No public service company shall sell, lease, assign or otherwise dispose of the whole or any part of its franchises, properties or facilities whatsoever, which are necessary or useful in the performance of its duties to the public, and no public service company shall, by any means whatsoever, directly or indirectly, merge or consolidate any of its franchises, properties or facilities with any other public service company, without having secured from the commission an order authorizing it so to do: PROVIDED, That this section shall not apply to any sale, lease, assignment or other disposal of such franchises, properties or facilities to a public utility district. [1961 c 14 § 81.12.020. Prior: 1945 c 75 § 1; 1941 c 159 § 2; Rem. Supp. 1945 § 10440b.]

81.12.030 Disposal without authorization void. Any such sale, lease, assignment, or other disposition, merger or consolidation made without authority of the commission

shall be void. [1961 c 14 § 81.12.030. Prior: 1941 c 159 § 3; Rem. Supp. 1941 § 10440c.]

81.12.040 Authority required to acquire property or securities of company. No public service company shall, directly or indirectly, purchase, acquire, or become the owner of any of the franchises, properties, facilities, capital stocks or bonds of any other public service company unless authorized so to do by the commission. Nothing contained in this chapter shall prevent the holding of stocks or other securities heretofore lawfully acquired or prohibit, upon the surrender or exchange of said stocks or other securities pursuant to a reorganization plan, the purchase, acquisition, taking or holding by the owner of a proportionate amount of the stocks or other securities of any new corporation organized to take over at foreclosure or other sale, the property of the corporation the stocks or securities of which have been thus surrendered or exchanged. Any contract by any public service company for the purchase, acquisition, assignment or transfer to it of any of the stocks or other securities of any other public service company, directly or indirectly, without the approval of the commission shall be void and of no effect. [1961 c 14 § 81.12.040. Prior: 1941 c 159 § 4; Rem. Supp. 1941 § 10440d.]

81.12.050 Rules and regulations. The commission shall have power to promulgate rules and regulations to make effective the provisions of this chapter. [1961 c 14 § 81.12.050. Prior: 1941 c 159 § 5; Rem. Supp. 1941 § 10440e.]

81.12.060 Penalty. The provisions of RCW 81.04.380 and 81.04.385 as to penalties shall be applicable to public service companies, their officers, agents and employees failing to comply with the provisions of this chapter. [1961 c 14 § 81.12.060. Prior: 1941 c 159 § 6; Rem. Supp. 1941 § 10440f.]

Chapter 81.16 RCW AFFILIATED INTERESTS

Sections

81.16.010	Definitions.
81.16.020	Dealings with affiliated interests—Prior filing with commission required—Commission may disapprove.
81.16.030	Payments to affiliated interest disallowed if not reasonable.
81.16.040	Satisfactory proof, what constitutes.
81.16.050	Commission's control is continuing.
81.16.060	Summary order on nonapproved payments.
81.16.070	Summary order on payments after disallowance.
81.16.075	Application of chapter—Solid waste collection companies.
81.16.080	Court action to enforce orders.
81.16.090	Review of orders.

81.16.010 Definitions. As used in this chapter:

(1) "Public service company" means every corporation engaged in business as a common carrier and subject to regulation as to rates and service by the utilities and transportation commission under this title.

(2) "Affiliated interest" means:

(a) Every corporation and person owning or holding directly or indirectly five percent or more of the voting securities of any public service company engaged in any intrastate business in this state;

(b) Every corporation and person, other than those above specified, in any chain of successive ownership of five percent or more of voting securities, the chain beginning with the holder of the voting securities of such public service company;

(c) Every corporation five percent or more of whose voting securities are owned by any person or corporation owning five percent or more of the voting securities of such public service company or by any person or corporation in any such chain of successive ownership of five percent or more of voting securities;

(d) Every corporation or person with which the public service company has a management or service contract; and

(e) Every person who is an officer or director of such public service company or of any corporation in any chain of successive ownership of five percent or more of voting securities. [2007 c 234 § 20; 1969 ex.s. c 210 § 5; 1961 c 14 § 81.16.010. Prior: 1953 c 95 § 13; 1933 c 152 § 1, part; RRS § 10440-1, part.]

81.16.020 Dealings with affiliated interests—Prior filing with commission required—Commission may disapprove. Every public service company shall file with the commission a verified copy, or a verified summary if unwritten, of a contract or arrangement providing for the furnishing of management, supervisory construction, engineering, accounting, legal, financial, or similar services, or any contract or arrangement for the purchase, sale, lease, or exchange of any property, right, or thing, or for the furnishing of any service, property, right, or thing, other than those enumerated in this section, hereafter made or entered into between a public service company and any affiliated interest as defined in this chapter, including open account advances from or to the affiliated interests. The filing must be made prior to the effective date of the contract or arrangement. Modifications or amendments to the contracts or arrangements with affiliated interests must be filed with the commission prior to the effective date of the modification or amendment. The commission may at any time after receipt of the contract or arrangement institute an investigation and disapprove the contract, arrangement, or amendment thereto if the commission finds the public service company has failed to prove that it is reasonable and consistent with the public interest. The commission may disapprove any such contract or arrangement if satisfactory proof is not submitted to the commission of the cost to the affiliated interest of rendering the services or of furnishing the property or service described in this section. [1998 c 47 § 6; 1961 c 14 § 81.16.020. Prior: 1941 c 160 § 1; 1933 c 152 § 1; Rem. Supp. 1941 § 10440-2.]

81.16.030 Payments to affiliated interest disallowed if not reasonable. In any proceeding, whether upon the commission's own motion or upon complaint, involving the rates or practices of any public service company, the commission may exclude from the accounts of the public service company any payment or compensation to an affiliated interest for any services rendered or property or service furnished, as described in this section, under existing contracts or arrangements with the affiliated interest unless the public service company establishes the reasonableness of the payment or compensation. In the proceeding the commission shall disal-

low the payment or compensation, in whole or in part, in the absence of satisfactory proof that it is reasonable in amount. In such a proceeding, any payment or compensation may be disapproved or disallowed by the commission, in whole or in part, if satisfactory proof is not submitted to the commission of the cost to the affiliated interest of rendering the service or furnishing the property or service described in this section. [1998 c 47 § 7; 1961 c 14 § 81.16.030. Prior: 1933 c 152 § 3; RRS § 10440-3.]

81.16.040 Satisfactory proof, what constitutes. No proof shall be satisfactory, within the meaning of RCW 81.16.010 through 81.16.030, unless it includes the original (or verified copies) of the relevant cost records and other relevant accounts of the affiliated interest, or such abstract thereof or summary taken therefrom, as the commission may deem adequate, properly identified and duly authenticated: PROVIDED, HOWEVER, That the commission may, where reasonable, approve or disapprove such contracts or arrangements without the submission of such cost records or accounts. [1961 c 14 § 81.16.040. Prior: 1933 c 152 § 4; RRS § 10440-4.]

81.16.050 Commission's control is continuing. The commission shall have continuing supervisory control over the terms and conditions of such contracts and arrangements as are herein described so far as necessary to protect and promote the public interest. The commission shall have the same jurisdiction over the modifications or amendment of contracts or arrangements as are herein described as it has over such original contracts or arrangements. The fact that a contract or arrangement has been filed with, or the commission has approved entry into such contracts or arrangements, as described herein, shall not preclude disallowance or disapproval of payments made pursuant thereto, if upon actual experience under such contract or arrangement, it appears that the payments provided for or made were or are unreasonable. Every order of the commission approving any such contract or arrangement shall be expressly conditioned upon the reserved power of the commission to revise and amend the terms and conditions thereof, if, when and as necessary to protect and promote the public interest. [1998 c 47 § 8; 1961 c 14 § 81.16.050. Prior: 1933 c 152 § 5; RRS § 10440-5.]

81.16.060 Summary order on nonapproved payments. Whenever the commission shall find upon investigation that any public service company is giving effect to any such contract or arrangement without such contract or arrangement having been filed or approved, the commission may issue a summary order prohibiting the public service company from treating any payments made under the terms of such contract or arrangement as operating expenses or as capital expenditures for rate or valuation purposes, unless and until such contract or arrangement has been filed with the commission or until payments have received the approval of the commission. [1998 c 47 § 9; 1961 c 14 § 81.16.060. Prior: 1933 c 152 § 6; RRS § 10440-6.]

81.16.070 Summary order on payments after disallowance. Whenever the commission finds upon investigation that any public service company is making payments to

an affiliated interest, although the payments have been disallowed or disapproved by the commission in a proceeding involving the public service company's rates or practices, the commission shall issue a summary order directing the public service company to not treat the payments as operating expenses or capital expenditures for rate or valuation purposes, unless and until the payments have received the approval of the commission. [1998 c 47 § 10; 1961 c 14 § 81.16.070. Prior: 1933 c 152 § 7; RRS § 10440-7.]

81.16.075 Application of chapter—Solid waste collection companies. This chapter does not apply to a determination of the base for collection rates for solid waste collection companies meeting the requirements under RCW 81.77.160(3). [1997 c 434 § 2.]

81.16.080 Court action to enforce orders. The superior court of Thurston county is authorized to enforce such orders to cease and desist by appropriate process, including the issuance of a preliminary injunction, upon the suit of the commission. [1961 c 14 § 81.16.080. Prior: 1933 c 152 § 8; RRS § 10440-8.]

81.16.090 Review of orders. Any public service company or affiliated interest deeming any decision or order of the commission to be in any respect or manner improper, unjust or unreasonable may have the same reviewed in the courts in the same manner and by the same procedure as is now provided by law for review of any other order or decision of the commission. [1961 c 14 § 81.16.090. Prior: 1933 c 152 § 9; RRS § 10440-9.]

Chapter 81.20 RCW INVESTIGATION OF PUBLIC SERVICE COMPANIES

Sections

81.20.010	Definition.
81.20.020	Cost of investigation may be assessed against company.
81.20.030	Interest on unpaid assessment—Action to collect.
81.20.040	Commission's determination of necessity as evidence.
81.20.050	Order of commission not subject to review.
81.20.060	Limitation on frequency of investigations.

81.20.010 Definition. As used in this chapter, the term "public service company" means any person, firm, association, or corporation, whether public or private, operating a utility or public service enterprise subject in any respect to regulation by the utilities and transportation commission under the provisions of this title or Title 22 RCW. [1961 c 14 § 81.20.010. Prior: 1953 c 95 § 14; 1939 c 203 § 1; RRS § 10458-6.]

81.20.020 Cost of investigation may be assessed against company. Whenever the commission in any proceeding upon its own motion or upon complaint shall deem it necessary in order to carry out the duties imposed upon it by law to investigate the books, accounts, practices and activities of, or make any valuation or appraisal of the property of any public service company, or to investigate or appraise any phase of its operations, or to render any engineering or accounting service to or in connection with any public ser-

vice company, and the cost thereof to the commission exceeds in amount the ordinary regulatory fees paid by such public service company during the preceding calendar year or estimated to be paid during the current year, whichever is more, such public service company shall pay the expenses reasonably attributable and allocable to such investigation, valuation, appraisal or services. The commission shall ascertain such expenses, and, after giving notice and an opportunity to be heard, shall render a bill therefor by registered mail to the public service company, either at the conclusion of the investigation, valuation, appraisal or services, or from time to time during its progress. Within thirty days after a bill has been mailed such public service company shall pay to the commission the amount of the bill, and the commission shall transmit such payment to the state treasurer who shall credit it to the public service revolving fund. The total amount which any public service company shall be required to pay under the provisions of this section in any calendar year shall not exceed one percent of the gross operating revenues derived by such public service company from its intrastate operations during the last preceding calendar year. If such company did not operate during all of the preceding year the calculations shall be based upon estimated gross revenues for the current year. [1961 c 14 § 81.20.020. Prior: 1939 c 203 § 2(a); RRS § 10458-6a(a).]

81.20.030 Interest on unpaid assessment—Action to collect. Amounts so assessed against any public service company not paid within thirty days after mailing of the bill therefor, shall draw interest at the rate of six percent per annum from the date of mailing of the bill. Upon failure of the public service company to pay the bill, the attorney general shall proceed in the name of the state by civil action in the superior court for Thurston county against such public service company to collect the amount due, together with interest and costs of suit. [1961 c 14 § 81.20.030. Prior: 1939 c 203 § 2(b); RRS § 10458-6a(b).]

81.20.040 Commission's determination of necessity as evidence. In such action the commission's determination of the necessity of the investigation, valuation, appraisal or services shall be conclusive evidence of such necessity, and its findings and determination of facts expressed in bills rendered pursuant to RCW 81.20.020 through 81.20.060 or in any proceedings determinative of such bills shall be prima facie evidence of such facts. [1961 c 14 § 81.20.040. Prior: 1939 c 203 § 2(c); RRS § 10458-6a(c).]

81.20.050 Order of commission not subject to review. In view of the civil action provided for in RCW 81.20.020 through 81.20.060 any order made by the commission in determining the amount of such bill shall not be reviewable in court, but the mere absence of such right of review shall not prejudice the rights of defendants in the civil action. [1961 c 14 § 81.20.050. Prior: 1939 c 203 § 2(d); RRS § 10458-6a(d).]

81.20.060 Limitation on frequency of investigations. Expenses of a complete valuation, rate and service investigation shall not be assessed against a public service company under this chapter if such company shall have been subjected

to and paid the expenses of a complete valuation, rate and service investigation during the preceding five years, unless the properties or operations of the company have materially changed or there has been a substantial change in its value for rate making purposes or in other circumstances and conditions affecting rates and services. [1961 c 14 § 81.20.060. Prior: 1939 c 203 § 2(e); RRS § 10458-6a(e).]

Chapter 81.24 RCW REGULATORY FEES

Sections

81.24.010	Companies to file reports of gross revenue and pay fees—Exempt companies.
81.24.020	Fees of auto transportation companies—Statement filing.
81.24.030	Fees of every commercial ferry—Statement filing.
81.24.050	Fees to approximate reasonable cost of regulation.
81.24.060	Intent of legislature—Regulatory cost records to be kept by commission.
81.24.070	Disposition of fees.
81.24.075	Delinquent fee payments.
81.24.080	Penalty for failure to pay fees—Disposition of fees and penalties.
81.24.090	Pipeline safety fee—Reports—Procedure to contest fees—Regulatory incentive program.
81.24.100	Mileage fees on stages—Penalty.

Corporations, annual license fees of public service companies: RCW 23B.01.570.

Highway user tax structure: Chapter 46.85 RCW.

Mileage fees on auto stages: RCW 81.24.100.

81.24.010 Companies to file reports of gross revenue and pay fees—Exempt companies. (1) Every company subject to regulation by the commission, except those listed in subsection (3) of this section, shall, on or before the date specified by the commission for filing annual reports under RCW 81.04.080, file with the commission a statement on oath showing its gross operating revenue from intrastate operations for the preceding calendar year, or portion thereof, and pay to the commission a fee equal to one-tenth of one percent of the first fifty thousand dollars of gross operating revenue, plus two-tenths of one percent of any gross operating revenue in excess of fifty thousand dollars, except railroad companies which shall each pay to the commission a fee of up to two and one-half percent of its intrastate gross operating revenue. However, a class three railroad that does not haul crude oil must pay a fee equal to one and one-half percent of its intrastate gross operating revenue. The commission may, by rule, set minimum fees that do not exceed the cost of collecting the fees. The commission may by rule waive any or all of the minimum fee established pursuant to this section. Any railroad association that qualifies as a non-profit charitable organization under the federal internal revenue code section 501(c)(3) is exempt from the fee required under this subsection.

(2) The percentage rates of gross operating revenue to be paid in any one year may be decreased by the commission for any class of companies subject to the payment of such fees, by general order entered before March 1st of such year, and for such purpose railroad companies are classified as class two. Every other company subject to regulation by the commission, for which regulatory fees are not otherwise fixed by law, shall pay fees as herein provided and shall constitute

additional classes according to kinds of businesses engaged in.

(3) This section does not apply to private nonprofit transportation providers, auto transportation companies, charter party carriers and excursion service carriers, solid waste collection companies, motor freight carriers, household goods carriers, commercial ferries, and low-level radioactive waste storage facilities. [2015 c 274 § 18; 2007 c 234 § 21; 2003 c 296 § 2; 1996 c 196 § 1; 1990 c 48 § 2; 1977 ex.s. c 48 § 1; 1969 ex.s. c 210 § 6; 1963 c 59 § 11; 1961 c 14 § 81.24.010. Prior: 1957 c 185 § 1; 1955 c 125 § 4; prior: 1939 c 123 § 1, part; 1937 c 158 § 1, part; 1929 c 107 § 1, part; 1923 c 107 § 1, part; 1921 c 113 § 1, part; RRS § 10417, part.]

Effective date—2015 c 274: See note following RCW 90.56.005.

81.24.020 Fees of auto transportation companies—Statement filing. On or before the date specified by the commission for filing annual reports under RCW 81.04.080, every auto transportation company must file with the commission a statement showing its gross operating revenue from intrastate operations for the preceding year and pay to the commission a fee of two-fifths of one percent of the amount of gross operating revenue. The commission may, by rule, set minimum fees that do not exceed the cost of collecting the fees. The commission may by rule waive any or all of the minimum fee established pursuant to this section.

The percentage rate of gross operating revenue to be paid in any period may be decreased by the commission by general order entered before the fifteenth day of the month preceding the month in which the fee is due. [2003 c 296 § 3; 1997 c 215 § 1; 1961 c 14 § 81.24.020. Prior: 1955 c 125 § 5; prior: 1937 c 158 § 2, part; RRS § 10417-1, part.]

81.24.030 Fees of every commercial ferry—Statement filing. Every commercial ferry shall, on or before the date specified by the commission for filing annual reports under RCW 81.04.080, file with the commission a statement on oath showing its gross operating revenue from intrastate operations for the preceding calendar year, or portion thereof, and pay to the commission a fee of two-fifths of one percent of the amount of gross operating revenue: PROVIDED, That the commission may, by rule, set minimum fees that do not exceed the cost of collecting the fees. The commission may by rule waive any or all of the minimum fee established pursuant to this section. The percentage rate of gross operating revenue to be paid in any year may be decreased by the commission by general order entered before March 1st of such year. [2003 c 296 § 4; 1993 c 427 § 10; 1981 c 13 § 5; 1961 c 14 § 81.24.030. Prior: 1955 c 125 § 6; prior: 1939 c 123 § 3, part; 1937 c 158 § 4, part; RRS § 10417-3, part.]

81.24.050 Fees to approximate reasonable cost of regulation. In fixing the percentage rates of gross operating revenue to be paid by companies under RCW 81.24.010, 81.24.020, and 81.24.030, the commission shall consider all moneys then in the public service revolving fund and the fees currently to be paid into such fund, to the end that the fees collected from the companies, or classes of companies, covered by each respective section shall be approximately the same as the reasonable cost of supervising and regulating such companies, or classes of companies, respectively. [1983

c 3 § 206; 1961 c 14 § 81.24.050. Prior: 1955 c 125 § 8; prior: (i) 1939 c 123 § 1, part; 1937 c 158 § 1, part; RRS § 10417, part. (ii) 1937 c 158 § 2, part; RRS § 10417-1, part. (iii) 1939 c 123 § 3, part; 1937 c 158 § 4, part; RRS § 10417-3, part. (iv) 1939 c 123 § 2, part; 1937 c 158 § 3, part; RRS § 10417-2, part. (v) 1949 c 124 § 1, part; Rem. Supp. 1949 § 10417-2, part.]

81.24.060 Intent of legislature—Regulatory cost records to be kept by commission. It is the intent and purpose of the legislature that the several groups of public service companies shall each contribute sufficient in fees to the commission to pay the reasonable cost of regulating the several groups respectively. The commission shall keep accurate records of the costs incurred in regulating and supervising the several groups of companies subject to regulation or supervision and such records shall be open to inspection by all interested parties. The records and data upon which the commission's determination is made shall be considered prima facie correct in any proceeding instituted to challenge the reasonableness or correctness of any order of the commission fixing fees and distributing regulatory expenses. [1961 c 14 § 81.24.060. Prior: 1937 c 158 § 7; RRS § 10417-5.]

81.24.070 Disposition of fees. All moneys collected under the provisions of this chapter shall within thirty days be paid to the state treasurer and by him or her deposited to the public service revolving fund. [2013 c 23 § 294; 1961 c 14 § 81.24.070. Prior: 1937 c 158 § 6; RRS § 10417-4.]

81.24.075 Delinquent fee payments. Any payment of a fee imposed by this chapter made after its due date shall include a late fee of two percent of the amount due. Delinquent fees shall accrue interest at the rate of one percent per month. [1994 c 83 § 2.]

81.24.080 Penalty for failure to pay fees—Disposition of fees and penalties. Every person, firm, company or corporation, or the officers, agents or employees thereof, failing or neglecting to pay the fees herein required shall be guilty of a misdemeanor. All fines and penalties collected under the provisions of this chapter shall be deposited into the public service revolving fund of the state treasury: PROVIDED, That all fees, fines, forfeitures and penalties collected or assessed by a district court because of the violation of a state law shall be remitted as provided in chapter 3.62 RCW as now exists or is later amended. [1987 c 202 § 242; 1979 ex.s. c 198 § 2; 1961 c 14 § 81.24.080. Prior: 1923 c 107 § 2; 1921 c 113 § 3; RRS § 10419.]

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

81.24.090 Pipeline safety fee—Reports—Procedure to contest fees—Regulatory incentive program. (1)(a) Every hazardous liquid pipeline company as defined in RCW 81.88.010 shall pay an annual pipeline safety fee to the commission. The pipeline safety fees received by the commission shall be deposited in the pipeline safety account created in RCW 81.88.050.

(b) The aggregate amount of fees set shall be sufficient to recover the reasonable costs of administering the pipeline safety program, taking into account federal funds used to off-

set the costs. The fees established under this section shall be designed to generate revenue not exceeding appropriated levels of funding for the current fiscal year. At a minimum, the fees established under this section shall be sufficient to adequately fund pipeline inspection personnel, the timely review of pipeline safety and integrity plans, the timely development of spill response plans, the timely development of accurate maps of pipeline locations, participation in federal pipeline safety efforts to the extent allowed by law, and the staffing of the citizens committee on pipeline safety.

(c) Increases in the aggregate amount of fees over the immediately preceding fiscal year are subject to the requirements of RCW 43.135.055.

(2) The commission shall by rule establish the methodology it will use to set the appropriate fee for each entity subject to this section. The methodology shall provide for an equitable distribution of program costs among all entities subject to the fee. The fee methodology shall provide for:

(a) Direct assignment of average costs associated with annual standard inspections, including the average number of inspection days per year. In establishing these directly assignable costs, the commission shall consider the requirements and guidelines of the federal government, state safety standards, and good engineering practices; and

(b) A uniform and equitable means of estimating and allocating costs of other duties relating to inspecting pipelines for safety that are not directly assignable, including but not limited to design review and construction inspections, specialized inspections, incident investigations, geographic mapping system design and maintenance, and administrative support.

(3) The commission shall require reports from those entities subject to this section in the form and at such time as necessary to set the fees. After considering the reports supplied by the entities, the commission shall set the amount of the fee payable by each entity by general order entered before a date established by rule.

(4) For companies subject to RCW 81.24.010, the commission shall collect the pipeline safety fee as part of the fee specified in RCW 81.24.010. The commission shall allocate the moneys collected under RCW 81.24.010 between the pipeline safety program and for other regulatory purposes. The commission shall adopt rules that assure that fee moneys related to the pipeline safety program are maintained separately from other moneys collected by the commission under this chapter.

(5) Any payment of the fee imposed by this section made after its due date must include a late fee of two percent of the amount due. Delinquent fees accrue interest at the rate of one percent per month.

(6) The commission shall keep accurate records of the costs incurred in administering its hazardous liquid pipeline safety program, and the records are open to inspection by interested parties. The records and data upon which the commission's determination is made shall be prima facie correct in any proceeding to challenge the reasonableness or correctness of any order of the commission fixing fees and distributing regulatory expenses.

(7) If any entity seeks to contest the imposition of a fee imposed under this section, that entity shall pay the fee and request a refund within six months of the due date for the pay-

ment by filing a petition for a refund with the commission. The commission shall establish by rule procedures for handling refund petitions and may delegate the decisions on refund petitions to the secretary of the commission.

(8) After establishing the fee methodology by rule as required in subsection (2) of this section, the commission shall create a regulatory incentive program for pipeline safety programs in collaboration with the citizens committee on pipeline safety. The regulatory incentive program created by the commission shall not shift costs among companies paying pipeline safety fees and shall not decrease revenue to pipeline safety programs. [2009 c 91 § 2; 2001 c 238 § 3.]

Intent—Finding—Effective date—2001 c 238: See notes following RCW 80.24.060.

81.24.100 Mileage fees on stages—Penalty. In addition to the license fees required under RCW 46.17.355 for registering vehicles under RCW 46.16A.455, operators of auto stages with seating capacity over six shall pay, at the time they file gross earning returns with the utilities and transportation commission, the sum of fifteen cents for each one hundred vehicle miles operated by each auto stage over the public highways of this state. However, in the case of each auto stage propelled by steam, electricity, natural gas, diesel oil, butane, or propane, the payment required in this section is twenty cents per one hundred miles of such operation. The commission shall transmit all sums so collected to the state treasurer, who shall deposit the same in the motor vehicle fund. Any person failing to make any payment required by this section is subject to a penalty of one hundred percent of the payment due in this section, in addition to any penalty provided for failure to submit a report. Any penalties so collected shall be credited to the public service revolving fund. [2010 c 161 § 424; 1997 c 215 § 2; 1967 ex.s. c 83 § 60; 1961 c 12 § 46.16.125. Prior: 1951 c 269 § 14. Formerly RCW 46.16.125.]

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.

Additional notes found at www.leg.wa.gov

Chapter 81.28 RCW COMMON CARRIERS IN GENERAL

Sections

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81.28.290	Investigation of accidents, wrecks.
81.28.900	Construction—Chapter applicable to state registered domestic partnerships—2009 c 521.

Charges, prohibition against discrimination: State Constitution Art. 12 § 15.

Common carrier may bridge state waterway: RCW 79.110.130.

Constitutional limitations generally: State Constitution Art. 12.

Department of transportation as common carrier: RCW 47.60.220.

Free transportation to public officers prohibited: State Constitution Art. 2 § 39.

Legislature may establish maximum rates for transportation: State Constitution Art. 12 § 18.

Lien for transportation, storage, etc.: Chapter 60.60 RCW.

Monopolies and trusts prohibited: State Constitution Art. 12 § 22.

Municipal transportation systems: Title 35 RCW.

Regulation of common carriers: State Constitution Art. 12 § 13.

81.28.010 Duties as to rates, services, and facilities.

All charges made for any service rendered or to be rendered in the transportation of persons or property, or in connection therewith, by any common carrier subject to regulation by the commission as to rates and service, or by any two or more such common carriers, must be just, fair, reasonable, and sufficient.

Every common carrier shall construct, furnish, maintain and provide, safe, adequate, and sufficient service facilities and equipment to enable it to promptly, expeditiously, safely, and properly receive, transport, and deliver all persons or property offered to or received by it for transportation, and to promote the safety, health, comfort, and convenience of its patrons, employees, and the public.

All rules and regulations issued by any such common carrier affecting or pertaining to the transportation of persons or property must be just and reasonable. [2007 c 234 § 22; 1961 c 14 § 81.28.010. Prior: 1911 c 117 § 9; RRS § 10345.]

81.28.020 Duty of carriers to expedite traffic.

Every common carrier subject to regulation by the commission as to rates and service shall under reasonable rules and regulations promptly and expeditiously receive, transport, and deliver all persons or property offered to or received by it for transportation. [2007 c 234 § 23; 1961 c 14 § 81.28.020. Prior: 1911 c 117 § 10; RRS § 10346.]

81.28.030 Routing of freight—Connecting companies—Damages.

All common carriers subject to regulation by the commission as to rates and service and doing business wholly within this state shall, upon receipt of any article of freight, promptly forward the same to its marked destination, by the route directed by the shipper, or if no directions are given by shipper, then to any connecting company whose line or route reaches nearest to the point to which such freight is marked.

Any such common carrier failing to comply with this section is liable for any damages that may be sustained, either to the shipper or consignee, from any cause, upon proof that the damages resulted from a failure of the transportation company to comply with this section.

Suit for damages may be instituted either at the place of shipping or destination, either by the shipper or consignee, and before any court competent and qualified to hear and determine like causes between persons who reside in the

court's district. [2007 c 234 § 24; 1961 c 14 § 81.28.030. Prior: (i) 1890 p 291 § 1; RRS § 10491. (ii) 1890 p 291 § 2; RRS § 10492. (iii) 1890 p 291 § 3; RRS § 10493.]

81.28.040 Tariff schedules to be filed with commission—Public schedules—Commission's powers as to schedules. Every common carrier subject to regulation by the commission as to rates and service shall file with the commission and shall print and keep open for public inspection, schedules showing the rates, fares, charges, and classification for the transportation of persons and property within the state between each point upon the carrier's route and all other points thereon; and between each point upon its route and all points upon every route leased, operated, or controlled by it; and between each point on its route or upon any route leased, operated, or controlled by it and all points upon the route of any other common carrier, whenever a through route and joint rate have been established or ordered between any two such points. If no joint rate over a through route has been established, the several carriers participating in the through route shall file, print, and keep open for public inspection, the separately established rates, fares, charges, and classifications that apply to the through transportation. The schedules printed must: Plainly state the places between which property and persons are carried; contain classification of passengers or property in force; and state separately all terminal charges, storage charges, icing charges, all other charges that the commission may require to be stated, all privileges or facilities granted or allowed, and any rules or regulations that may in any way change, affect, or determine any part, or the aggregate of, such rates, fares, and charges, or the value of the service rendered to the passenger, shipper, or consignee. The schedule must be plainly printed in large type, and a copy of it shall be kept by every carrier readily accessible to inspection by the public in every station or office of the carrier where passengers or property are respectively received for transportation, when the station or office is in charge of any agent. All of the schedules kept as provided in this section must be immediately produced by the carrier for inspection upon the demand of any person. A notice printed in bold type and stating that the schedules are on file with the agent and open to inspection by any person and that the agent will assist any person to determine from the schedules any transportation rates or fares or rules or regulations that are in force must be kept posted by the carrier in two public and conspicuous places in every such station or office. The form of each schedule must be prescribed by the commission.

The commission may, from time to time, determine and prescribe by order such changes in the form of the schedules as may be found expedient, and modify the requirements of this section in respect to publishing, posting, and filing of schedules either in particular instances or by general rule or order applicable to special or peculiar circumstances or conditions.

The commission may suspend the operation of this section in whole or in part as applied to vessels engaged in jobbing business not operating on regular routes. [2007 c 234 § 25; 1984 c 143 § 4; 1961 c 14 § 81.28.040. Prior: 1911 c 117 § 14; RRS § 10350.]

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81.28.050 Tariff changes—Notice—Exception—Waiver of provisions during state of emergency. Unless the commission otherwise orders, a change may not be made to any classification, rate, fare, charge, rule, or regulation filed and published by a common carrier subject to regulation by the commission as to rates and service, except after thirty days' notice to the commission and to the public. In the case of a solid waste collection company, a change may not be made except after forty-five days' notice to the commission and to the public. The notice must be published as provided in RCW 81.28.040 and must plainly state the changes proposed to be made in the schedule then in force and the time when the changed rate, classification, fare, or charge will go into effect. All proposed changes must be shown by printing, filing, and publishing new schedules or must be plainly indicated upon the schedules in force at the time and kept open to public inspection. The commission, for good cause shown, may by order allow changes in rates without requiring the notice and the publication time periods specified in this section. When any change is made in any rate, fare, charge, classification, rule, or regulation, attention must be directed to the change by some character on the schedule. The character and its placement must be designated by the commission. The commission may, by order, for good cause shown, allow changes in any rate, fare, charge, classification, rule, or regulation without requiring any character to indicate each and every change to be made.

During a state of emergency declared under RCW 43.06.010(12), the governor may waive or suspend the operation or enforcement of this section or any portion of this section or under any administrative rule, and issue any orders to facilitate the operation of state or local government or to promote and secure the safety and protection of the civilian population. [2008 c 181 § 406; 2007 c 234 § 26; 1993 c 300 § 2; 1984 c 143 § 5; 1981 c 116 § 1; 1961 c 14 § 81.28.050. Prior: 1957 c 205 § 3; 1911 c 117 § 15; RRS § 10351.]

Part headings not law—2008 c 181: See note following RCW 43.06.220.

81.28.060 Joint rates, contracts, etc. The names of the several carriers which are parties to any joint tariff shall be specified therein, and each of the parties thereto, other than the one filing the same, shall file with the commission such evidence of concurrence therein or acceptance thereof as may be required or approved by the commission; and where such evidence of concurrence or acceptance is filed, it shall not be necessary for the carriers filing the same also to file copies of the tariffs in which they are named as parties.

Every common carrier shall file with the commission copies of every contract, agreement or arrangement with any other common carrier or common carriers relating in any way to the transportation of persons or property. [1961 c 14 § 81.28.060. Prior: 1911 c 117 § 16; RRS § 10352.]

81.28.080 Published rates to be charged—Exceptions—Definitions. (1) A common carrier subject to regulation by the commission as to rates and service shall not charge, demand, collect, or receive a greater or less or different compensation for transportation of persons or property, or for any service in connection therewith, than the rates, fares, and charges applicable to such transportation as specified in

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its schedules filed and in effect at the time and shall not refund or remit in any manner or by any device any portion of the rates, fares, or charges so specified excepting upon order of the commission as hereinafter provided, or extend to any shipper or person any privileges or facilities in the transportation of passengers or property except such as are regularly and uniformly extended to all persons and corporations under like circumstances. Any common carrier subject to regulation by the commission as to rates and service shall not, directly or indirectly, issue or give any free ticket, free pass, or free or reduced transportation for passengers between points within this state, except to the carrier's employees and their families, surgeons and physicians and their families, the carrier's officers, agents, and attorneys-at-law; to ministers of religion, traveling secretaries of young men's christian associations, inmates of hospitals, charitable and eleemosynary institutions, and persons exclusively engaged in charitable and eleemosynary work; to indigent, destitute, and homeless persons; to inmates of the national homes or state homes for volunteer soldiers with disabilities and of soldiers' and sailors' homes, including those about to enter and those returning home after discharge; to necessary caretakers of livestock, poultry, milk, and fruit; to lineworkers of telegraph and telephone companies; to post office inspectors, customs inspectors, and immigration inspectors; to baggage agents and witnesses attending any legal investigation in which the common carrier is interested; to persons injured in accidents or wrecks and physicians and nurses attending such persons; to the national guard of Washington when on official duty; and students going to and returning from state institutions of learning. This section does not prohibit the interchange of passes for the officers, attorneys, agents and employees and their families, of commercial ferries or prohibit any common carrier from carrying passengers free with the object of providing relief in cases of general epidemic, pestilence, or other calamitous visitation.

(2) "Employee," as used in this section, includes furloughed, pensioned, and superannuated employees, persons who have become disabled or infirm in the service of any such common carrier, the remains of a person killed or dying in the employment of a carrier, those entering or leaving its service, and former employees traveling for the purpose of entering the service of any such common carrier.

(3) "Families," as used in this section, includes the families of those persons named in subsection (2) of this section, the families of persons killed and their surviving spouses prior to remarriage and minor children during minority, and the families of persons who died while in the service of any such common carrier.

(4) Nothing in this section prevents the issuance of mileage, commutation tickets, or excursion passenger tickets or prevents the issuance of free or reduced transportation by any street railroad company for mail carriers, or police officers or members of fire departments, city officers, and employees when engaged in the performance of their duties as city employees.

(5) Common carriers may carry, store, or handle, free or at reduced rates, property for the United States, state, county, or municipal governments, for charitable purposes, or to or from fairs and exhibitions for exhibition, and may carry, store, or handle, free or at reduced rates, the household goods and personal effects of its employees, those entering or leav-

ing its service, and those killed or dying while in its service. [2007 c 234 § 27; 2007 c 218 § 74; 1973 1st ex.s. c 154 § 117; 1961 c 14 § 81.28.080. Prior: 1929 c 96 § 1; 1911 c 117 § 18; RRS § 10354. Formerly RCW 81.28.080 through 81.28.130, 81.28.150 through 81.28.170, and 80.36.130.]

Reviser's note: This section was amended by 2007 c 218 § 74 and by 2007 c 234 § 27, 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—Finding—2007 c 218: See note following RCW 1.08.130.

Additional notes found at www.leg.wa.gov

81.28.180 Rate discrimination prohibited. A common carrier subject to regulation by the commission as to rates and service shall not, directly or indirectly, by any special rate, rebate, drawback, or other device or method, charge, demand, collect, or receive from any person or corporation a greater or lesser compensation for any service rendered or to be rendered in the transportation of persons or property, except as authorized in this title, than it charges, demands, collects, or receives from any person or corporation for doing a like and contemporaneous service in the transportation of a like kind of traffic under the same or substantially similar circumstances and conditions. [2007 c 234 § 28; 1984 c 143 § 6; 1961 c 14 § 81.28.180. Prior: 1911 c 117 § 20; RRS § 10356.]

81.28.190 Unreasonable preferences and prejudices prohibited. A common carrier subject to regulation by the commission as to rates and service shall not make or give any undue or unreasonable preference or advantage to any person, corporation, locality, or particular description of traffic in any respect whatsoever, or subject any particular person, corporation, locality, or particular description of traffic, to any undue or unreasonable prejudice or disadvantage in any respect whatsoever. [2007 c 234 § 29; 1984 c 143 § 7; 1961 c 14 § 81.28.190. Prior: 1911 c 117 § 21; RRS § 10357.]

81.28.200 Long and short haul. A common carrier, subject to regulation by the commission as to rates and service and this title, shall not charge or receive any greater compensation in the aggregate for the transportation of persons or a like kind of property for a shorter distance than for a longer distance over the same line in the same direction, the shorter distance being included within the longer distance, or to charge any greater compensation as a through rate than the aggregate of the intermediate rates subject to this title. The common carriers may not charge and receive as great a compensation for a shorter as for a longer distance or haul. Upon the application of a common carrier, the commission may by order authorize the common carrier to charge less for a longer distance than for a shorter distance for the transportation of persons or property in special cases after investigation by the commission, but the order must specify and prescribe the extent to which the common carrier making the application is relieved from the operation of this section. Only to the extent so specified and prescribed is any common carrier relieved from the operation and requirements of this section. [2007 c 234 § 30; 1984 c 143 § 8; 1961 c 14 § 81.28.200. Prior: 1911 c 117 § 22; RRS § 10358.]

81.28.210 Transportation at less than published rates—Rebating—False representation. (1) A common carrier subject to regulation by the commission as to rates and service, or any officer or agent thereof, or any person acting for or employed by the common carrier, shall not assist, suffer, or permit any person or corporation to obtain transportation for any person or property between points within this state at less than the rates then established and in force in accordance with the schedules filed and published under this title, by false billing, false classification, false weight or weighing, or false report of weight, or by any other device or means. Any person, corporation, or any officer, agent, or employee of a corporation, who delivers property for transportation within the state to a common carrier, shall not seek to obtain or obtain such transportation for such property at less than the rates then established and in force, by false billing, false or incorrect classification, false weight or weighing, false representation of the contents or substance of a package, or false report or statement of weight, or by any device or means, whether with or without the consent or connivance of a common carrier or any of its officers, agents, or employees.

(2) A person, corporation, or any officer, agent, or employee of a corporation, shall not knowingly or wilfully, directly or indirectly, by false statement or representation as to the cost, value, nature, or extent of injury, or by the use of any false billing, bill of lading, receipt, voucher, roll, account, claim, certificate, affidavit, or deposition, knowing the same to be false, fictitious, or fraudulent, or to upon any false, fictitious, or fraudulent statement or entry, obtain or attempt to obtain any allowance, rebate, or payment for damage, or otherwise, in connection with or growing out of the transportation of persons or property, or agreement to transport such persons or property, whether with or without the consent or connivance of such common carrier or any of its officers, agents, or employees, when the compensation of such carrier for such transportation is less than the rates then established and in force.

(3) A person, corporation, or any officer, agent, or employee of a corporation, who delivers property for transportation within the state to a common carrier, shall not seek to obtain or obtain such transportation by any false representation or false statement of false paper or token as to the contents or substance thereof, when the transportation of such property is prohibited by law. [2007 c 234 § 31; 1961 c 14 § 81.28.210. Prior: 1911 c 117 § 23; RRS § 10359.]

81.28.220 Action for treble damages. The attorney general of the state of Washington shall, whenever he or she has reasonable grounds to believe that any person, firm, or corporation has knowingly accepted or received from any carriers of persons or property subject to the jurisdiction of the commission, either directly or indirectly, any unlawful rebate, discount, deduction, concession, refund, or remittance from the rates or charges filed and open to public inspection as provided for in the public service laws of this state, prosecute a civil action in the name of the people of the state of Washington in the superior court of Thurston county to collect three times the total sum of such rebates, discounts, deductions, concessions, refunds, or remittances so accepted or received within three years prior to the commencement of such action.

All penalties imposed under the provisions of this section shall be paid to the state treasurer and by him or her deposited in the public service revolving fund. [2007 c 234 § 32; 1961 c 14 § 81.28.220. Prior: 1937 c 169 § 5; RRS § 10447-1.]

81.28.230 Commission to fix just, reasonable, and compensatory rates. Whenever the commission finds, after a hearing had upon its own motion or upon complaint, as provided in this chapter, that the rates, fares, or charges demanded, exacted, charged, or collected by any common carrier subject to regulation by the commission as to rates and service for the transportation of persons or property within the state or in connection therewith, or that the regulations or practices of the common carrier affecting those rates are unjust, unreasonable, unjustly discriminatory, or unduly preferential, or in any way are in violation of the provisions of law, or that the rates, fares, or charges are insufficient to yield a reasonable compensation for the service rendered, the commission shall determine and fix by order the just, reasonable, or sufficient rates, fares, or charges, or the regulations or practices to be thereafter observed and enforced. [2007 c 234 § 33; 1984 c 143 § 9; 1961 c 14 § 81.28.230. Prior: 1911 c 117 § 53, part; RRS § 10389, part.]

81.28.240 Commission may order improved facilities and service. Whenever the commission shall find, after such hearing, that the rules, regulations, practices, equipment, appliances, facilities or service of any such common carrier in respect to the transportation of persons or property are unjust, unreasonable, unsafe, improper, inadequate or insufficient, the commission shall determine the just, reasonable, safe, adequate, sufficient and proper rules, regulations, practices, equipment, appliances, facilities or service to be observed, furnished, constructed or enforced and be used in the transportation of persons and property by such common carrier, and fix the same by its order or rule. [1961 c 14 § 81.28.240. Prior: 1911 c 117 § 53, part; RRS § 10389, part.]

81.28.250 Investigation and determination of interstate rates—Application for federal relief. The commission shall investigate all interstate, rates, fares, charges, classifications, or rules or practices in relation to the transportation of persons or property within this state, and if the commission determines that these rates, fares, charges, classification, or rules or practices are excessive or discriminatory, or are applied in violation of the act of congress entitled "An act to regulate commerce," approved February 4, 1887, as amended or supplemented, or in conflict with the rulings, orders, or regulations of the applicable federal regulatory agency, the commission shall apply, by petition, to the applicable federal regulatory agency for relief, and may present to the agency all facts concerning violations of the rulings, orders, or regulations of that agency, or violations of the act to regulate commerce as amended or supplemented. [2007 c 234 § 34; 1961 c 14 § 81.28.250. Prior: 1911 c 117 § 58; RRS § 10394.]

81.28.260 Bicycles as baggage on commercial ferries. Bicycles must be transported as baggage for passengers by commercial ferries and are subject to the same liabilities as

other baggage. A passenger is not required to crate, cover, or otherwise protect any bicycle. A commercial ferry is not required to transport more than one bicycle for one person. [2007 c 234 § 35; 1961 c 14 § 81.28.260. Prior: 1899 c 15 § 1; RRS § 10495.]

81.28.270 Limitation of action for collection of transportation charges. All actions at law by railroads, common and contract carriers by motor truck and all other public carriers for recovery of their charges, or any part of them, for any common carrier service performed by said carriers, shall be begun within two years from the time the cause of action accrues, and not after. [1961 c 14 § 81.28.270. Prior: 1945 c 117 § 1; Rem. Supp. 1945 § 167-1.]

81.28.280 Reports of wrecks, etc. Every public service company shall give immediate notice to the commission of every accident resulting in death or injury to any person occurring on its lines or system, in such manner as the commission may prescribe.

Such notice shall not be admitted as evidence or used for any purpose against the company giving it in any action for damages growing out of any matter mentioned in the notice. The commission may require reports to be made by any common carrier of all wrecks, collisions, or derailments occurring on its line. [1961 c 14 § 81.28.280. Prior: 1953 c 104 § 3; prior: 1911 c 117 § 63, part; RRS § 10399, part.]

81.28.290 Investigation of accidents, wrecks. The commission shall investigate all accidents that may occur upon the lines of any common carrier resulting in loss of life, to any passenger or employee, and may investigate any and all accidents or wrecks occurring on the line of any common carrier. Notice of the investigation shall be given in all cases for a sufficient length of time to enable the company affected to participate in the hearing and may be given orally or in writing, in such manner as the commission may prescribe.

Such witnesses may be examined as the commission deems necessary and proper to thoroughly ascertain the cause of the accident or wreck and fix the responsibility therefor. The examination and investigation may be conducted by an inspector or deputy inspector, and he or she may administer oaths, issue subpoenas, and compel the attendance of witnesses, and when the examination is conducted by an inspector or deputy inspector, he or she shall make a full and complete report thereof to the commission. [2013 c 23 § 295; 1961 c 14 § 81.28.290. Prior: 1953 c 104 § 4; prior: 1911 c 117 § 63, part; RRS § 10399, part.]

81.28.900 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. For the purposes of this chapter, the terms spouse, marriage, marital, husband, wife, widow, widower, next of kin, and family shall be interpreted as applying equally to state registered domestic partnerships or individuals in state registered domestic partnerships as well as to marital relationships and married persons, and references to dissolution of marriage shall apply equally to state registered domestic partnerships that have been terminated, dissolved, or invalidated, to the extent that such interpretation does not conflict with federal law. Where necessary to implement chapter 521, Laws of 2009, gender-

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specific terms such as husband and wife used in any statute, rule, or other law shall be construed to be gender neutral, and applicable to individuals in state registered domestic partnerships. [2009 c 521 § 187.]

Chapter 81.29 RCW

COMMON CARRIERS—LIMITATIONS ON LIABILITY

Sections

81.29.010	Definition.
81.29.020	Carrier's liability for loss—Exceptions—Tariff schedule—Time for filing claims or instituting suits.
81.29.030	Carrier's right of action against other carrier.
81.29.040	Penalty for violations.
81.29.050	Liability for baggage.

81.29.010 Definition. "Common carrier," as used in this chapter, means every common carrier subject to regulation by the commission as to rates and service. [2007 c 234 § 36; 1961 c 14 § 81.29.010. Prior: 1945 c 203 § 1; Rem. Supp. 1945 § 3673-0. Formerly RCW 81.32.010, part.]

81.29.020 Carrier's liability for loss—Exceptions—Tariff schedule—Time for filing claims or instituting suits. (1) Any common carrier subject to regulation by the commission as to rates and service, receiving property for transportation wholly within the state of Washington from one point in the state of Washington to another point in the state of Washington, shall issue a receipt or bill of lading and is liable to the lawful holder thereof for any loss, damage, or injury to such property caused by it, or by any common carrier to which such property may be delivered, or over whose line or lines such property may pass when transported on a through bill of lading, and a contract, receipt, rule, regulation, or other limitation of any character, does not exempt such common carrier from the liability imposed; and any such common carrier receiving property for transportation wholly within the state of Washington, or any common carrier delivering property received and transported, is liable to the lawful holder of the receipt or bill of lading, or to any party entitled to recover thereon, whether such receipt or bill of lading has been issued or not, for the full actual loss, damage, or injury to such property caused by it or by any such common carrier to which such property may be delivered, or over whose line or lines such property may pass, when transported on a through bill of lading. Any limitation of liability, limitation of the amount of recovery, or representation or agreement as to value in any such receipt or bill of lading, or in any contract, rule, or regulation, or in any tariff filed with the commission is unlawful and void.

(2) Liability for full actual loss, damage, or injury, notwithstanding any limitation of liability or recovery or representation, agreement, or release as to value, and declaring any such limitation to be unlawful and void, does not apply: First, to baggage carried on commercial ferries or motor vehicles, or commercial ferries or motor vehicles carrying passengers; second, to property, concerning which the carrier is expressly authorized or required by order of the commission, to establish and maintain rates dependent upon the value declared in writing by the shipper or agreed upon in writing as the released value of the property, in which case such declaration

or agreement has no other effect than to limit liability and recovery to an amount not exceeding the value so declared or released; and any tariff schedule that may be filed with the commission pursuant to such order must contain specific reference thereto and may establish rates varying with the value so declared and agreed upon; and the commission may make such order in cases where rates dependent upon and varying with declared or agreed values would, in its opinion, be just and reasonable under the circumstances and conditions surrounding the transportation.

(3) This section does not deprive any holder of a receipt or bill of lading of any remedy or right of action which he or she has under the existing law.

(4) It is unlawful for any receiving or delivering common carrier to provide by rule, contract, regulation, or otherwise a shorter period for the filing of claims than nine months, and for the institution of suits than two years, such period for institution of suits to be computed from the day when notice in writing is given by the carrier to the claimant that the carrier has disallowed the claim or any part or parts thereof specified in the notice.

(5) The liability imposed by this section applies to property reconsigned or diverted in accordance with the applicable tariffs filed with the commission. [2007 c 234 § 37; 1982 c 83 § 1; 1980 c 132 § 1; 1961 c 14 § 81.29.020. Prior: 1945 c 203 § 2; 1923 c 149 § 1; Rem. Supp. 1945 § 3673-1. Formerly RCW 81.32.290 through 81.32.330.]

Additional notes found at www.leg.wa.gov

81.29.030 Carrier's right of action against other carrier. The common carrier issuing such receipt or bill of lading, or delivering such property so received and transported, shall be entitled to recover from the common carrier on whose line the loss, damage, or injury shall have been sustained, the amount of such loss, damage, or injury as it may be required to pay to the owners of such property, as may be evidenced by any receipt, judgment or transcript thereof. [1961 c 14 § 81.29.030. Prior: 1945 c 203 § 3; 1923 c 149 § 2; Rem. Supp. 1945 § 3673-2. Formerly RCW 81.32.340.]

81.29.040 Penalty for violations. Any common carrier subject to the provisions of this chapter, or whenever such common carrier is a corporation, any director or officer thereof, or any receiver, trustee, lessee, agent, or person acting for or employed by such corporation, who, alone, or with any other corporation, company, person, or party, shall wilfully do or cause to be done, or shall willingly suffer or permit to be done, any act, matter, or thing in this chapter prohibited or declared to be unlawful, or who shall aid or abet therein, or shall wilfully omit or fail to do any act, matter or thing in this chapter required to be done, or shall cause or willingly suffer or permit any act, matter or thing so directed or required by this chapter to be done, or not to be so done, or shall aid or abet any such omission or failure, or shall be guilty of any infraction of this chapter for which no penalty is otherwise provided, or who shall aid or abet therein, shall be deemed guilty of a misdemeanor, and shall upon conviction thereof in any court of competent jurisdiction, be subject to a fine of not to exceed five thousand dollars for each offense. [1961 c 14 § 81.29.040. Prior: 1923 c 149 § 3; RRS § 3673-3. Formerly RCW 81.32.350.]

81.29.050 Liability for baggage. The liability of any common carrier subject to regulation by the commission for the loss of or damage to any baggage shall be set by the commission. The commission will review the amounts periodically and adjust the rate accordingly. [1991 c 21 § 1; 1961 c 14 § 81.29.050. Prior: 1945 c 209 § 1; Rem. Supp. 1945 § 10495-1. Formerly RCW 81.32.360.]

Chapter 81.36 RCW

RAILROADS—CORPORATE POWERS AND DUTIES

Sections

81.36.010	Right of eminent domain.
81.36.020	Right of entry.
81.36.030	Intersections and connections with other roads or canals.
81.36.040	Line or canal across or along watercourses.
81.36.050	Change of grade or location of road or canal.
81.36.060	Extensions, branch lines.
81.36.075	Proceedings prior to March 18, 1909, validated.
81.36.090	Requisites to building extension or branch line.
81.36.100	Bridges over navigable streams.
81.36.120	May own securities of irrigation companies.
81.36.130	May construct and operate ditches and canals.

Assessment of private car companies for property tax purposes: Chapter 84.16 RCW.

Consolidation of competing railroads prohibited: State Constitution Art. 12 § 16.

Constitutional limitations, generally: State Constitution Art. 12.

Express companies: State Constitution Art. 12 § 21.

Rights-of-way over public lands, bridges, etc.: Chapter 79.36 RCW.

Taxation of rolling stock: State Constitution Art. 12 § 17.

81.36.010 Right of eminent domain. Every corporation organized for the construction of any railway, macadamized road, plank road, clay road, canal or bridge, is hereby authorized and empowered to appropriate, by condemnation, land and any interest in land or contract right relating thereto, including any leasehold interest therein and any rights-of-way for tunnels beneath the surface of the land, and any elevated rights-of-way above the surface thereof, including lands granted to the state for university, school or other purposes, and also tide and shore lands belonging to the state (but not including harbor areas), which may be necessary for the line of such road, railway or canal, or site of such bridge, not exceeding two hundred feet in width, besides a sufficient quantity thereof for toll houses, workshops, materials for construction, excavations and embankments and a right-of-way over adjacent lands or property, to enable such corporation to construct and prepare its road, railway, canal or bridge, and to make proper drains; and in case of a canal, whenever the court shall deem it necessary, to appropriate a sufficient quantity of land, including lands granted to the state for university, school or other purposes, in addition to that before specified in this section, for the construction and excavation of such canal and of the slopes and bermes thereof, not exceeding one thousand feet in total width; and in case of a railway to appropriate a sufficient quantity of any such land, including lands granted to the state for university, schools and other purposes and also tide and shore lands belonging to the state (but not including harbor areas) in addition to that before specified in this section, for the necessary side tracks, depots and water stations, and the right to conduct water thereto by aqueduct, and for yards, terminal, transfer and switching grounds, docks and warehouses required for

receiving, delivering, storage and handling of freight, and such land, or any interest therein, as may be necessary for the security and safety of the public in the construction, maintenance and operation of its railways; compensation therefor to be made to the owner thereof irrespective of any benefit from any improvement proposed by such corporation, in the manner provided by law: AND PROVIDED FURTHER, That if such corporation locate the bed of such railway or canal upon any part of the track now occupied by any established state or county road, said corporation shall be responsible to the state or county in which such state or county road so appropriated is located, for all expenses incurred by the state or county in relocating and opening the part of such road so appropriated. The term land as herein used includes tide and shore lands but not harbor areas; it also includes any interest in land or contract right relating thereto, including any leasehold interest therein. [1961 c 14 § 81.36.010. Prior: 1907 c 244 § 1; 1903 c 180 § 1; 1895 c 80 § 2; 1888 p 63 § 2; Code 1881 § 2456; 1869 p 343 § 2; RRS § 10539.]

81.36.020 Right of entry. A corporation organized for the construction of any railway, macadamized road, plank road, clay road, canal or bridge, shall have a right to enter upon any land, real estate or premises, or any of the lands granted to the state of Washington for school, university or other purposes, between the termini thereof, for the purpose of examining, locating and surveying the line of such road or canal, or the site of such bridge, doing no unnecessary damage thereby. [1961 c 14 § 81.36.020. Prior: 1895 c 80 § 1; 1888 p 63 § 1; Code 1881 § 2455; 1869 p 34 § 1; RRS § 10538.]

81.36.030 Intersections and connections with other roads or canals. Every corporation formed under the laws of this state for the construction of a railroad shall have the power to cross, intersect, join and unite its railway with any other railway before constructed, at any point in its route, and upon the grounds of such other railway company, with the necessary turn-outs, sidings, switches and other conveniences in furtherance of the objects of its connections, and every corporation whose railway is or shall be hereafter intersected by any new railway shall unite with the corporation owning such new railway in forming such intersections and connections and grant the facilities aforesaid; and if the two corporations cannot agree upon the amount of compensation to be made therefor, or the points and manner of such crossings and connections, the same shall be ascertained and determined in the manner provided by law for the taking of lands and other property which shall be necessary for the construction of its road, and every corporation formed under the laws of this state for the construction of a canal shall have the power to cross and intersect any railway before constructed at any point in its road and upon the grounds of such other railway company, and every corporation whose railway is or shall hereafter be crossed or intersected by any canal shall unite with the corporation owning such canal in forming such crossings and intersections and grant the facilities therefor; and if the two corporations cannot agree upon the compensation to be made therefor, or the points and manner of such crossings and connections, the same shall be ascertained and determined in the manner provided by law for the taking of

lands and other property which shall be necessary for the construction of said canal. [1961 c 14 § 81.36.030. Prior: 1895 c 80 § 3; 1888 p 64 § 3; Code 1881 § 2456 1/2; RRS § 10535.]

81.36.040 Line or canal across or along water-courses. Every corporation formed under the laws of this state for the construction of railroads or canals shall possess the power to construct its railway or canal, as the case may be, across, along or upon any river, stream of water, water-courses, plank road, turnpike or canal, which the route of such railway or canal shall intersect or touch; but such corporation shall restore the river, stream, watercourse, plank road or turnpike thus intersected or touched to its former state as near as may be, and pay any damages caused by such construction: PROVIDED, That the construction of any railway or canal by such corporation along, across or upon any of the navigable rivers or waters of this state shall be in such manner as to not interfere with, impede or obstruct the navigation thereof; and all rights, privileges and powers of every description by law conferred upon road or railroad companies are hereby given and granted to canal companies so far as the same may be applicable, and all power and authority possessed by the public or municipal corporations of the state or their local authorities, with reference to road or railroad companies, may be exercised by them with reference to canal companies. [1961 c 14 § 81.36.040. Prior: 1895 c 80 § 4; 1888 p 64 § 3; RRS § 10536.]

81.36.050 Change of grade or location of road or canal. Any corporation may change the grade or location of its road, or canal, not departing from the general route specified in the articles of incorporation, for the purpose of avoiding annoyances to public travel or dangerous or deficient curves or grades, or unsafe or unsubstantial grounds or foundation, or for other like reasonable causes, and for the accomplishment of such change, shall have the same right to enter upon, examine, survey and appropriate the necessary lands and materials, as in the original location and construction of such road or canal. [1961 c 14 § 81.36.050. Prior: Code 1881 § 2457; 1869 p 343 § 3; RRS § 10537.]

81.36.060 Extensions, branch lines. Any railroad corporation chartered by, or organized under, the laws of the state, or of any state or territory, or under the laws of the United States, and authorized to do business in this state, may extend its railroads from any point named in its charter or articles of incorporation, or may build branch roads either from any point on its line of road or from any point on the line of any other railroad connecting, or to be connected, with its road, the use of which other road between such points and the connection with its own road such corporation shall have secured by lease or agreement for a term of not less than ten years from its date. Before making any such extension or building any such branch road, such corporation shall, by resolution of its directors or trustees, to be entered in the record of its proceedings, designate the route of such proposed extension or branch by indicating the place from and to which said railroad is to be constructed, and the estimated length of such railroad, and the name of each county in this state through or into which it is constructed or intended to be constructed, and file a copy of such record, certified by the pres-

ident and secretary, in the office of the secretary of state, who shall endorse thereon the date of the filing thereof and record the same. Thereupon such corporation shall have all the rights and privileges to make such extension or build such branch and receive aid thereto which it would have had if it had been authorized in its charter or articles of incorporation. [1961 c 14 § 81.36.060. Prior: 1890 p 526 § 1; RRS § 10460.]

81.36.075 Proceedings prior to March 18, 1909, validated. Any sale or purchase of, and any consolidation by sale, or otherwise, or any lease, or agreement to sell, consolidate with or lease, the whole or any part of any railroad, or the branch lines of any company, whether organized or located within or without this state, with the franchises appertaining thereto, to, from or with any railroad company organized under the laws of the United States or of this state or any other state or territory, or any consolidation between such companies, executed prior to March 18, 1909 by the proper officers of the respective companies, parties to such sale, lease or consolidation or contract, is hereby legalized and made in all respects valid and binding from the date of its execution: PROVIDED, That the provisions of this section shall not apply when the railroads or transportation corporations involved are competing lines. [1961 c 14 § 81.36.075. Prior: 1909 c 196 § 2; RRS § 10464.]

81.36.090 Requisites to building extension or branch line. Any railroad corporation chartered by or organized under the laws of the United States, or of any state or territory, whose constructed railroad shall reach or intersect the boundary line of this state at any point, may extend its railroad into this state from any such point or points to any place or places within the state, and may build branches from any point on such extension. Before making such extension or building any such branch road, such corporation shall, by resolution of its directors or trustees, to be entered in the record of its proceedings, designate the route of such proposed extension or branch by indicating the place from and to which such extension or branch is to be constructed, and the estimated length of such extension or branch, and the name of each county in this state through or into which it is constructed or intended to be constructed, and file a copy of such record, certified by the president and secretary, in the office of the secretary of state, who shall endorse thereon the date of filing thereof, and record the same. Thereupon such corporation shall have all the rights and privileges to make such extension or build such branch and receive such aid thereto as it would have had had it been authorized so to do by articles of incorporation duly filed in accordance with the laws of this state. [1961 c 14 § 81.36.090. Prior: 1890 p 527 § 3; RRS § 10466.]

81.36.100 Bridges over navigable streams. Any railroad corporation heretofore duly incorporated and organized under the laws of this state or of the territory of Washington, or which may hereafter be duly incorporated and organized under the laws of this state, or heretofore or hereafter incorporated and organized under the laws of any other state or territory of the United States, and authorized to do business in this state and to construct and operate railroads therein, shall have and hereby is given the right to construct bridges across

the navigable streams within this state over which the projected line or lines of railway of said railroad corporations will run: PROVIDED, That said bridges are constructed in good faith for the purpose of being made a part of the constructed line of said railroad: AND PROVIDED, That they shall be constructed in the course of the construction of said railroad or thereafter for the more convenient operation thereof: AND PROVIDED FURTHER, That such bridges shall be so constructed as not to interfere with, impede or obstruct the navigation of such streams. [1961 c 14 § 81.36.100. Prior: 1890 p 53 § 1; RRS § 10468.]

Bridges and trestles across state waterways: RCW 79.110.130, 79.110.140.

Railroad bridges across navigable streams: RCW 79.110.110.

81.36.120 May own securities of irrigation companies. It shall be lawful for any corporation, whether such corporation is organized under the laws of the territory or state of Washington, the laws of any other state or territory, or the laws of the United States owning, leasing or operating any line or lines of railway within the state of Washington, or which may own, lease or operate in the future any such line or lines of railway within this state, to take, acquire, own, negotiate, sell and guarantee bonds and stocks of companies or corporations which are or may hereafter be organized for the purpose of irrigating and reclaiming lands within this state. [1961 c 14 § 81.36.120. Prior: 1890 p 529 § 1; RRS § 10461.]

81.36.130 May construct and operate ditches and canals. It shall be lawful for any such corporation to build, own and operate irrigating ditches and canals in this state for the purpose of irrigating and reclaiming arid lands contiguous to or tributary to such line or lines of railway. [1961 c 14 § 81.36.130. Prior: 1890 p 529 § 2; RRS § 10462.]

Chapter 81.40 RCW

RAILROADS—EMPLOYEE REQUIREMENTS AND REGULATIONS

Sections

81.40.010	Full train crews—Passenger—Safety review—Penalty—Enforcement.
81.40.035	Freight train crews.
81.40.060	Purchase of apparel by employees—Penalty.
81.40.080	Employee shelters—Penalty.
81.40.095	Rules and regulations—Railroad employees—Sanitation, shelter.
81.40.110	Flagger must read, write, and speak English.
81.40.130	Cost of records or medical examinations—Unlawful to require employee or applicant to pay—Penalty—Definitions.

Industrial insurance, employments covered: Chapter 51.12 RCW.

Intoxication of railway employees: RCW 9.91.020.

81.40.010 Full train crews—Passenger—Safety review—Penalty—Enforcement. (1) No law or order of any regulatory agency of this state shall prevent a common carrier by railroad from staffing its passenger trains in accordance with collective bargaining agreements or any national or other applicable settlement of train crew size. In the absence of a collective bargaining agreement or any national or other applicable settlement of train crew size, any common carrier railroad operating a passenger train with a crew of less than two members shall be subject to a safety review by the

Washington utilities and transportation commission, which, as to staffing, may issue an order requiring as many as two crewmembers.

(2) Each train or engine run in violation of this section is a separate offense: PROVIDED, That nothing in this section shall be construed as applying in the case of disability of one or more of any train crew while out on the road between division terminals, wrecking trains, or to any line, or part of line, where not more than two trains are run in each twenty-four hours.

(3) Any person, corporation, company, or officer of court operating any railroad or railway, or part of any railroad or railway in the state of Washington, and engaged as a common carrier, in the transportation of freight or passengers, who violates this section is guilty of a misdemeanor and upon conviction thereof shall be fined not less than one hundred dollars nor more than five hundred dollars for each offense.

(4) It is the duty of the commission to enforce this section. [2003 c 53 § 386; 1992 c 102 § 1; 1961 c 14 § 81.40.010. Prior: 1911 c 134 § 1; RRS § 10486.]

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

81.40.035 Freight train crews. No law or order of any regulatory agency of this state shall prevent a common carrier by railroad from manning its freight trains in accordance with collective bargaining agreements or any national or other settlement of train crew size. The size of passenger train crews shall not be affected by *this act. [1967 c 2 § 2 (Initiative Measure No. 233, approved November 8, 1966).]

***Reviser's note:** This act [chapter 2, Laws of 1967], consisting of this section and the repeal of RCW 81.40.020, was Initiative Measure No. 233 adopted by the people November 8, 1966, and declared effective law by proclamation signed by the governor December 8, 1966.

Repeal of conflicting acts: "All acts or parts of acts in conflict with or in derogation of this act are hereby repealed insofar as the same are in conflict with, or in derogation of, this act or any part thereof." [1967 c 2 § 3 (Initiative Measure No. 233, approved November 8, 1966).]

81.40.060 Purchase of apparel by employees—Penalty. (1) It shall be unlawful for any railroad or other transportation company doing business in the state of Washington, or of any officer, agent, or servant of such railroad or other transportation company, to require any conductor, engineer, brake operator, fire tender, purser, or other employee, as a condition of his or her continued employment, or otherwise to require or compel, or attempt to require or compel, any such employees to purchase of any such railroad or other transportation company or of any particular person, firm, or corporation or at any particular place or places, any uniform or other clothing or apparel, required by any such railroad or other transportation company to be used by any such employee in the performance of his or her duties as such; and any such railroad or transportation company or any officer, agent or servant thereof, who shall order or require any conductor, engineer, brake operator, fire tender, purser, or other person in its employ, to purchase any uniform or other clothing or apparel as aforesaid, shall be deemed to have required such purchase as a condition of such employee's continued employment.

(2) Any railroad or other transportation company doing business in the state of Washington, or any officer, agent, or

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servant thereof, violating this section is guilty of a misdemeanor and upon conviction thereof shall be punished by a fine in any sum not less than one hundred dollars nor more than five hundred dollars, or by imprisonment in the county jail of the county where the misdemeanor is committed, not exceeding six months. [2013 c 23 § 296; 2003 c 53 § 388; 1961 c 14 § 81.40.060. Prior: 1907 c 224 § 1; RRS § 10504.]

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

81.40.080 Employee shelters—Penalty. (1) It shall be unlawful for any railroad company, corporation, association or other person owning, controlling or operating any line of railroad in the state of Washington, to build, construct, reconstruct, or repair railroad car equipment or motive power in this state without first erecting and maintaining at every point where five employees or more are regularly employed on such work, a shed over a sufficient portion of the tracks used for such work, so as to provide that all persons regularly employed in such work shall be sheltered and protected from rain and other inclement weather: PROVIDED, That the provisions of this section shall not apply at points where it is necessary to make light repairs only on equipment or motive power, nor to equipment loaded with time or perishable freight, nor to equipment when trains are being held for the movement of equipment, nor to equipment on tracks where trains arrive or depart or are assembled or made up for departure. The term "light repairs," as herein used, shall not include repairs usually made in roundhouse, shop or shed upon well equipped railroads.

(2) Any railroad company or officer or agent thereof, or any other person, who violates this section by failing or refusing to comply with its provisions is guilty of a misdemeanor, and each day's failure or refusal to comply shall be considered a separate offense. [2009 c 549 § 1030; 2003 c 53 § 389; 1961 c 14 § 81.40.080. Prior: 1941 c 238 § 1; Rem. Supp. 1941 § 7666-40.]

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

81.40.095 Rules and regulations—Railroad employees—Sanitation, shelter. The utilities and transportation commission shall adopt and enforce rules and regulations relating to sanitation and adequate shelter as it affects the health of all railroad employees, including but not limited to railroad workers, maintenance of way employees, highway crossing watchpersons, clerical, platform, freight house and express employees. [2007 c 218 § 82; 1961 c 14 § 81.40.095. Prior: 1957 c 71 § 1. Formerly RCW 81.04.162.]

Intent—Finding—2007 c 218: See note following RCW 1.08.130.

81.40.110 Flagger must read, write, and speak English. Any railroad operating within this state, shall not employ or use as flagger any person or persons who cannot read, write, and speak the English language. [2013 c 23 § 297; 1961 c 14 § 81.40.110. Prior: 1907 c 138 § 1, part; 1899 c 35 § 1, part; RRS § 10480, part.]

81.40.130 Cost of records or medical examinations—Unlawful to require employee or applicant to pay—Penalty—Definitions. (1) It is unlawful for any employer to

require any employee or applicant for employment to pay the cost of a medical examination or the cost of furnishing any records required by the employer as a condition of employment.

(2) Any employer who violates this section is guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than one hundred dollars. Each violation shall constitute a separate offense.

(3) As used in this section:

(a) "Employer" means any common carrier by rail, doing business in or operating within the state, and any subsidiary thereof.

(b) "Employee" means every person who may be permitted, required, or directed by any employer, in consideration of direct or indirect gain or profit, to engage in any employment. [2003 c 53 § 390; 1961 c 14 § 81.40.130. Prior: 1955 c 228 § 2.]

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

Chapter 81.44 RCW COMMON CARRIERS—EQUIPMENT

Sections

81.44.010	Order for improved equipment and facilities.
81.44.020	Correction of unsafe or defective conditions—Walkways and handrails as unsafe or defective condition, when.
81.44.040	Streetcars.
81.44.070	Duties of inspector of safety appliances.
81.44.085	First aid kits and drinking water—Penalty.
81.44.130	Safeguarding frogs, switches, and guard rails.
81.44.170	Hazardous materials inspections—Authority for certified commission employees to enter property of certain businesses.

Excessive steam in boilers, penalty: RCW 70.54.080.

Safety and health, tunnels and underground construction: Chapter 49.24 RCW.

Steam boilers, pressure vessels, construction, inspection, etc.: Chapter 70.79 RCW.

Tampering with signals, lights, etc.: RCW 88.08.020.

81.44.010 Order for improved equipment and facilities. Whenever the commission, after a hearing had upon its own motion or upon complaint, finds that any equipment or facility for use by any common carrier in, or in connection with the transportation of persons or property, ought reasonably to be provided, or any repairs or improvements to, or changes in, any theretofore in use ought reasonably to be made, or any additions or changes in construction should reasonably be made thereto, in order to promote the security or convenience of the public or employees, or in order to secure adequate service or facilities for the transportation of passengers or property, the commission may, after a hearing, either on its own motion or after complaint, serve an order directing such repairs, improvements, changes, or additions to be made. [2007 c 234 § 38; 1961 c 14 § 81.44.010. Prior: 1911 c 117 § 64; RRS § 10400.]

81.44.020 Correction of unsafe or defective conditions—Walkways and handrails as unsafe or defective condition, when. If upon investigation the commission finds that the equipment, facilities, tracks, bridges, or other structures of any common carrier are defective, and that the oper-

ation thereof is dangerous to the employees of the common carrier or to the public, it shall immediately give notice to the superintendent or other officer of the common carrier of the repairs or reconstruction necessary to place the same in a safe condition. The commission may also prescribe the rate of speed for trains or cars passing over the dangerous or defective track, bridge, or other structure until the repairs or reconstruction required are made, and may also prescribe the time when the repairs or reconstruction must be made; or if, in the commission's opinion, it is needful or proper, the commission may forbid trains or cars to run over any defective track, bridge, or structure until the track, bridge, or structure is repaired and placed in a safe condition. Railroad bridges or trestles without walkways and handrails may be identified as an unsafe or defective condition under this section after a hearing by the commission upon complaint or on its own motion. The commission, in making the determination, shall balance considerations of employee and public safety with the potential for increased danger to the public resulting from adding walkways or handrails to railway bridges. A railroad company and its employees are not liable for injury to or death of any person occurring on or about any railway bridge or trestle if the person was not a railway employee but was a trespasser or was otherwise not authorized to be in the location where the injury or death occurred.

Appeal from or action to review any order of the commission made under this section is not available if the commission finds that immediate compliance is necessary for the protection of employees or the public. [2007 c 234 § 39; 1982 c 141 § 1; 1977 ex.s. c 46 § 1; 1961 c 14 § 81.44.020. Prior: 1911 c 117 § 65; RRS § 10401.]

81.44.040 Streetcars. Every streetcar must be equipped with proper and efficient brakes, steps, grab irons or hand rails, fenders or aprons or pilots, and with such other appliances, apparatus, and machinery necessary for the safe operation of the streetcar as the commission may prescribe. [2007 c 234 § 40; 1961 c 14 § 81.44.040. Prior: 1911 c 117 § 66, part; RRS § 10402, part. Formerly RCW 81.44.040 and 81.64.120, part.]

81.44.070 Duties of inspector of safety appliances. It shall be the duty of the inspector of tracks, bridges, structures, and equipment, and such deputies as may be appointed, to inspect all equipment, and appliances connected therewith, and all apparatus, tracks, bridges and structures, depots and facilities and accommodations connected therewith, and facilities and accommodations furnished for the use of employees, and make such reports of his or her inspection to the commission as may be required. He or she shall, on discovering any defective equipment or appliances connected therewith, rendering the use of such equipment dangerous, immediately report the same to the superintendent of the road on which it is found, and to the proper official at the nearest point where such defect is discovered, describing the defect. Such inspector may, on the discovery of any defect rendering the use of any car, motor or locomotive dangerous, condemn such car, motor or locomotive, and order the same out of service until repaired and put in good working order. He or she shall, on discovering any track, bridge, or structure defective or unsafe in any particular, report such condition to the com-

mission, and, in addition thereto, report the same to the official in charge of the division of such railroad upon which such defect is found. In case any track, bridge, or structure is found so defective as to be dangerous to the employees or public for a train or trains to be operated over the same, the inspector is hereby authorized to condemn such track, bridge, or structure and notify the commission and the office in charge of the division of such railroad where such defect is found of his or her action concerning the same, reporting in detail the defect complained of, and the work or improvements necessary to repair such defect. He or she shall also report to the commission the violation of any law governing, controlling, or affecting the conduct of public service companies in this state, as such companies are defined in this title or in Title 80 RCW.

The inspector, or such deputies as may be appointed, shall have the right and privilege of riding on any locomotive, either on freight or passenger trains, or on the caboose of any freight train, for the purpose of inspecting the track on any railroad in this state: PROVIDED, That the engineer or conductor in charge of any such locomotive or caboose may require such inspector to produce his or her authority, under the seal of the commission, showing that he or she is such inspector or deputy inspector.

The inspector, or such deputy inspector or inspectors as may be appointed, shall, when required by the commission, inspect any street railroad, gas plant, electrical plant, water system, telephone line, or telegraph line, and upon discovering any defective or dangerous track, bridge, structure, equipment, apparatus, machinery, appliance, facility, instrumentality, or building, rendering the use of the same dangerous to the public or to the employees of the company owning or operating the same, report the same to the commission, and to the official in charge of such road, plant, system, or line. [2013 c 23 § 298; 1961 c 14 § 81.44.070. Prior: 1911 c 117 § 67; RRS § 10403. Formerly RCW 81.44.070 and 81.44.080.]

81.44.085 First aid kits and drinking water—Penalty. (1) Every person operating a common carrier railroad in this state shall equip each locomotive and caboose used in train or yard switching service, and every car used in passenger service with a first aid kit of a type to be approved by the commission, which kit shall be plainly marked and be readily visible and accessible and be maintained in a fully quipped condition: PROVIDED, That such kits shall not be required on equipment used exclusively in yard or switching service where such kits are maintained in the yard or terminal.

(2) Each locomotive and caboose shall also be furnished with sanitary cups and sanitary ice-cooled drinking water.

(3) For the purpose of this section a "locomotive" shall include all railroad engines propelled by any form of energy and used in rail line haul or yard switching service.

(4) Any person violating this section is guilty of a misdemeanor. [2003 c 53 § 391; 1969 ex.s. c 210 § 7; 1961 c 14 § 81.44.085. Prior: 1951 c 66 §§ 1, 2, 3.]

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

81.44.130 Safeguarding frogs, switches, and guard rails. Every railroad and street railroad operating in this state shall so adjust, fill, block and securely guard all frogs,

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switches and guard rails so as to protect and prevent the feet of persons being caught therein. [1961 c 14 § 81.44.130. Prior: 1911 c 117 § 68; RRS § 10404.]

81.44.170 Hazardous materials inspections—Authority for certified commission employees to enter property of certain businesses. Commission employees certified by the federal railroad administration to perform hazardous materials inspections may enter the property of any business that receives, ships, or offers for shipment hazardous materials by rail. Entry shall be at a reasonable time and in a reasonable manner. The purpose of entry is limited to performing inspections, investigations, or surveillance of equipment, records, and operations relating to the packaging, loading, unloading, or transportation of hazardous materials by rail, pursuant only to the state participation program outlined in 49 C.F.R. Part 212. The term "business" is all inclusive and is not limited to common carriers or public service companies. [2015 c 274 § 19.]

Effective date—2015 c 274: See note following RCW 90.56.005.

Chapter 81.48 RCW

RAILROADS—OPERATING REQUIREMENTS AND REGULATIONS

Sections

81.48.020	Obstructing or delaying train—Penalty.
81.48.030	Regulating speed within cities and towns and at grade crossings—Exception.
81.48.040	Procedure to fix or change speed limits.
81.48.050	Trains to stop at railroad crossings.
81.48.060	Penalty for violation of duty endangering safety.
81.48.070	Cruelty to stock in transit—Penalty.

Excessive steam in boilers, penalty: RCW 70.54.080.

Steam boilers, pressure vessels, construction, inspection, etc.: Chapter 70.79 RCW.

81.48.020 Obstructing or delaying train—Penalty. Every person who shall wilfully obstruct, hinder or delay the passage of any car lawfully operated upon any railway, shall be guilty of a misdemeanor. [1961 c 14 § 81.48.020. Prior: 1909 c 249 § 278; RRS § 2530.]

81.48.030 Regulating speed within cities and towns and at grade crossings—Exception. Except to the extent preempted by federal law, the right to fix and regulate the speed of railway trains within the limits of any city or town other than a first-class city, and at grade crossings as defined in RCW 81.53.010 where such grade crossings are outside the limits of cities and towns, is vested exclusively in the commission: PROVIDED, That RCW 81.48.030 and 81.48.040 shall not apply to street railways which may be operating or hereafter operated within the limits of said cities and towns. [2006 c 70 § 1; 1994 c 81 § 83; 1973 c 115 § 3; 1971 ex.s. c 143 § 1; 1961 c 14 § 81.48.030. Prior: 1943 c 228 § 1; Rem. Supp. 1943 § 10547-1.]

81.48.040 Procedure to fix or change speed limits. (1) After due investigation, the commission shall make and issue an order fixing and regulating the speed of railway trains within the limits of cities and towns other than first-class cities. Except to the extent preempted by federal law, the speed

limit to be fixed by the commission shall be discretionary, and it may fix different rates of speed for different cities and towns, which rates of speed shall be commensurate with the hazard presented and the practical operation of the trains. Except to the extent preempted by federal law, the commission shall also fix and regulate the speed of railway trains at grade crossings as defined in RCW 81.53.010 where such grade crossings are outside the limits of cities and towns when in the judgment of the commission the public safety so requires; such speed limit to be fixed shall be discretionary with the commission and may be different for different grade crossings and shall be commensurate with the hazard presented and the practical operation of trains. The commission shall have the right from time to time, as conditions change, to either increase or decrease speed limits established under RCW 81.48.030 and 81.48.040.

(2) Any speed limit that the commission fixed by order prior to June 7, 2006, but without making a finding permitted under P.L. 91-458, Sec. 205 (49 U.S.C. Sec. 20106), has no force or effect.

(3) Before increasing operating speeds, the railroad company, government agency, or jurisdiction that owns or operates the railroad must provide a sixty-day written notice to the commission and to either the governing body of the city or town within which the limit applies or the road authority that has control over the grade crossing at which the limit applies. In the notice, the railroad company, government agency, or jurisdiction must provide the existing timetable speed limits and new passenger and freight speed limits, the milepost limits where the speed increase is to occur, and the federal track class standard to which the track will be maintained. At the end of sixty days, the railroad company, government agency, or jurisdiction may raise the speed limit unless the commission staff, after investigation, finds that a lower limit is necessary to address local conditions consistent with P.L. 91-458, Sec. 205 (49 U.S.C. Sec. 20106). In the event of such a finding by the staff that is not agreed to by the railroad company, government agency, or jurisdiction, the matter shall be scheduled for a hearing before the commission. A railroad company, government agency, or jurisdiction may provide no more than five notices in any sixty-day period without the consent of the commission. The railroad company, government agency, or jurisdiction and the commission may extend the sixty-day period by mutual consent. [2006 c 70 § 2; 1994 c 81 § 84; 1971 ex.s. c 143 § 2; 1961 c 14 § 81.48.040. Prior: 1943 c 228 § 2; Rem. Supp. 1943 § 10547-2.]

81.48.050 Trains to stop at railroad crossings. All railroads and street railroads, operating in this state shall cause their trains and cars to come to a full stop at a distance not greater than five hundred feet before crossing the tracks of another railroad crossing at grade, excepting at crossings where there are established signal towers, and signal operators, interlocking plants or gates. [2009 c 549 § 1031; 1961 c 14 § 81.48.050. Prior: 1911 c 117 § 69; RRS § 10405.]

81.48.060 Penalty for violation of duty endangering safety. Every engineer, motor operator, grip operator, conductor, brake operator, switch tender, train dispatcher, or other officer, agent, or servant of any railway company, who shall be guilty of any willful violation or omission of his or

her duty as such officer, agent, or servant, by which human life or safety shall be endangered, for which no punishment is specially prescribed, shall be guilty of a misdemeanor. [2013 c 23 § 299; 1961 c 14 § 81.48.060. Prior: 1909 c 249 § 277; RRS § 2529.]

81.48.070 Cruelty to stock in transit—Penalty. Railroad companies in carrying or transporting animals shall not permit them to be confined in cars for a longer period than forty-eight consecutive hours without unloading them for rest, water, and feeding for a period of at least two consecutive hours, unless prevented from so unloading them by unavoidable accident. In estimating such confinement, the time during which the animals have been confined without such rest on connecting roads from which they are received shall be included. Animals so unloaded shall, during such rest, be properly fed, watered by the owner or person having the custody of them, or in case of his or her default in so doing, then by the railroad company transporting them, at the expense of said owner or person in custody thereof, and said company shall in such case have a lien upon such animals for food, care, and custody furnished, and shall not be liable for such detention of such animals. If animals are transported where they can and do have proper food, water, space, and opportunity for rest, the foregoing provision in regard to their being unloaded shall not apply. Violators of this section shall be punished by fine not exceeding one thousand dollars per animal. [2013 c 23 § 300; 1994 c 261 § 19; 1961 c 14 § 81.56.120. Prior: 1893 c 27 § 4; RRS § 10494. Formerly RCW 81.56.120.]

Finding—Intent—1994 c 261: See note following RCW 16.52.011.

Chapter 81.52 RCW RAILROADS—RIGHTS-OF-WAY—SPURS— FENCES

Sections

81.52.050	Fences—Crossings—Cattle guards.
81.52.060	Fences—Liability for injury to stock.
81.52.070	Fences—Negligence—Evidence.

Eminent domain by corporations: Chapter 8.20 RCW.

Forest protection: Chapter 76.04 RCW.

Public lands, rights-of-way, easements, etc.: Chapter 79.36 RCW.

81.52.050 Fences—Crossings—Cattle guards. Every person, company, or corporation having the control or management of any railroad shall, outside of any corporate city or town, and outside the limits of any sidetrack or switch, cause to be constructed and maintained in good repair on each side of said railroad, along the line of said right-of-way of such person, company, or corporation operating the same, a substantial fence, and at every point where any roadway or other public highway shall cross said railroad, a safe and sufficient crossing must be built and maintained, and on each side of such crossing and at each end of such sidetrack or switch, outside of any incorporated city or town, a sufficient cattle guard: PROVIDED, That any person holding land on both sides of said right-of-way shall have the right to put in gates for his or her own use at such places as may be convenient. [2013 c 23 § 301; 1961 c 14 § 81.52.050. Prior: 1907 c 88 § 1; RRS § 10507.]

81.52.060 Fences—Liability for injury to stock.

Every such person, company or corporation owning or operating such railroad shall be liable for all damages sustained in the injury or killing of stock in any manner by reason of the failure of such person, company or corporation, to construct and maintain such fence or such crossing or cattle guard; but when such fences, crossings and guards have been duly made, and shall be kept in good repair, such person, company or corporation shall not be liable for any such damages, unless negligently or unlawfully done. [1961 c 14 § 81.52.060. Prior: 1907 c 88 § 2; RRS § 10508.]

81.52.070 Fences—Negligence—Evidence.

In all actions against persons, companies or corporations, operating steam or electric railroads in the state of Washington, for injury to stock by collision with moving trains, it is prima facie evidence of negligence on the part of such person, company or corporation, to show that the railroad track was not fenced with a substantial fence or protected by a sufficient cattle guard at the place where the stock was injured or killed. [1961 c 14 § 81.52.070. Prior: 1907 c 88 § 3; RRS § 10509.]

**Chapter 81.53 RCW
RAILROADS—CROSSINGS**

Sections

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81.53.400	Traffic control devices during construction, repair, etc. of crossing or overpass—Required.
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81.53.420	Traffic control devices during construction, repair, etc. of crossing or overpass—Rules.
81.53.430	Safety standards for private crossings along railroad tracks over which crude oil is transported—Adoption of rules.
81.53.900	Effective date—1975 1st ex.s. c 189.

Counties, signs, signals, etc.: RCW 36.86.040.

Railroad intersections, crossings, etc.: State Constitution Art. 12 § 13.

Traffic devices required by utilities and transportation commission: RCW 47.36.050.

Underpasses, overpasses constructed with federal funds, maintenance cost apportionment for: RCW 47.28.150.

81.53.010 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Commission" means the utilities and transportation commission of Washington.

(2) "Grade crossing" means any point or place where a railroad crosses a highway or a highway crosses a railroad or one railroad crosses another, at a common grade.

(3) "Highway" includes all state and county roads, streets, alleys, avenues, boulevards, parkways, and other public places actually open and in use, or to be opened and used, for travel by the public.

(4) "Over-crossing" means any point or place where a highway crosses a railroad by passing above the same. "Over-crossing" also means any point or place where one railroad crosses another railroad not at grade.

(5) "Private crossing" means any point or place where a railroad crosses a private road at grade or a private road crosses a railroad at grade, where the private road is not a highway.

(6) "Railroad" means every railroad, including interurban and suburban electric railroads, by whatsoever power operated, for the public use in the conveyance of persons or property for hire, with all bridges, ferries, tunnels, equipment, switches, spurs, sidings, tracks, stations, and terminal facilities of every kind, used, operated, controlled, managed, or owned by or in connection therewith. The term also includes every logging and other industrial railway owned or operated primarily for the purpose of carrying the property of its owners or operators or of a limited class of persons, with all tracks, spurs, and sidings used in connection therewith. The term does not include street railways operating within the limits of any incorporated city or town.

(7) "Railroad company" includes every corporation, company, association, joint stock association, partnership, or person, its, their, or his or her lessees, trustees, or receivers appointed by any court whatsoever, owning, operating, controlling, or managing any railroad.

(8) "Under-crossing" means any point or place where a highway crosses a railroad by passing under the same. "Under-crossing" also means any point or place where one railroad crosses another railroad not at grade. [2015 c 274 § 20; 2013 c 23 § 302; 1961 c 14 § 81.53.010. Prior: 1959 c 283 § 2; prior: (i) 1913 c 30 § 1; RRS § 10511. (ii) 1941 c 161 § 1; Rem. Supp. 1941 § 10511-1. Formerly RCW 81.52.080, part.]

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

Effective date—2015 c 274: See note following RCW 90.56.005.

81.53.020 Grade separation required where practicable. All railroads and extensions of railroads hereafter constructed shall cross existing railroads and highways by passing either over or under the same, when practicable, and shall in no instance cross any railroad or highway at grade without authority first being obtained from the commission to do so. All highways and extensions of highways hereafter laid out and constructed shall cross existing railroads by passing either over or under the same, when practicable, and shall in no instance cross any railroad at grade without authority first being obtained from the commission to do so: PROVIDED, That this section shall not be construed to prohibit a railroad company from constructing tracks at grade across other tracks owned or operated by it within established yard limits. In determining whether a separation of grades is practicable, the commission shall take into consideration the amount and character of travel on the railroad and on the highway; the grade and alignment of the railroad and the highway; the cost of separating grades; the topography of the country, and all other circumstances and conditions naturally involved in such an inquiry. [1961 c 14 § 81.53.020. Prior: 1913 c 30 § 2; RRS § 10512. Formerly RCW 81.52.090.]

81.53.030 Petition for crossing—Hearing—Order. Whenever a railroad company desires to cross a highway or railroad at grade, it shall file a written petition with the commission setting forth the reasons why the crossing cannot be made either above or below grade. Whenever the legislative authority of a county, or the municipal authorities of a city, or the state officers authorized to lay out and construct state roads, or the state parks and recreation commission, desire to extend a highway across a railroad at grade, they shall file a written petition with the commission, setting forth the reasons why the crossing cannot be made either above or below grade. Upon receiving the petition, the commission shall immediately investigate it, giving at least ten days' notice to the railroad company and the county or city affected thereby, of the time and place of the investigation, to the end that all parties interested may be present and heard. If the highway involved is a state road or parkway, the secretary of transportation or the state parks and recreation commission shall be notified of the time and place of hearing. The evidence introduced shall be reduced to writing and be filed by the commission. If it finds that it is not practicable to cross the railroad or highway either above or below grade, the commission shall enter a written order in the cause, either granting or denying the right to construct a grade crossing at the point in question. The commission may provide in the order authorizing a grade crossing, or at any subsequent time, that the railroad company shall install and maintain proper signals, warnings, flaggers, interlocking devices, or other devices or means to secure the safety of the public and its employees. In respect to existing railroad grade crossings over highways the construction of which grade crossings was accomplished other than under a commission order authorizing it, the commission may in any event require the railroad company to install and maintain, at or near each crossing, on both sides of it, a sign known as the sawbuck crossing sign with the lettering "Railroad Crossing" inscribed thereon with a suitable inscription indicating the number of tracks. The sign shall be of standard design conforming to specifications furnished by the Wash-

ington state department of transportation. [2013 c 23 § 303; 1984 c 7 § 373; 1961 c 14 § 81.53.030. Prior: 1959 c 283 § 1; 1955 c 310 § 3; prior: 1937 c 22 § 1, part; 1913 c 30 § 3, part; RRS § 10513, part. Formerly RCW 81.52.100.]

81.53.040 Supplemental hearing—Change of route. If the commission finds that it is impracticable to construct an over-crossing or under-crossing on the established or proposed highway, and shall find that by deflecting the established or proposed highway a practicable and feasible over-crossing or under-crossing or a safer grade crossing can be provided, it shall continue the hearing and hold a supplemental hearing thereon. At least ten days' notice of the time and place of the supplemental hearing shall be given to all landowners that may be affected by the proposed change in location of the highways. At the supplemental hearing the commission shall inquire into the propriety and necessity of changing and deflecting the highway as proposed. If the proposed change in route of the highway involves the abandonment and vacation of a portion of an established highway, the owners of land contiguous to the portion of the highway to be vacated shall, in like manner, be notified of the time and place of the supplemental hearing. At the conclusion of the hearing, the commission shall enter its findings in writing, and shall determine the location of the crossing which may be constructed, and whether it shall be an under-crossing, over-crossing or grade crossing, and shall determine whether or not any proposed change in the route of an existing highway, or the abandonment of a portion thereof is advisable or necessary to secure an over-crossing, under-crossing, or safer grade crossing. [1961 c 14 § 81.53.040. Prior: 1955 c 310 § 4; prior: 1937 c 22 § 1, part; 1913 c 30 § 3, part; RRS § 10513, part. Formerly RCW 81.52.110.]

81.53.050 Requirements of order on change of route. If the commission finds and determines that a change in route of an existing highway, or vacation of a portion thereof, is necessary or advisable, it shall further find and determine what private property or property rights it is necessary to take, damage, or injuriously affect for the purpose of constructing the highway along a new route, and what private property or property rights, will be affected by the proposed vacation of a portion of an existing highway. The property and property rights found necessary to be taken, damaged, or affected shall be described in the findings with reasonable accuracy. In any action brought to acquire the right to take or damage any such property or property rights, the findings of the commission shall be conclusive as to the necessity therefor. A copy of the findings shall be served upon all parties to the cause. [1961 c 14 § 81.53.050. Prior: 1955 c 310 § 5; 1937 c 22 § 1, part; 1913 c 30 § 3, part; RRS § 10513, part. Formerly RCW 81.52.120.]

81.53.060 Petition for alteration of crossing—Closure of grade crossing without hearing. The mayor and city council, or other governing body of any city or town, or the legislative authority of any county within which there exists any under-crossing, over-crossing, or grade crossing, or where any street or highway is proposed to be located or established across any railroad, or any railroad company whose road is crossed by any highway, may file with the

commission their or its petition in writing, alleging that the public safety requires the establishment of an under-crossing or over-crossing, or an alteration in the method and manner of an existing crossing and its approaches, or in the style and nature of construction of an existing over-crossing, under-crossing, or grade crossing, or a change in the location of an existing highway or crossing, the closing or discontinuance of an existing highway crossing, and the diversion of travel thereon to another highway or crossing, or if not practicable, to change the crossing from grade or to close and discontinue the crossing, the opening of an additional crossing for the partial diversion of travel, and praying that this relief may be ordered. If the existing or proposed crossing is on a state road, highway, or parkway, the petition may be filed by the secretary of transportation or the state parks and recreation commission. If the existing crossing is adjacent to a project funded in part or in full by the state of Washington and managed by the department of transportation, and closure of the crossing is part of the project, the petition may be filed by the secretary of transportation or the secretary's designee, or if the petition is filed by another entity, the secretary of transportation or the secretary's designee shall intervene as a party in any hearing at which the closure of the crossing is contested. If the department of transportation is not a lead agency under chapter 43.21C RCW, a lead agency shall also intervene as a party in any hearing at which the closure of the crossing is contested. Upon the petition being filed, the commission shall fix a time and place for hearing the petition and shall give not less than twenty days' notice to the petitioner, the railroad company, and the municipality or county in which the crossing is situated. If the highway involved is a state highway or parkway, or if the crossing is adjacent to a project funded in part or in full by the state of Washington and managed by the department of transportation and closure of the crossing is part of the project, like notice shall be given to the secretary of transportation or the state parks and recreation commission. If the change petitioned for requires that private lands, property, or property rights be taken, damaged, or injuriously affected to open up a new route for the highway, or requires that any portion of any existing highway be vacated and abandoned, twenty days' notice of the hearing shall be given to the owner or owners of the private lands, property, and property rights which it is necessary to take, damage, or injuriously affect, and to the owner or owners of the private lands, property, or property rights that will be affected by the proposed vacation and abandonment of the existing highway. The commission shall also cause notice of the hearing to be published once in a newspaper of general circulation in the community where the crossing is situated, which publication shall appear at least two days before the date of hearing. At the time and place fixed in the notice, all persons and parties interested are entitled to be heard and introduce evidence. In the case of a petition for closure of a grade crossing the commission may order the grade crossing closed without hearing where: (1) Notice of the filing of the petition is posted at, or as near as practical to, the crossing; (2) notice of the filing of the petition is published once in a newspaper of general circulation in the community or area where the crossing is situated, which publication shall appear within the same week that the notice referred to in subsection (1) of this section is posted; and (3) no objections are

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received by the commission within twenty days from the date of the publication of the notice. [2010 c 82 § 1; 1984 c 7 § 374; 1969 ex.s. c 210 § 8; 1961 c 14 § 81.53.060. Prior: 1937 c 22 § 2, part; 1921 c 138 § 1, part; 1913 c 30 § 4, part; RRS § 10514, part. Formerly RCW 81.52.130.]

81.53.070 Hearing. At the conclusion of the hearing the commission shall make and file its written findings of fact concerning the matters inquired into in like manner as provided for findings of fact upon petition for new crossings. The commission shall also enter its order based upon said findings of fact, which shall specify whether the highway shall continue at grade or whether it shall be changed to cross over or under the railroad in its existing location or at some other point, and whether an over-crossing or under-crossing shall be established at the proposed location of any street or highway or at some other point, or whether the style and nature of construction of an existing crossing shall be changed, or whether said highway shall be closed and travel thereon diverted to another channel, or any other change that the commission may find advisable or necessary: **PROVIDED**, That in an emergency where a highway is relocated to avoid a grade crossing, or a new crossing is constructed in the vicinity of an existing crossing in the interest of public safety, the commission may order such existing crossing closed without notice or hearing as specified herein. In case the order made requires that private lands, property, or property rights be taken, damaged or injuriously affected, the right to take, damage or injuriously affect the same shall be acquired as hereinafter provided.

Any petition herein authorized may be filed by the commission on its own motion, and proceedings thereon shall be the same as herein provided for the hearing and determination of a petition filed by a railroad company. [1961 c 14 § 81.53.070. Prior: 1937 c 22 § 2, part; 1921 c 138 § 1, part; 1913 c 30 § 4, part; RRS § 10514, part. Formerly RCW 81.52.140.]

81.53.080 Restrictions on structures, railway equipment, in proximity of crossings—Minimum clearance for under-crossings. After February 24, 1937, no building, loading platform, or other structure which will tend to obstruct the vision of travelers on a highway or parkway, of approaching railway traffic, shall be erected or placed on railroad or public highway rights-of-way within a distance of one hundred feet of any grade crossing located outside the corporate limits of any city or town unless authorized by the commission, and no trains, railway cars or equipment shall be spotted less than one hundred feet from any grade crossing within or without the corporate limits of any city or town except to serve station facilities and existing facilities of industries.

The commission shall have the power to specify the minimum vertical and horizontal clearance of under-crossings constructed, repaired or reconstructed after February 24, 1937, except as to primary state highways. [1969 ex.s. c 210 § 9; 1961 c 14 § 81.53.080. Prior: 1937 c 22 § 2, part; 1921 c 138 § 1, part; 1913 c 30 § 4, part; RRS § 10514, part. Formerly RCW 81.52.150.]

81.53.090 Duty to maintain crossings. When a highway crosses a railroad by an over-crossing or under-crossing, the framework and abutments of the over-crossing or under-crossing, as the case may be, shall be maintained and kept in repair by the railroad company, and the roadway thereover or thereunder and approaches thereto shall be maintained and kept in repair by the county or municipality in which the same are situated, or if the highway is a state road or parkway, the roadway over or under the railroad shall be maintained and kept in repair as provided by law for the maintenance and repair of state roads and parkways.

The railings of over-crossings shall be considered a part of the roadway. Whenever a highway intersects a railroad at common grade, the roadway approaches within one foot of the outside of either rail shall be maintained and kept in repair by highway authority, and the planking or other materials between the rails and for one foot on the outside thereof shall be installed and maintained by the railroad company. At crossings involving more than one track, maintenance by the railroad company shall include that portion of the crossing between and for one foot on the outside of each outside rail. The minimum length of such planking or other materials shall be twenty feet on installation or repairs made after February 24, 1937. [1961 c 14 § 81.53.090. Prior: 1937 c 22 § 3; 1913 c 30 § 5; RRS § 10515. Formerly RCW 81.52.160.]

81.53.100 Cost when railroad crosses highway. Whenever, under the provisions of this chapter, new railroads are constructed across existing highways, or highway changes are made either for the purpose of avoiding grade crossings on such new railroads, or for the purpose of crossing at a safer and more accessible point than otherwise available, the entire expense of crossing above or below the grade of the existing highway, or changing the route thereof, for the purpose mentioned in this section, shall be paid by the railroad company. [1961 c 14 § 81.53.100. Prior: 1937 c 22 § 4A; 1925 ex.s. c 73 § 1A; 1921 c 138 § 2A; 1913 c 30 § 6A; RRS § 10516A. Formerly RCW 81.52.170.]

81.53.110 Cost when highway crosses railroad. Whenever, under the provisions of this chapter, a new highway is constructed across a railroad, or an existing grade crossing is eliminated or changed (or the style or nature of construction of an existing crossing is changed), the entire expense of constructing a new grade crossing, an overcrossing, under-crossing, or safer grade crossing, or changing the nature and style of construction of an existing crossing, including the expense of constructing approaches to such crossing and the expense of securing rights-of-way for such approaches, as the case may be, shall be apportioned by the commission between the railroad, municipality or county affected, or if the highway is a state road or parkway, between the railroad and the state, in such manner as justice may require, regard being had for all facts relating to the establishment, reason for, and construction of said improvement. If the highway involved is a state road or parkway, the amount not apportioned to the railroad company shall be paid as provided by law for constructing such state road or parkway. [1961 c 14 § 81.53.110. Prior: 1937 c 22 § 4B; 1925 ex.s. c 73 § 1B; 1921 c 138 § 2B; 1913 c 30 § 6B; RRS § 10516B. Formerly RCW 81.52.180.]

81.53.120 Cost when railroad crosses railroad. Whenever two or more lines of railroad owned or operated by different companies cross a highway, or each other, by an over-crossing, under-crossing, or grade crossing required or permitted by this chapter or by an order of the commission, the portion of the expense of making such crossing not chargeable to any municipality, county, or to the state, and the expense of constructing and maintaining such signals, warnings, flaggers, interlocking devices, or other devices or means to secure the safety of the public and the employees of the railroad company, as the commission may require to be constructed and maintained, shall be apportioned between said railroad companies by the commission in such manner as justice may require, regard being had for all facts relating to the establishment, reason for, and construction of said improvement, unless said companies shall mutually agree upon an apportionment. If it becomes necessary for the commission to make an apportionment between the railroad companies, a hearing for that purpose shall be held, at least ten days' notice of which shall be given. [2013 c 23 § 304; 1961 c 14 § 81.53.120. Prior: 1937 c 22 § 4C; 1925 ex.s. c 73 § 1C; 1921 c 138 § 2C; 1913 c 30 § 6C; RRS § 10516C. Formerly RCW 81.52.190.]

81.53.130 Apportionment of cost. In the construction of new railroads across existing highways, the railroads shall do or cause to be done all the work of constructing the crossings and road changes that may be required, and shall acquire and furnish whatever property or easements may be necessary, and shall pay, as provided in RCW 81.53.100 through 81.53.120, the entire expense of such work including all compensation or damages for property or property rights taken, damaged or injuriously affected. In all other cases the construction work may be apportioned by the commission between the parties who may be required to contribute to the cost thereof as the parties may agree, or as the commission may consider advisable. All work within the limits of railroad rights-of-way shall in every case be done by the railroad company owning or operating the same. The cost of acquiring additional lands, rights or easements to provide for the change of existing crossings shall, unless the parties otherwise agree, in the first instance be paid by the municipality or county within which the crossing is located; or in the case of a state road or parkway, shall be paid in the manner provided by law for paying the cost of acquiring lands, rights or easements for the construction of state roads or parkways. The expense accruing on account of property taken or damaged shall be divided and paid in the manner provided for dividing and paying other costs of construction. Upon the completion of the work and its approval by the commission, an accounting shall be had, and if it shall appear that any party has expended more than its proportion of the total cost, a settlement shall be forthwith made. If the parties shall be unable to agree upon a settlement, the commission shall arbitrate, adjust and settle the account after notice to the parties. In the event of failure and refusal of any party to pay its proportion of the expense, the sum with interest from the date of the settlement may be recovered in a civil action by the party entitled thereto. In cases where the commission has settled the account, the finding of the commission as to the amount due shall be conclusive in any civil action brought to recover the

same if such finding has not been reviewed or appealed from as herein provided, and the time for review or appeal has expired. If any party shall seek review of any finding or order of the commission apportioning the cost between the parties liable therefor, the superior court, the court of appeals, or the supreme court, as the case may be, shall cause judgment to be entered in such review proceedings for such sum or sums as may be found lawfully or justly due by one party to another. [1988 c 202 § 65; 1971 c 81 § 144; 1961 c 14 § 81.53.130. Prior: 1937 c 22 § 5; 1913 c 30 § 7; RRS § 10517. Formerly RCW 81.52.200.]

Additional notes found at www.leg.wa.gov

81.53.140 Time for performance. The commission, in any order requiring work to be done, shall have power to fix the time within which the same shall be performed and completed: PROVIDED, That if any party having a duty to perform within a fixed time under any order of the commission shall make it appear to the commission that the order cannot reasonably be complied with within the time fixed by reason either of facts arising after the entry of the order or of facts existing prior to the entry thereof that were not presented, and with reasonable diligence could not have been sooner presented to the commission, such party shall be entitled to a reasonable extension of time within which to perform the work. An order of the commission refusing to grant an extension of time may be reviewed as provided for the review of other orders of the commission. [1961 c 14 § 81.53.140. Prior: 1913 c 30 § 10; RRS § 10520. Formerly RCW 81.52.210.]

81.53.150 Practice and procedure. Modes of procedure under this chapter, unless otherwise provided in this chapter, shall be as provided in other provisions of this title. The commission is hereby given power to adopt rules to govern its proceedings and to regulate the mode and manner of all investigations and hearings under this chapter. [1961 c 14 § 81.53.150. Prior: 1913 c 30 § 11; RRS § 10521. Formerly RCW 81.52.220.]

81.53.160 Service of process. All notices required to be served by this chapter shall be in writing, and shall briefly state the nature of the matter to be inquired into and investigated. Notices may be served in the manner provided by law for the service of summons in civil cases, or by registered United States mail. When service is made by registered mail, the receipt of the receiving post office shall be sufficient proof of service. When, under the provisions of this chapter, it is necessary to serve notice of hearings before the commission on owners of private lands, property, or property rights, and such owners cannot be found, service may be made by publication in the manner provided by law for the publication of summons in civil actions, except that publication need be made but once each week for three consecutive weeks, and the hearing may be held at any time after the expiration of thirty days from the date of the first publication of the notice. [1961 c 14 § 81.53.160. Prior: 1913 c 30 § 12; RRS § 10522. Formerly RCW 81.52.230.]

81.53.170 Judicial review. Upon the petition of any party to a proceeding before the commission, any finding or findings, or order or orders of the commission, made under

color of authority of this chapter, except as otherwise provided, may be reviewed in the superior court of the county wherein the crossing is situated, and the reasonableness and lawfulness of such finding or findings, order or orders inquired into and determined, as provided in this title for the review of the commission's orders generally. Appellate review of the judgment of the superior court may be sought in like manner as provided in said utilities and transportation commission law for review by the supreme court or the court of appeals. [1988 c 202 § 66; 1971 c 81 § 145; 1961 c 14 § 81.53.170. Prior: 1937 c 22 § 6; 1913 c 30 § 13; RRS § 10523. Formerly RCW 81.52.240.]

Additional notes found at www.leg.wa.gov

81.53.180 Eminent domain. Whenever to carry out any work undertaken under this chapter it is necessary to take, damage, or injuriously affect any private lands, property, or property rights, the right so to take, damage, or injuriously affect the same may be acquired by condemnation after as hereinafter provided:

(1) In cases where new railroads are constructed and laid out by railroad company authorized to exercise the power of eminent domain, the right to take, damage, or injuriously affect private lands, property, or property rights shall be acquired by the railroad company by a condemnation proceedings brought in its own name and prosecuted as provided by law for the exercise of the power of eminent domain by railroad companies, and the right of eminent domain is hereby conferred on railroad companies for the purpose of carrying out the requirements of this chapter or the requirements of any order of the commission.

(2) In cases where it is necessary to take, damage, or injuriously affect private lands, property, or property rights to permit the opening of a new highway or highway crossing across a railroad, the right to take, damage, or injuriously affect such lands, property, or property rights shall be acquired by the municipality or county petitioning for such new crossing by a condemnation proceeding brought in the name of such municipality or county as provided by law for the exercise of the power of eminent domain by such municipality or county. If the highway involved be a state highway, then the right to take, damage, or injuriously affect private lands, property, or property rights shall be acquired by a condemnation proceeding prosecuted under the laws relative to the exercise of the power of eminent domain in aid of such state road.

(3) In cases where the commission orders changes in existing crossings to secure an under-crossing, over-crossing, or safer grade crossing, and it is necessary to take, damage, or injuriously affect private lands, property, or property rights to execute the work, the right to take, damage, or injuriously affect such lands, property, or property rights shall be acquired in a condemnation proceeding prosecuted in the name of the state of Washington by the attorney general under the laws relating to the exercise of the power of eminent domain by cities of the first class for street and highway purposes: PROVIDED, That in the cases mentioned in this subdivision the full value of any lands taken shall be awarded, together with damages, if any accruing to the remainder of the land not taken by reason of the severance of the part taken, but in computing the damages to the remain-

der, if any, the jury shall offset against such damages, if any, the special benefits, if any, accruing to such remainder by reason of the proposed improvement. The right of eminent domain for the purposes mentioned in this subdivision is hereby granted. [1961 c 14 § 81.53.180. Prior: 1913 c 30 § 15; RRS § 10525. Formerly RCW 81.52.250.]

81.53.190 Abatement of illegal crossings. If an under-crossing, over-crossing, or grade crossing is constructed, maintained, or operated, or is about to be constructed, operated, or maintained, in violation of the provisions of this chapter, or in violation of any order of the commission, such construction, operation, or maintenance may be enjoined, or may be abated, as provided by law for the abatement of nuisances. Suits to enjoin or abate may be brought by the attorney general, or by the prosecuting attorney of the county in which the unauthorized crossing is located. [1961 c 14 § 81.53.190. Prior: 1913 c 30 § 16; RRS § 10526. Formerly RCW 81.52.260.]

81.53.200 Mandamus to compel performance. If any railroad company, county, municipality, or officers thereof, or other person, shall fail, neglect, or refuse to perform or discharge any duty required of it or them under this chapter or any order of the commission, the performance of such duty may be compelled by mandamus, or other appropriate proceeding, prosecuted by the attorney general upon request of the commission. [1961 c 14 § 81.53.200. Prior: 1913 c 30 § 17; RRS § 10527. Formerly RCW 81.52.270.]

81.53.210 Penalty. If any railroad company shall fail or neglect to obey, comply with, or carry out the requirements of this chapter, or any order of the commission made under it, such company shall be liable to a penalty not to exceed five thousand dollars, such penalty to be recovered in a civil action brought in the name of the state of Washington by the attorney general. All penalties recovered shall be paid into the state treasury. [1961 c 14 § 81.53.210. Prior: 1913 c 30 § 18; RRS § 10528. Formerly RCW 81.52.280.]

81.53.220 Obstructions in highways. Whenever, to carry out any work ordered under RCW 81.53.010 through 81.53.281 and 81.54.010, it is necessary to erect and maintain posts, piers, or abutments in a highway, the right and authority to erect and maintain the same is hereby granted: PROVIDED, That, in case of a state highway the same shall be placed only at such points on such state highway as may be approved by the state secretary of transportation and fixed after such approval by order of the commission. [1983 c 3 § 210; 1961 c 14 § 81.53.220. Prior: 1925 ex.s. c 179 § 2; 1913 c 30 § 19; RRS § 10529. Formerly RCW 81.52.290.]

81.53.230 No new right of action conferred. Nothing contained in this chapter shall be construed as conferring a right of action for the abandonment or vacation of any existing highway or portion thereof in cases where no right of action exists independent of this chapter. [1961 c 14 § 81.53.230. Prior: 1913 c 30 § 20; RRS § 10530.]

81.53.240 Scope of chapter. (1) Except to the extent necessary to permit participation by first-class cities in the

grade crossing protective fund, when an election to participate is made as provided in RCW 81.53.261 through 81.53.291, or to the extent a first-class city requests to participate in the commission's crossing safety inspection program within the city, this chapter is not operative within the limits of first-class cities, and does not apply to street railway lines operating on or across any street, alley, or other public place within the limits of any city, except that a streetcar line outside of cities of the first class shall not cross a railroad at grade without express authority from the commission. The commission may not change the location of a state highway without the approval of the secretary of transportation, or the location of any crossing thereon adopted or approved by the department of transportation, or grant a railroad authority to cross a state highway at grade without the consent of the secretary of transportation.

(2) Within thirty days of July 1, 2015, first-class cities must provide to the commission a list of all existing public crossings within the limits of a first-class city, including over and under-crossings, including the United States department of transportation number for the crossing. Within thirty days of modifying, closing, or opening a grade crossing within the limits of a first-class city, the city must notify the commission in writing of the action taken, identifying the crossing by United States department of transportation number. [2015 c 274 § 21; 1984 c 7 § 375; 1969 c 134 § 8; 1961 c 14 § 81.53.240. Prior: (i) 1953 c 95 § 15; 1925 ex.s. c 179 § 3; 1913 c 30 § 21; RRS § 10531. (ii) 1959 c 283 § 7. Formerly RCW 81.52.300 and 81.52.380.]

Effective date—2015 c 274: See note following RCW 90.56.005.

81.53.250 Employment of experts. The commission may employ temporarily such experts, engineers, and inspectors as may be necessary to supervise changes in existing crossings undertaken under this chapter; the expense thereof shall be paid by the railroad upon the request and certificate of the commission, said expense to be included in the cost of the particular change of grade on account of which it is incurred, and apportioned as provided in this chapter.

The commission may also employ such engineers and other persons as permanent employees as may be necessary to properly administer this chapter. [1961 c 14 § 81.53.250. Prior: 1937 c 22 § 7; 1913 c 30 § 14; RRS § 10524. Formerly RCW 81.52.330.]

81.53.261 Crossing signals, warning devices—Petition—Hearing—Order—Costs apportionment—Records not evidence for actions—Appeal. Whenever the secretary of transportation or the governing body of any city, town, or county, or any railroad company whose road is crossed by any highway, shall deem that the public safety requires signals or other warning devices, other than sawbuck signs, at any crossing of a railroad at common grade by any state, city, town, or county highway, road, street, alley, avenue, boulevard, parkway, or other public place actually open and in use or to be opened and used for travel by the public, he or she or it shall file with the utilities and transportation commission a petition in writing, alleging that the public safety requires the installation of specified signals or other warning devices at such crossing or specified changes in the method and manner of existing crossing warning devices. Upon receiving such

petition, the commission shall promptly set the matter for hearing, giving at least twenty days notice to the railroad company or companies and the county or municipality affected thereby, or the secretary of transportation in the case of a state highway, of the time and place of such hearing. At the time and place fixed in the notice, all persons and parties interested shall be entitled to be heard and introduce evidence, which shall be reduced to writing and filed by the commission. If the commission shall determine from the evidence that public safety does not require the installation of the signal, other warning device or change in the existing warning device specified in the petition, it shall make determinations to that effect and enter an order denying said petition in toto. If the commission shall determine from the evidence that public safety requires the installation of such signals or other warning devices at such crossing or such change in the existing warning devices at said crossing, it shall make determinations to that effect and enter an order directing the installation of such signals or other warning devices or directing that such changes shall be made in existing warning devices. The commission shall also at said hearing apportion the entire cost of installation and maintenance of such signals or other warning devices, other than sawbuck signs, as provided in RCW 81.53.271: PROVIDED, That upon agreement by all parties to waive hearing, the commission shall forthwith enter its order.

No railroad shall be required to install any such signal or other warning device until the public body involved has either paid or executed its promise to pay to the railroad its portion of the estimated cost thereof.

Nothing in this section shall be deemed to foreclose the right of the interested parties to enter into an agreement, franchise, or permit arrangement providing for the installation of signals or other warning devices at any such crossing or for the apportionment of the cost of installation and maintenance thereof, or compliance with an existing agreement, franchise, or permit arrangement providing for the same.

The hearing and determinations authorized by this section may be instituted by the commission on its own motion, and the proceedings, hearing, and consequences thereof shall be the same as for the hearing and determination of any petition authorized by this section.

No part of the record, or a copy thereof, of the hearing and determination provided for in this section and no finding, conclusion, or order made pursuant thereto shall be used as evidence in any trial, civil or criminal, arising out of an accident at or in the vicinity of any crossing prior to installation of signals or other warning devices pursuant to an order of the commission as a result of any such investigation.

Any order entered by the utilities and transportation commission under this section shall be subject to review, supersedeas, and appeal as provided in chapter 34.05 RCW.

Nothing in this section shall be deemed to relieve any railroad from liability on account of failure to provide adequate protective devices at any such crossing. [2013 c 23 § 305; 2007 c 234 § 99; 1982 c 94 § 1; 1969 c 134 § 1.]

Additional notes found at www.leg.wa.gov

81.53.271 Crossing signals, warning devices—Petition contents—Apportionment of installation and maintenance costs. The petition shall set forth by description the

location of the crossing or crossings, the type of signal or other warning device to be installed, the necessity from the standpoint of public safety for such installation, the approximate cost of installation and related work, and the approximate annual cost of maintenance. If the commission directs the installation of a grade crossing protective device, and a federal-aid funding program is available to participate in the costs of such installation, installation and maintenance costs of the device shall be apportioned in accordance with the provisions of RCW 81.53.295. Otherwise if installation is directed by the commission, it shall apportion the cost of installation and maintenance as provided in this section:

(1) Installation: (a) The first twenty thousand dollars shall be apportioned to the grade crossing protective fund created by RCW 81.53.281; and

(b) The remainder of the cost shall be apportioned as follows:

(i) Sixty percent to the grade crossing protective fund, created by RCW 81.53.281;

(ii) Thirty percent to the city, town, county, or state; and

(iii) Ten percent to the railroad:

PROVIDED, That, if the proposed installation is located at a new crossing requested by a city, town, county, or state, forty percent of the cost shall be apportioned to the city, town, county, or state, and none to the railroad. If the proposed installation is located at a new crossing requested by a railroad, then the entire cost shall be apportioned to the railroad. In the event the city, town, county, or state should concurrently petition the commission and secure an order authorizing the closure of an existing crossing or crossings in proximity to the crossing for which installation of signals or other warning devices shall have been directed, the apportionment to the petitioning city, town, county, or state shall be reduced by ten percent of the total cost for each crossing ordered closed and the apportionment from the grade crossing protective fund increased accordingly. This exception shall not be construed to permit a charge to the grade crossing protective fund in an amount greater than the total cost otherwise apportionable to the city, town, county, or state. No reduction shall be applied where one crossing is closed and another opened in lieu thereof, nor to crossings of a private nature.

(2) Maintenance: (a) Twenty-five percent to the grade crossing protective fund, created by RCW 81.53.281; and

(b) Seventy-five percent to the railroad:

PROVIDED, That if the proposed installation is located at a new crossing requested by a railroad, then the entire cost shall be apportioned to the railroad. [2003 c 190 § 2; 1982 c 94 § 2; 1975 1st ex.s. c 189 § 1; 1973 1st ex.s. c 77 § 1; 1969 c 134 § 2.]

Findings—2003 c 190: "The legislature finds that grade crossing, rail trespass, and other safety issues continue to present a public safety problem.

The legislature further finds that with the increased importance of rail to freight and commuter mobility, there is a direct public benefit in assisting local communities and railroads to work together to address rail-related public safety concerns." [2003 c 190 § 1.]

Additional notes found at www.leg.wa.gov

81.53.275 Crossing signals, warning devices—Apportionment when funds not available from grade crossing protective fund. In the event funds are not available from the grade crossing protective fund, the commission shall apportion to the parties on the basis of the benefits to be

derived by the public and the railroad, respectively, that part of the cost which would otherwise be assigned to the fund: PROVIDED, That in such instances the city, town, county or state shall not be assessed more than sixty percent of the total cost of installation on other than federal aid designated highway projects: AND PROVIDED FURTHER, That in such instances the entire cost of maintenance shall be apportioned to the railroad. [1969 ex.s. c 281 § 18; 1969 c 134 § 7.]

81.53.281 Crossing signals, warning devices—Grade crossing protective fund—Use and transfer of funds—Allocation of costs—Procedure—Federal funding. There is hereby created in the state treasury a "grade crossing protective fund" to carry out the provisions of RCW 81.53.261, 81.53.271, 81.53.281, 81.53.291, and 81.53.295; for grants and/or subsidies to public, private, and nonprofit entities for rail safety projects authorized or ordered by the commission; and for personnel and associated costs related to supervising and administering rail safety grants and/or subsidies. During the 2013-2015 fiscal biennium, funds in this account may also be used to conduct the study required under section 102, chapter 222, Laws of 2014. The commission shall transfer from the public service revolving fund's miscellaneous fees and penalties accounts moneys appropriated for these purposes as needed. At the time the commission makes each allocation of cost to said grade crossing protective fund, it shall certify that such cost shall be payable out of said fund. When federal-aid highway funds are involved, the department of transportation shall, upon entry of an order by the commission requiring the installation or upgrading of a grade crossing protective device, submit to the commission an estimate for the cost of the proposed installation and related work. Upon receipt of the estimate the commission shall pay to the department of transportation the percentage of the estimate specified in RCW 81.53.295, as now or hereafter amended, to be used as the grade crossing protective fund portion of the cost of the installation and related work.

The commission may adopt rules for the allocation of money from the grade crossing protective fund. During the 2015-2017 and 2017-2019 fiscal biennia, the commission may waive rules regarding local matching fund requirements, maximum awards for individual projects, and other application requirements as necessary to expedite the allocation of money from the grade crossing protective fund to address underprotected grade crossings as identified by the commission. [2017 c 313 § 715; 2016 c 14 § 701; 2014 c 222 § 702; 2003 c 190 § 3; 1998 c 245 § 166; 1987 c 257 § 1; 1985 c 405 § 509; 1982 c 94 § 3; 1975 1st ex.s. c 189 § 2; 1973 c 115 § 4; 1969 c 134 § 3.]

Effective date—2017 c 313: See note following RCW 43.19.642.

Effective date—2016 c 14: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 25, 2016]." [2016 c 14 § 802.]

Effective date—2014 c 222: See note following RCW 47.28.030.

Findings—2003 c 190: See note following RCW 81.53.271.

Additional notes found at www.leg.wa.gov

81.53.291 Crossing signals, warning devices—Operational scope—Election by first-class cities—Procedure. RCW 81.53.261 through 81.53.291 shall be operative within

the limits of all cities, towns and counties, except cities of the first class. Cities of the first class may elect as to each particular crossing whether RCW 81.53.261 through 81.53.291 shall apply. Such election shall be made by the filing by such city of a petition as provided for in RCW 81.53.261 with the utilities and transportation commission, or by a statement filed with the commission accepting jurisdiction, when such petition is filed by others. [1969 c 134 § 4.]

81.53.295 Crossing signals, warning devices, etc.—Federal funds used to pay installation costs—Grade crossing protective fund—State and local authorities to pay remaining installation costs—Railroad to pay maintenance costs. Whenever federal-aid highway funds are available and are used to pay a portion of the cost of installing a grade crossing protective device, and related work, at a railroad crossing of any state highway, city or town street, or county road at the then prevailing federal-aid matching rate, the grade crossing protective fund shall pay ten percent of the remaining cost of such installation and related work. The state or local authority having jurisdiction of such highway, street, or road shall pay the balance of the remaining cost of such installation and related work. The railroad whose road is crossed by the highway, street, or road shall thereafter pay the entire cost of maintaining the device. [1982 c 94 § 4; 1975 1st ex.s. c 189 § 3.]

Additional notes found at www.leg.wa.gov

81.53.400 Traffic control devices during construction, repair, etc. of crossing or overpass—Required. Whenever any railroad company engages in the construction, maintenance, or repair of a crossing or overpass, the company shall install and maintain traffic control devices adequate to protect the public and railroad employees, subject to the requirements of RCW 81.53.410 and 81.53.420. [1977 ex.s. c 168 § 1.]

81.53.410 Traffic control devices during construction, repair, etc. of crossing or overpass—Standards and conditions. All traffic control devices used under RCW 81.53.400 shall be subject to the following conditions:

(1) Any traffic control devices shall be used at a repair or construction site only so long as the devices are needed or applicable. Any devices that are no longer needed or applicable shall be removed or inactivated so as to prevent confusion;

(2) All barricades, signs, and similar devices shall be constructed and installed in a workmanlike manner;

(3) Bushes, weeds, or any other material or object shall not be allowed to obscure any traffic control devices;

(4) All signs, barricades, and other control devices intended for use during hours of darkness shall be adequately illuminated or reflectorized, with precautions taken to protect motorists from glare; and

(5) Flagpersons shall be provided where necessary to adequately protect the public and railroad employees. The flagpersons shall be responsible and competent and possess at least average intelligence, vision, and hearing. They shall be neat in appearance and courteous to the public. [1977 ex.s. c 168 § 2.]

81.53.420 Traffic control devices during construction, repair, etc. of crossing or overpass—Rules. The utilities and transportation commission shall adopt rules to implement the provisions of RCW 81.53.400 and 81.53.410 pursuant to chapter 34.05 RCW. The commission shall invite the participation of all interested parties in any hearings or proceedings taken under this section, including any parties who request notice of any proceedings.

Any rules adopted under this section and any devices employed under RCW 81.53.410 shall conform to the national standards established by the current manual, including any future revisions, on the Uniform Traffic Control Devices as approved by the American National Standards Institute as adopted by the federal highway administrator of the United States department of transportation.

Rules adopted by the commission shall specifically prescribe the duties, procedures, and equipment to be used by the flagpersons required by RCW 81.53.410.

RCW 81.53.400 through 81.53.420 and rules adopted thereunder shall be enforced by the commission under the provisions of chapter 81.04 RCW: PROVIDED, That rules adopted by the commission shall recognize that cities with a population in excess of four hundred thousand are responsible for specific public thoroughfares and have the specific responsibility and authority for determining the practices relating to safeguarding the public during construction, repair, and maintenance activities. [1977 ex.s. c 168 § 3.]

81.53.430 Safety standards for private crossings along railroad tracks over which crude oil is transported—Adoption of rules. (1) To address the potential public safety hazards presented by private crossings in the state and by the transportation of hazardous materials in the state, including crude oil, the commission is authorized to and must adopt rules governing safety standards for private crossings along the railroad tracks over which crude oil is transported in the state. The commission is also authorized to conduct inspections of the private crossings subject to this section, to order the railroads to make improvements at the private crossings, and enforce the orders.

(2) The commission must adopt rules governing private crossings along railroad tracks over which crude oil is transported in the state, establishing:

(a) Minimum safety standards for the private crossings subject to this section, including, but not limited to, requirements for signage; and

(b) Criteria for prioritizing the inspection and improvements of the private crossings subject to this section.

(3) Nothing in this section modifies existing agreements between the railroad company and the landowner governing liability for injuries or damages occurring at the private crossing. [2015 c 274 § 22.]

Effective date—2015 c 274: See note following RCW 90.56.005.

81.53.900 Effective date—1975 1st ex.s. c 189. This 1975 amendatory act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect July 1, 1975. [1975 1st ex.s. c 189 § 4.]

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Chapter 81.54 RCW

RAILROADS—INSPECTION OF INDUSTRIAL CROSSINGS

Sections

81.54.010	Definitions.
81.54.020	Annual inspection of industrial crossings.
81.54.030	Reimbursement of inspection cost.
81.54.040	Chapter not operative within first-class cities.

81.54.010 Definitions. The term "grade crossing" when used in this chapter means any point or place where a logging or industrial railroad crosses a highway or a highway crosses such railroad or such railroad crosses any other railroad, at a common grade.

The term "over-crossing" when used in this chapter means any point or place where a highway crosses a railroad by passing above the same.

The term "under-crossing" when used in this chapter means any point or place where a highway crosses a railroad by passing under the same.

The term "over-crossing" or "under-crossing" shall also mean any point or place where one railroad crosses another railroad not at grade.

The term "logging" or "industrial" railroad when used in this chapter shall include every railway owned or operated primarily for the purpose of carrying the property of its owners or operators or a limited class of persons, with all tracks, spurs and sidings used in connection therewith. [1961 c 14 § 81.54.010. Prior: 1941 c 161 § 1; Rem. Supp. 1941 § 10511-1. Formerly RCW 81.52.080, part.]

81.54.020 Annual inspection of industrial crossings. All grade crossings, under-crossings and over-crossings on the line of every logging and other industrial railway as herein defined shall be inspected annually by the commission as to condition, also maintenance, and safety in the interest of the public, for the purpose that the commission may, if it shall deem it necessary, require such improvements, changes and repairs as in its judgment are proper to the end that adequate safety shall be provided for the public. [1961 c 14 § 81.54.020. Prior: 1941 c 161 § 2; Rem. Supp. 1941 § 10511-2. Formerly RCW 81.52.310.]

81.54.030 Reimbursement of inspection cost. (1) Every person operating any logging railroad or industrial railway shall, prior to July 1st of each year, file with the commission a statement showing the number of, and location, by name of highway, quarter section, section, township, and range of all crossings on his or her line and pay with the filing a fee for each crossing so reported. The commission shall, by order, fix the exact fee based on the cost of rendering such inspection service. All fees collected shall be deposited in the state treasury to the credit of the public service revolving fund. Intersections having one or more tracks shall be treated as a single crossing. Tracks separated a distance in excess of one hundred feet from the nearest track or group of tracks shall constitute an additional crossing. Where two or more independently operated railroads cross each other or the same highway intersection, each independent track shall constitute a separate crossing.

(2) Every person failing to make the report and pay the fees as required by this section is guilty of a misdemeanor and in addition subject to a penalty of twenty-five dollars for each day that the fee remains unpaid after it becomes due. [2003 c 53 § 392; 1991 c 46 § 1; 1961 c 14 § 81.54.030. Prior: 1951 c 111 § 1; 1941 c 161 § 3; Rem. Supp. 1941 § 10511-3. Formerly RCW 81.52.320.]

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

81.54.040 Chapter not operative within first-class cities. This chapter shall not be operative within the limits of cities of the first class. [1961 c 14 § 81.54.040. Prior: 1953 c 95 § 16; 1951 c 111 § 2. Formerly RCW 81.52.325.]

Chapter 81.60 RCW RAILROADS—RAILROAD POLICE AND REGULATIONS

Sections

81.60.010	Criminal justice training commission may appoint railroad police officers.
81.60.020	Application for appointment.
81.60.030	Oath.
81.60.040	Duties.
81.60.050	Badge.
81.60.060	Liability for unlawful acts.
81.60.070	Malicious injury to railroad property.
81.60.080	Sabotaging rolling stock—Receiving stolen railroad property.

Intoxication of railway employee: RCW 9.91.020.

Tampering with lights, signals, etc.: RCW 88.08.020.

81.60.010 Criminal justice training commission may appoint railroad police officers. The criminal justice training commission shall have the power to and may in its discretion appoint and commission railroad police officers at the request of any railroad corporation and may revoke any appointment at its pleasure. [2001 c 72 § 1; 1961 c 14 § 81.60.010. Prior: 1915 c 118 § 1; RRS § 10542.]

81.60.020 Application for appointment. Any railroad corporation desiring the appointment of any of its officers, agents, or servants not exceeding twenty-five in number for any one division of any railroad operating in this state as railroad police officers shall file a request with the criminal justice training commission on an approved application form. The application shall be signed by the president or some managing officer of the railroad corporation and shall be accompanied by an affidavit stating that the officer is acquainted with the person whose appointment is sought, that the officer believes the person to be of good moral character, and that the person is of such character and experience that he or she can be safely entrusted with the powers of a police officer.

For the purposes of this section, "division" means the part of any railroad or railroads under the jurisdiction of any one division superintendent. [2001 c 72 § 2; 1961 c 14 § 81.60.020. Prior: 1955 c 99 § 1; 1915 c 118 § 2; RRS § 10543.]

81.60.030 Oath. Before receiving a commission each person appointed under the provisions of RCW 81.60.010 through 81.60.060 shall successfully complete a course of training prescribed or approved by the criminal justice train-

ing commission, and shall take, subscribe, and file with the commission an oath to support the Constitution of the United States and the Constitution and laws of the state of Washington, and to faithfully perform the duties of the office. The corporation requesting appointment of a railroad police officer shall bear the full cost of training.

Railroad police officers appointed and commissioned under RCW 81.60.010 through 81.60.060 are subject to rules and regulations adopted by the commission. [2001 c 72 § 3; 1961 c 14 § 81.60.030. Prior: 1915 c 118 § 3; RRS § 10544.]

81.60.040 Duties. Every police officer appointed and commissioned under the provisions of RCW 81.60.010 through 81.60.060 shall when on duty have the power and authority conferred by law on peace officers, but shall exercise such power only in the protection of the property belonging to or under the control of the corporation at whose instance the officer is appointed and in preventing, and making arrest for, violations of law upon or in connection with such property. [2001 c 72 § 4; 1961 c 14 § 81.60.040. Prior: 1915 c 118 § 4; RRS § 10545.]

81.60.050 Badge. Every railroad police officer shall, when on duty, wear in plain view a badge bearing the words "railroad police" and the name of the corporation by which the officer is employed, or carry, and present upon request, official credentials identifying the railroad police officer and corporation. [2001 c 72 § 5; 1961 c 14 § 81.60.050. Prior: 1915 c 118 § 5; RRS § 10546.]

81.60.060 Liability for unlawful acts. The corporation procuring the appointment of any railroad police shall be solely responsible for the compensation for the officer's services and shall be liable civilly for any unlawful act of the officer resulting in damage to any person or corporation. [2001 c 72 § 6; 1961 c 14 § 81.60.060. Prior: 1915 c 118 § 6; RRS § 10547.]

81.60.070 Malicious injury to railroad property. Every person who, in such manner as might, if not discovered, endanger the safety of any engine, motor, car or train, or any person thereon, shall in any manner interfere or tamper with or obstruct any switch, frog, rail, roadbed, sleeper, viaduct, bridge, trestle, culvert, embankment, structure, or appliance pertaining to or connected with any railway, or any train, engine, motor, or car on such railway, and every person who shall discharge any firearm or throw any dangerous missile at any train, engine, motor, or car on any railway, is guilty of a class B felony and shall be punished by imprisonment in a state correctional facility for not more than ten years. [2003 c 53 § 394; 1999 c 352 § 4; 1992 c 7 § 60; 1961 c 14 § 81.60.070. Prior: 1909 c 249 § 398; RRS § 2650.]

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

Additional notes found at www.leg.wa.gov

81.60.080 Sabotaging rolling stock—Receiving stolen railroad property. (1) Any person or persons who shall willfully or maliciously, with intent to injure or deprive the owner thereof, take, steal, remove, change, add to, alter, or in any manner interfere with any journal bearing, brass, waste,

packing, triple valve, pressure cock, brake, air hose, or any other part of the operating mechanism of any locomotive, engine, tender, coach, car, caboose, or motor car used or capable of being used by any railroad or railway company in this state, is guilty of a class C felony, and upon conviction thereof shall be punished by imprisonment in a state correctional facility for not more than five years, or by a fine not exceeding one thousand dollars, or by both such fine and imprisonment.

(2) Every person who buys or receives any of the property described in subsection (1) of this section, knowing the same to have been stolen, is guilty of a class C felony, and upon conviction thereof shall be punished as provided in subsection (1) of this section. [2003 c 53 § 395; 1992 c 7 § 61; 1961 c 14 § 81.60.080. Prior: 1941 c 212 § 1; Rem. Supp. 1941 § 2650-1.]

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

**Chapter 81.61 RCW
RAILROADS—RAILROAD CREW
TRANSPORTATION**

(Formerly: Railroads—Passenger-carrying vehicles for employees)

Sections

81.61.010	Definitions.
81.61.020	Minimum standards for safe maintenance and operation of passenger-carrying vehicles—Rules and orders—Scope.
81.61.030	Rules and orders—Adoption and enforceability—Hearings—Notice.
81.61.040	Inspection of railroad crew transportation vehicles.
81.61.050	Contract railroad crew transportation and vehicles—Commission duties and powers.
81.61.060	Operation of contract crew transportation vehicle—Grounds for disqualification, reporting.
81.61.070	Safety complaint, accident, and penalty data compilation—Exemption.

81.61.010 Definitions. Unless the context clearly requires otherwise:

(1) "Contract crew transportation vehicle," as used in this chapter, means every motor vehicle, designed to transport fifteen or fewer passengers, including the driver, that is owned, leased, operated, or maintained by a person contracting with a railroad company or its agents, contractors, subcontractors, vendors, subvendors, secondary vendors, or subcarriers, and used primarily to provide railroad crew transportation.

(2) "Passenger-carrying vehicle," as used in this chapter, means those buses, vans, trucks, and cars owned, operated, and maintained by a railroad company and primarily used to transport railroad employees in other than the cab of such vehicle and designed primarily for operation on roads which may or may not be equipped with retractable flanged wheels for operation on railroad tracks. [2017 c 333 § 1; 1977 ex.s. c 2 § 1.]

Effective date—2017 c 333: "This act takes effect January 1, 2018." [2017 c 333 § 7.]

81.61.020 Minimum standards for safe maintenance and operation of passenger-carrying vehicles—Rules and orders—Scope. The utilities and transportation commission shall adopt rules and orders necessary to ensure that every passenger-carrying vehicle provided by a railroad company

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to transport employees in the course of their employment is maintained and operated in a safe manner when it is used on a public or private road. The rules and orders must establish minimum standards for:

(1) The construction and mechanical equipment of the passenger-carrying vehicles, including lighting devices and reflectors, exhaust system, rear vision mirrors, service and parking brakes, steering mechanisms, tires, warning and signaling devices, windshield wipers, and heating equipment capable of maintaining a reasonable temperature in passenger areas;

(2) The operation of passenger-carrying vehicles, including driving rules, the loading and carrying of passengers, maximum daily hours of service by drivers, minimum age and skill of drivers, physical condition of drivers, refueling, road warning devices, and the transportation of gasoline and explosives;

(3) The safety of passengers in a passenger-carrying vehicle, including emergency exits, fire extinguishers, first aid kits, facilities for communication between cab and rear compartments, means of ingress and egress, side walls, canopy, tail gates, or other means of retaining passengers within the passenger-carrying vehicle. [2007 c 234 § 41; 1977 ex.s. c 2 § 2.]

81.61.030 Rules and orders—Adoption and enforceability—Hearings—Notice. Any rules or orders adopted under this chapter shall be subject to the requirements of, and enforceable by the penalties imposed by chapter 81.04 RCW. Any interested person or group may request notice of, and participate in any hearings or proceedings held pursuant to this chapter. The commission shall conduct a hearing prior to the adoption of any rule or order under this chapter. [1977 ex.s. c 2 § 3.]

81.61.040 Inspection of railroad crew transportation vehicles. (1) The commission may, in enforcing rules and orders under this chapter, inspect any passenger-carrying vehicle or contract crew transportation vehicle. Upon request, the chief of the state patrol may assist the commission in these inspections.

(2) Consistent with RCW 81.61.050, the commission must develop an inspection program for contract crew transportation vehicles. This program must require a periodic inspection of each vehicle, including a review of operational practices. [2017 c 333 § 5; 1977 ex.s. c 2 § 4.]

Effective date—2017 c 333: See note following RCW 81.61.010.

81.61.050 Contract railroad crew transportation and vehicles—Commission duties and powers. (1) The commission must regulate persons providing contract railroad crew transportation and every contract crew transportation vehicle with respect to driver qualifications, equipment safety, safety of operations, hours of service by drivers, passenger safety, drug testing requirements, and record retention. This regulation must be consistent with the manner in which the commission regulates these areas under chapter 81.70 RCW and the manner in which it regulates safety under chapter 81.68 RCW, as well as with the approach used in federal motor carrier safety regulations under Title 49 of the code of federal regulations. In the event of a conflict between

this chapter and the laws referenced in this subsection, this chapter governs.

(2) The commission must adopt rules under chapter 34.05 RCW as necessary to carry out this chapter regarding the operation of contract crew transportation vehicles.

(3)(a) The commission must require insurance coverage for each contract crew transportation vehicle that satisfies the following minimum amounts:

(i) Five million dollars combined single limit coverage for bodily injury and property damage liability coverage; and

(ii) Uninsured and underinsured motorist coverage of one million dollars.

(b) If a third party contracts with the person operating the vehicle on behalf of the railroad company or its agents, contractors, subcontractors, vendors, subvendors, secondary vendors, or subcarriers to transport railroad crew, the insurance requirements may be satisfied by either the third party or the person operating the vehicle, so long as the person operating the vehicle names the third party as an additional insured or named insured. The railroad company may also satisfy the insurance requirements. Proof of coverage must be provided to the commission by the person contracting with the railroad company.

(4) The commission must require the form and posting of adequate notices in a conspicuous location in all contract crew transportation vehicles to advise railroad employee passengers of their rights, the opportunity to submit safety complaints to the commission, the complaint process, and contact information for the commission.

(5) The commission must require persons providing contract railroad crew transportation to ensure that all drivers of contract crew transportation vehicles successfully complete at least eight hours of commission-approved safety training that includes, but is not limited to, vehicle and passenger safety awareness, rail yard safety, grade crossing safety, load securement, and distracted and fatigued driving.

(6) The commission must investigate safety complaints related to contract railroad crew transportation under this chapter and take appropriate enforcement action as authorized.

(7) The commission may enforce this chapter with respect to persons providing contract railroad crew transportation under the authority in RCW 81.04.380 through 81.04.405, including assessing penalties as warranted.

(8) The commission may suspend or revoke a permit upon complaint by any interested party, or upon the commission's own motion after notice and opportunity for hearing, when it finds that any person owning, leasing, operating, or maintaining contract crew transportation vehicles has violated this chapter or the rules of the commission, or that the company or its agent has been found by a court or governmental agency to have violated the laws of a state or the United States. [2017 c 333 § 2.]

Effective date—2017 c 333: See note following RCW 81.61.010.

81.61.060 Operation of contract crew transportation vehicle—Grounds for disqualification, reporting. (1) A person is immediately and automatically disqualified from operating a contract crew transportation vehicle for a period of three years if (a) the person is convicted of, or is found to have committed, two or more traffic violations that result in

suspension or revocation of the person's driver's license within a three-year period, for a reason other than the non-payment of fines, or (b) the person is found guilty of, or is found to have committed, any drug or alcohol-related traffic offense, using a vehicle to commit a felony, leaving the scene of an accident, prohibited passing of another vehicle, a railroad-highway grade crossing offense identified in RCW 46.25.090(8), or driving with a suspended, revoked, or canceled license.

(2) A driver that sustains a conviction or a traffic violation as outlined under this section while employed by a contract carrier must report the conviction or infraction to the carrier within ten days of the date of conviction or the finding that the infraction was committed. [2017 c 333 § 3.]

Effective date—2017 c 333: See note following RCW 81.61.010.

81.61.070 Safety complaint, accident, and penalty data compilation—Exemption. (1) The commission must compile data regarding any reported safety complaints, accidents, regulatory violations and fines, and corrective actions taken by the commission involving vehicles regulated under this chapter. A railroad company, and any person that owns or leases, operates, or maintains contract crew transportation vehicles in the state, must, at the request of the commission, provide data relevant to any complaints and accidents, including location, time of day, visibility, a description of the event, whether any property damage or personal injuries resulted, and any corrective action taken by the railroad company, person operating the contract crew transportation vehicle, or commission. The commission must make this data available upon request.

(2) Information included in safety complaints that identifies the employee who submitted the complaint is exempt from public inspection and copying pursuant to RCW 42.56.330. [2017 c 333 § 4.]

Effective date—2017 c 333: See note following RCW 81.61.010.

Chapter 81.64 RCW STREET RAILWAYS

Sections

81.64.010	Grant of franchise.
81.64.020	Application to county legislative authority—Notice—Hearing—Order.
81.64.030	May cross public road.
81.64.040	Eminent domain.
81.64.050	Right of entry.
81.64.060	Purchase or lease of street railway property.
81.64.070	Consolidation of companies.
81.64.080	Fares and transfers.
81.64.090	Competent employees required—"Competent" defined—Penalty.
81.64.120	Car equipment specified.
81.64.130	Penalty.
81.64.140	Weather guards.
81.64.150	Penalty.
81.64.160	Hours of labor—Penalty.

Bridges across navigable waters: RCW 79.110.110 through 79.110.140.

Municipal transportation systems: Title 35 RCW.

81.64.010 Grant of franchise. The legislative authority of the city or town having control of any public street or road, or where such street or road is not within the limits of any incorporated city or town, then the board of county commis-

sioners wherein such road or street is situated, may grant authority for the construction, maintenance and operation of electric railroads or railways, motor railroads or railways and railroads and railways of which the motive power is any power other than steam, together with such poles, wires and other appurtenances upon, over, along and across any such public street or road and in granting such authority the legislative authority of such city or town or the board of county commissioners, as the case may be, may prescribe the terms and conditions on which such railroads or railways and their appurtenances shall be constructed, maintained and operated upon, over, along and across such road or street, and the grade or elevation at which the same shall be maintained and operated. [1961 c 14 § 81.64.010. Prior: 1907 c 99 § 1, part; 1903 c 175 § 1, part; RRS § 11082, part.]

81.64.020 Application to county legislative authority—Notice—Hearing—Order. On application being made to the county legislative authority for such authority, the county legislative authority shall fix a time and place for hearing the same, and shall cause the county auditor to give public notice thereof at the expense of the applicant, by posting written or printed notices in three public places in the county seat of the county, and in at least one conspicuous place on the road or street or part thereof, for which application is made, at least thirty days before the day fixed for the hearing, and by publishing a like notice once a week for two consecutive weeks in the official county newspaper, the last publication to be at least five days before the day fixed for the hearing, which notice shall state the name or names of the applicant or applicants, a description of the roads or streets or parts thereof for which the application is made, and the time and place fixed for the hearing. The hearing may be adjourned from time to time by order of the county legislative authority. If, after the hearing, the county legislative authority shall deem it to be for the public interest to grant the authority in whole or in part, it may make and enter the proper order granting the authority applied for or such part thereof as it deems to be for the public interest, and shall require such railroad or railway and its appurtenances to be placed in such location on or along the road or street as it finds will cause the least interference with other uses of the road or street. [1985 c 469 § 63; 1961 c 14 § 81.64.020. Prior: 1907 c 99 § 1, part; 1903 c 175 § 1, part; RRS § 11082, part.]

81.64.030 May cross public road. In case any such railroad or railway, is or shall be located in part on private right-of-way, the owner thereof shall have the right to construct and operate the same across any county road or county street which intersects such private right-of-way, if such crossing is so constructed and maintained as to do no unnecessary damage: PROVIDED, That any person or corporation constructing such crossing or operating such railroad or railway on or along such county road or public street shall be liable to the county for all necessary expense incurred in restoring such county road or public street to a suitable condition for travel. [1961 c 14 § 81.64.030. Prior: 1907 c 99 § 1, part; 1903 c 175 § 1, part; RRS § 11082, part.]

81.64.040 Eminent domain. Every corporation incorporated or that may hereafter be incorporated under the laws

of this state, or of any other state or territory of the United States and doing business in this state for the purpose of operating railroads or railways by electric power, shall have the right to appropriate real estate and other property for right-of-way or for any corporate purpose, in the same manner and under the same procedure as now is or may hereafter be provided by law in the case of ordinary railroad corporations authorized by the laws of this state to exercise the right of eminent domain: PROVIDED, That such right of eminent domain shall not be exercised with respect to any public road or street until the location of the electric railroad or railway thereon has been authorized in accordance with RCW 81.64.010 through 81.64.030. [1961 c 14 § 81.64.040. Prior: 1903 c 175 § 2; RRS § 11083.]

81.64.050 Right of entry. Every such corporation shall have the right to enter upon any land between the termini of the proposed lines for the purpose of examining, locating and surveying such lines, doing no unnecessary damage thereby. [1961 c 14 § 81.64.050. Prior: 1899 c 94 § 2; RRS § 11085.]

81.64.060 Purchase or lease of street railway property. Any corporation incorporated or that may hereafter be incorporated under the laws of this state or any state or territory of the United States, for the purpose of constructing, owning or operating railroads or railways by electric power, may lease or purchase and operate (except in cases where such lease or purchase is prohibited by the Constitution of this state) the whole or any part of the electric railroad or electric railway, of any other corporation heretofore or hereafter constructed, together with the franchises, powers, immunities and all other property or appurtenances appertaining thereto: PROVIDED, That such lease or purchase has been or shall be consented to by stockholders of record holding at least two-thirds in amount of the capital stock of the lessor or grantor corporation; and all such leases and purchases made or entered into prior to the effective date of chapter 175, Laws of 1903, by consent of stockholders as aforesaid are for all intents and purposes hereby ratified and confirmed, saving, however, any vested rights of private parties. [1961 c 14 § 81.64.060. Prior: 1903 c 175 § 3; RRS § 11084.]

81.64.070 Consolidation of companies. With the consent of the majority in interest of their shareholders, two or more corporations operating street railway lines within or in the suburbs of the same municipality, may amalgamate their businesses and properties by consolidation, sale, lease, or other appropriate means, and either by conveyance to a third corporation or one to the other. [1961 c 14 § 81.64.070. Prior: 1917 c 170 § 1; RRS § 11086.]

81.64.080 Fares and transfers. No street railroad company shall charge, demand or collect more than five cents for one continuous ride within the corporate limits of any city or town: PROVIDED, That such rate may be exceeded or lowered as to any municipally owned street railroad when the corporate authorities of the municipality owning such railroad shall, by an ordinance duly passed, authorize the collection of a higher or lower rate of fare, to be specified in such ordinance, and as to any other street railroad company, such

rate may be exceeded or lowered with the permission or upon the order of the commission after the filing of a tariff or a complaint by such street railroad company and a hearing thereon as provided in this title. Every street railroad company shall, upon such terms as shall be just and reasonable, furnish to its passengers transfers entitling such passenger to one continuous trip over and upon portions of its lines within the said city or town not reached by the originating car. [1961 c 14 § 81.64.080. Prior: 1919 c 33 § 1; 1911 c 117 § 25; RRS § 10361.]

81.64.090 Competent employees required—"Competent" defined—Penalty. (1) Street railway or streetcar companies, or streetcar corporations, shall employ none but competent persons to operate or assist as conductors, motor operators, or grip operators upon any street railway, or streetcar line in this state.

(2) A person shall be deemed competent to operate or assist in operating cars or (dummies) usually used by street railway or streetcar companies, or corporations, only after first having served at least three days under personal instruction of a regularly employed conductor, motor operator, or grip operator on a car or dummy in actual service on the particular street railway or streetcar line for which the service of an additional person or additional persons may be required: PROVIDED, That during a strike on the streetcar lines the railway companies may employ competent persons who have not worked three days on the particular streetcar line.

(3) Any violation of this section by the president, secretary, manager, superintendent, assistant superintendent, stockholder, or other officer or employee of any company or corporation owning or operating any street railway or streetcar line or any receiver of street railway or streetcar company, or street railway or streetcar corporations appointed by any court within this state to operate such car line is a misdemeanor punishable by a fine in any amount not less than fifty dollars nor more than two hundred dollars, or imprisonment in the county jail for a term of thirty days, or both such fine and imprisonment at the discretion of the court. [2009 c 549 § 1032; 2003 c 53 § 396; 1961 c 14 § 81.64.090. Prior: 1901 c 103 § 1; RRS § 11073.]

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

81.64.120 Car equipment specified. Every streetcar run or used on any streetcar line in the state of Washington shall be provided with good and substantial aprons, pilots or fenders, and which shall be so constructed as to prevent any person from being thrown down and run over or caught beneath or under such car. [1961 c 14 § 81.64.120. Prior: 1897 c 94 § 1; RRS § 11076. FORMER PART OF SECTION: 1911 c 117 § 66, part now codified in RCW 81.44.040.]

81.64.130 Penalty. The owners or managers operating any streetcar line failing to comply with the provisions of RCW 81.64.120 shall forfeit and pay to the state of Washington a penalty of not less than twenty-five dollars for each and every violation of RCW 81.64.120 and each car run shall be considered a separate violation of RCW 81.64.120 and every period of five days shall be deemed a separate violation of

RCW 81.64.120. [1961 c 14 § 81.64.130. Prior: 1897 c 94 § 2; RRS § 11077.]

81.64.140 Weather guards. All corporations, companies or individuals owning, managing or operating any street railway or line in the state of Washington, shall provide, during the rain or winter season, all cars run or used on its or their respective roads with good, substantial and sufficient vestibules, or weather guards, for the protection of the employees of such corporation, company or individual.

The vestibules or weather guards shall be so constructed as to protect the employees of such company, corporation or individual from the wind, rain or snow. [1961 c 14 § 81.64.140. Prior: (i) 1895 c 144 § 1; RRS § 11078. (ii) 1895 c 144 § 2; RRS § 11079.]

81.64.150 Penalty. Any such street railway company, corporation or individual, as mentioned in RCW 81.64.140, failing to comply with the provisions of RCW 81.64.140, shall forfeit and pay to the state of Washington a penalty of not less than fifty dollars nor more than two hundred and fifty dollars for each and every violation of RCW 81.64.140, and each period of ten days that any such company, corporation or individual shall fail to comply with the provisions of RCW 81.64.140, or for each car used by such corporation, company, or individual not in conformity with RCW 81.64.140, shall be taken and deemed to be a separate violation of RCW 81.64.140. [1961 c 14 § 81.64.150. Prior: 1895 c 144 § 3; RRS § 11080.]

81.64.160 Hours of labor—Penalty. (1) No person, agent, officer, manager, or superintendent or receiver of any corporation or owner of streetcars shall require his, her, or its grip operators, motor operators, drivers, or conductors to work more than ten hours in any twenty-four hours.

(2) Any person, agent, officer, manager, superintendent, or receiver of any corporation, or owner of streetcar or cars, violating this section is guilty of a misdemeanor, and shall be fined in any sum not less than twenty-five dollars nor more than one hundred dollars for each day in which such grip operator, motor operator, driver, or conductor in the employ of such person, agent, officer, manager, superintendent, or receiver of such corporation or owner is required to work more than ten hours during each twenty-four hours, as provided in this section.

(3) It is the duty of the prosecuting attorney of each county of this state to institute the necessary proceedings to enforce the provisions of this section. [2013 c 23 § 306; 2003 c 53 § 397; 1961 c 14 § 81.64.160. Prior: 1895 c 100 § 1; RRS § 7648.]

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

Chapter 81.66 RCW

TRANSPORTATION FOR PERSONS WITH SPECIAL NEEDS

Sections

- | | |
|-----------|---|
| 81.66.005 | Scope—Federal authority and registration for compensatory services. |
| 81.66.010 | Definitions. |

- 81.66.020 Private, nonprofit transportation provider required to operate in accordance with this chapter.
- 81.66.030 Authority of commission.
- 81.66.040 Certificate required—Transferability—Application—Carried in vehicle.
- 81.66.050 Insurance or bond required.
- 81.66.060 Suspension, revocation, or alteration of certificate.

81.66.005 Scope—Federal authority and registration for compensatory services. This chapter applies to persons and motor vehicles engaged in interstate or foreign commerce to the full extent permitted by the Constitution and laws of the United States.

It is unlawful for any motor carrier to perform a transportation service for compensation upon the public highways of this state without first having secured appropriate federal authority from the United States department of transportation, if such authority is required, and without first having registered with the commission either directly or through a federally authorized uniform registration program. [2007 c 234 § 42.]

81.66.010 Definitions. The definitions set forth in this section shall apply throughout this chapter, unless the context clearly indicates otherwise.

(1) "Corporation" means a corporation, company, association, or joint stock association.

(2) "Person" means an individual, firm, or a copartnership.

(3) "Persons with special transportation needs" means those persons, including their personal attendants, who because of physical or mental disability, income status, or age are unable to transport themselves or to purchase appropriate transportation.

(4) "Private, nonprofit transportation provider" means any private, nonprofit corporation providing transportation services for compensation solely to persons with special transportation needs, or pursuant to a contract with a state agency or funded by a grant issued by the department of transportation. [2009 c 557 § 3; 1996 c 244 § 1; 1979 c 111 § 4.]

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

Additional notes found at www.leg.wa.gov

81.66.020 Private, nonprofit transportation provider required to operate in accordance with this chapter. No person or corporation, their lessees, trustees, receivers, or trustees appointed by any court, may operate as a private, nonprofit transportation provider except in accordance with this chapter. [1979 c 111 § 5.]

Additional notes found at www.leg.wa.gov

81.66.030 Authority of commission. The commission shall regulate every private, nonprofit transportation provider in this state but has authority only as follows: To issue certificates to such providers; to set forth insurance requirements; to adopt reasonable rules to insure that any vehicles used by such providers will be adequate for the proposed service; and to inspect the vehicles and otherwise regulate the safety of operations of each provider. The commission may charge fees to private, nonprofit transportation providers, which

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shall be approximately the same as the reasonable cost of regulating such providers. [1998 c 173 § 4; 1979 c 111 § 6.]

Additional notes found at www.leg.wa.gov

81.66.040 Certificate required—Transferability—Application—Carried in vehicle. A private, nonprofit transportation provider may not operate in this state without first having obtained from the commission under this chapter a certificate. Any right, privilege, or certificate held, owned, or obtained by a private, nonprofit transportation provider may be sold, assigned, leased, transferred, or inherited as other property only upon authorization by the commission. The commission shall issue a certificate to any person or corporation who files an application, in a form to be determined by the commission, which sets forth:

(1) Satisfactory proof of its status as a private, nonprofit corporation;

(2) The kind of service to be provided;

(3) The number and type of vehicles to be operated, together with satisfactory proof that the vehicles are adequate for the proposed service and that drivers of such vehicles will be adequately trained and qualified;

(4) Satisfactory proof of insurance or surety bond, in accordance with RCW 81.66.050.

The commission may deny a certificate to a provider who does not meet the requirements of this section. Each vehicle of a private, nonprofit transportation provider must carry a copy of the provider's certificate. [2007 c 234 § 43; 1979 c 111 § 7.]

Additional notes found at www.leg.wa.gov

81.66.050 Insurance or bond required. The commission shall, in the granting of certificates to operate any private, nonprofit transportation provider, require the owner or operator to first procure liability and property damage insurance from a company licensed to make liability insurance in the state of Washington or a surety bond of a company licensed to write surety bonds in the state of Washington on each vehicle used or to be used in transporting persons for compensation. The commission shall fix the amount of the insurance policy or policies or surety bond, giving due consideration to the character and amount of traffic, the number of persons affected, and the degree of danger which the proposed operation involves. Such liability and property damage insurance or surety bond shall be maintained in force on each vehicle while so used. Each policy for liability of property damage insurance or surety bond required herein, shall be filed with the commission and kept in full force and effect, and failure to do so shall be cause for the revocation of the certificate. [1979 c 111 § 8.]

Additional notes found at www.leg.wa.gov

81.66.060 Suspension, revocation, or alteration of certificate. The commission may, at any time, by its order duly entered after notice to the holder of any certificate issued under this chapter, and an opportunity for a hearing, at which it is proven that the holder has willfully violated or refused to observe any of the commission's proper orders, rules, or regulations, suspend, revoke, alter, or amend any certificate issued under this chapter, but the holder of the certificate shall have all the rights of rehearing, review, and appeal as to

the order of the commission as is provided for in chapter 34.05 RCW. [2007 c 234 § 44; 2005 c 121 § 1; 1979 c 111 § 9.]

Additional notes found at www.leg.wa.gov

Chapter 81.68 RCW AUTO TRANSPORTATION COMPANIES

Sections

81.68.010	Definitions.
81.68.015	Application of chapter restricted.
81.68.020	Compliance with chapter required.
81.68.030	Regulation by commission.
81.68.040	Certificate of convenience and necessity.
81.68.046	Temporary certificates—Waiver of provisions during state of emergency.
81.68.050	Filing fees.
81.68.060	Liability and property damage insurance—Surety bond.
81.68.065	Self-insurers exempt as to insurance or bond.
81.68.080	Penalty.
81.68.090	Scope of chapter.
81.68.100	Federal authority and registration for compensatory services.

Auto stages, licensing, etc.: Title 46 RCW.

Certificate required for carrier service provided pursuant to state agency contract or department of transportation grant: RCW 81.70.220.

Highway user tax structure: Chapter 46.85 RCW.

Mileage fees: RCW 81.24.100.

Penalty for carrying passengers without license: RCW 46.16A.530.

Seating capacity fees: RCW 46.17.340.

81.68.010 Definitions. The definitions set forth in this section apply throughout this chapter, unless the context clearly indicates otherwise.

(1) "Corporation" means a corporation, company, association, or joint stock association.

(2) "Person" means an individual, firm, or a copartnership.

(3) "Auto transportation company" means every corporation or person, their lessees, trustees, receivers, or trustees appointed by any court whatsoever, owning, controlling, operating, or managing any motor-propelled vehicle used in the business of transporting persons and their baggage on the vehicles of auto transportation companies carrying passengers, for compensation over any public highway in this state between fixed termini or over a regular route, and not operating exclusively within the incorporated limits of any city or town.

(4) "Public highway" means every street, road, or highway in this state.

(5) The words "between fixed termini or over a regular route" mean the termini or route between or over which any auto transportation company usually or ordinarily operates any motor-propelled vehicle, even though there may be departure from the termini or route, whether the departures are periodic or irregular. Whether or not any motor-propelled vehicle is operated by any auto transportation company "between fixed termini or over a regular route" within the meaning of this section is a question of fact, and the finding of the commission thereon is final and is not subject to review. [2007 c 234 § 46; 1989 c 163 § 1; 1984 c 166 § 1; 1979 c 111 § 16; 1975-'76 2nd ex.s. c 121 § 1; 1969 ex.s. c 210 § 10; 1961 c 14 § 81.68.010. Prior: 1935 c 120 § 1; 1921 c 111 § 1; RRS § 6387.]

Additional notes found at www.leg.wa.gov

81.68.015 Application of chapter restricted. This chapter does not apply to corporations or persons, their lessees, trustees, receivers, or trustees appointed by any court whatsoever insofar as they own, control, operate, or manage taxicabs, hotel buses, school buses, or any other carrier that does not come within the term "auto transportation company" as defined in RCW 81.68.010.

This chapter does not apply to persons operating motor vehicles when operated wholly within the limits of incorporated cities or towns, and for a distance not exceeding three road miles beyond the corporate limits of the city or town in Washington in which the original starting point of the vehicle is located, and which operation either alone or in conjunction with another vehicle or vehicles is not a part of any journey beyond the three-mile limit.

This chapter does not apply to commuter ride sharing or ride sharing for persons with special transportation needs in accordance with RCW 46.74.010, so long as the ride-sharing operation does not compete with or infringe upon comparable service actually being provided before the initiation of the ride-sharing operation by an existing auto transportation company certificated under this chapter.

This chapter does not apply to a service carrying passengers for compensation over any public highway in this state between fixed termini or over a regular route if the commission finds, with or without a hearing, that the service does not serve an essential transportation purpose, is solely for recreation, and would not adversely affect the operations of the holder of a certificate under this chapter, and that exemption from this chapter is otherwise in the public interest. Companies providing these services must, however, obtain a permit under chapter 81.70 RCW.

This chapter does not apply to a service carrying passengers for compensation over any public highway in this state between fixed termini or over a regular route if the commission finds, with or without a hearing, that the service is provided pursuant to a contract with a state agency, or funded by a grant issued by the department of transportation, and that exemption from this chapter is otherwise in the public interest. Companies providing these services must, however, obtain a permit under chapter 81.70 RCW. [2009 c 557 § 1; 2007 c 234 § 47; 1989 c 163 § 2; 1984 c 166 § 2.]

81.68.020 Compliance with chapter required. A corporation or person, their lessees, trustees, or receivers or trustees appointed by any court whatsoever, may not engage in the business of operating as a common carrier any motor-propelled vehicle for the transportation of persons and their baggage on the vehicles of auto transportation companies carrying passengers, between fixed termini or over a regular route for compensation on any public highway in this state, except in accordance with this chapter. [2007 c 234 § 48; 1989 c 163 § 3; 1984 c 166 § 3; 1961 c 14 § 81.68.020. Prior: 1927 c 166 § 1; 1921 c 111 § 2; RRS § 6388.]

81.68.030 Regulation by commission. The commission is vested with power and authority, and it is its duty to supervise and regulate every auto transportation company in

this state as provided in this section. Under this authority, it shall for each auto transportation company:

- (1) Fix, alter, and amend just, fair, reasonable, and sufficient rates, fares, charges, classifications, rules, and regulations;
- (2) Regulate the accounts, service, and safety of operations;
- (3) Require the filing of annual and other reports and of other data;
- (4) Supervise and regulate the companies in all other matters affecting the relationship between such companies and the traveling and shipping public;
- (5) By general order or otherwise, prescribe rules and regulations in conformity with this chapter, applicable to any and all such companies, and within such limits make orders.

The commission may, at any time, by its order duly entered after notice to the holder of any certificate under this chapter, and an opportunity for a hearing, at which it shall be proven that the holder willfully violates or refuses to observe any of the commission's proper orders, rules, or regulations, suspend, revoke, alter, or amend any certificate issued under the provisions of this chapter, but the holder of the certificate has all the rights of rehearing, review, and appeal as to the order of the commission as is provided for in chapter 34.05 RCW. [2007 c 234 § 96; 2005 c 121 § 2; 1989 c 163 § 4; 1984 c 166 § 4; 1961 c 14 § 81.68.030. Prior: 1921 c 111 § 3; RRS § 6389.]

81.68.040 Certificate of convenience and necessity.

An auto transportation company shall not operate for the transportation of persons and their baggage for compensation between fixed termini or over a regular route in this state, without first having obtained from the commission under this chapter a certificate declaring that public convenience and necessity require such operation. Any right, privilege, certificate held, owned, or obtained by an auto transportation company may be sold, assigned, leased, transferred, or inherited as other property, only if authorized by the commission. The commission may, after notice and an opportunity for a hearing, when the applicant requests a certificate to operate in a territory already served by a certificate holder under this chapter, only when the existing auto transportation company or companies serving such territory will not provide the same to the satisfaction of the commission, or when the existing auto transportation company does not object, and in all other cases with or without hearing, issue the certificate as prayed for; or for good cause shown, may refuse to issue same, or issue it for the partial exercise only of the privilege sought, and may attach to the exercise of the rights granted by the certificate to such terms and conditions as, in its judgment, the public convenience and necessity may require. [2007 c 234 § 49; 2005 c 121 § 3; 1961 c 14 § 81.68.040. Prior: 1921 c 111 § 4; RRS § 6390.]

81.68.046 Temporary certificates—Waiver of provisions during state of emergency. The commission may, with or without a hearing, issue temporary certificates to engage in the business of operating an auto transportation company, but only after it finds that the issuance of the temporary certificate is consistent with the public interest. The temporary certificate may be issued for a period up to one

hundred eighty days. The commission may prescribe rules and impose terms and conditions as in its judgment are reasonable and necessary in carrying out this chapter. The commission may by rule, prescribe a fee for an application for the temporary certificate. The commission shall not issue a temporary certificate to operate in a territory: (1) For which a certificate has been issued, unless the existing certificate holder, upon twenty days' notice, does not object to the issuance of the certificate or is not providing service; or (2) for which an application is pending unless the filing for a temporary certificate is made by the applicant or the applicant does not object to the issuance of the certificate.

During a state of emergency declared under RCW 43.06.010(12), the governor may waive or suspend the operation or enforcement of this section or any portion of this section or under any administrative rule, and issue any orders to facilitate the operation of state or local government or to promote and secure the safety and protection of the civilian population. [2008 c 181 § 415; 2005 c 121 § 8.]

Part headings not law—2008 c 181: See note following RCW 43.06.220.

81.68.050 Filing fees. Any application for a certificate of public convenience and necessity or amendment thereof, or application to sell, lease, mortgage, or transfer a certificate of public convenience and necessity or any interest therein, shall be accompanied by such filing fees as the commission may prescribe by rule: PROVIDED, That such fee shall not exceed two hundred dollars. [1973 c 115 § 5; 1961 c 14 § 81.68.050. Prior: 1955 c 125 § 9; prior: 1937 c 158 § 2, part; RRS § 10417-1, part.]

81.68.060 Liability and property damage insurance—Surety bond. In granting certificates to operate any auto transportation company, for transporting for compensation persons and their baggage on the vehicles of auto transportation companies carrying passengers, the commission shall require the owner or operator to first procure liability and property damage insurance from a company licensed to make liability insurance in the state of Washington or a surety bond of a company licensed to write surety bonds in the state of Washington on each motor-propelled vehicle used or to be used in transporting persons for compensation, in an amount of no less than one hundred thousand dollars for any recovery for personal injury by one person, no less than three hundred thousand dollars for any vehicle having a capacity of sixteen passengers or less, no less than five hundred thousand dollars for any vehicle having a capacity of seventeen passengers or more for all persons receiving personal injury by reason of at least one act of negligence, and no less than fifty thousand dollars for damage to property of any person other than the insured. The commission shall fix the amount of the insurance policy or policies or security deposit by giving due consideration to the character and amount of traffic, the number of persons affected, and the degree of danger that the proposed operation involves. The liability and property damage insurance or surety bond must be maintained in force on the motor-propelled vehicle while in use, and each policy for liability or property damage insurance or surety bond required by this section must be filed with the commission and kept in full force and effect. Failure to file and maintain the required

insurance is cause for the revocation of the certificate. [2007 c 234 § 50; 1989 c 163 § 5; 1984 c 166 § 6; 1977 ex.s. c 298 § 1; 1961 c 14 § 81.68.060. Prior: 1921 c 111 § 5; RRS § 6391.]

81.68.065 Self-insurers exempt as to insurance or bond. Any auto transportation company authorized to transport persons for compensation on the highways and engaging in interstate, or interstate and intrastate, operations within the state of Washington which is or becomes qualified as a self-insurer with the federal motor carrier safety administration of the United States department of transportation under the United States interstate commerce act applicable to self insurance by motor carriers, is exempt, so long as such qualification remains effective, from all provisions of law relating to the carrying or filing of insurance policies or bonds in connection with such operations.

The commission may require auto transportation companies to prove the existence and continuation of such qualification with the federal motor carrier safety administration by affidavit in any form the commission prescribes. [2007 c 234 § 51; 1961 c 14 § 81.68.065. Prior: (i) 1949 c 127 § 1; Rem. Supp. 1949 § 6386-5a. (ii) 1949 c 127 § 2; Rem. Supp. 1949 § 6386-5b.]

81.68.080 Penalty. Every officer, agent, or employee of any corporation, and every other person who violates or fails to comply with, or who procures, aids, or abets in the violation of any provisions of this chapter, or who fails to obey, observe, or comply with any order, decision, rule or regulation, direction, demand, or requirement, or any part of provision thereof, is guilty of a gross misdemeanor. [2007 c 234 § 52; 2003 c 53 § 398; 1979 ex.s. c 136 § 106; 1961 c 14 § 81.68.080. Prior: 1921 c 111 § 7; RRS § 6393.]

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

Additional notes found at www.leg.wa.gov

81.68.090 Scope of chapter. This chapter applies to persons and motor vehicles engaged in interstate or foreign commerce to the full extent permitted by the Constitution and laws of the United States. [2007 c 234 § 53; 1961 c 14 § 81.68.090. Prior: 1921 c 111 § 8; RRS § 6394.]

81.68.100 Federal authority and registration for compensatory services. It is unlawful for any motor carrier to perform a transportation service for compensation upon the public highways of this state without first having secured appropriate federal authority from the United States department of transportation, if such authority is required, and without first having registered with the commission either directly or through a federally authorized uniform registration program. [2007 c 234 § 45.]

Chapter 81.70 RCW PASSENGER CHARTER AND EXCURSION CARRIERS

(Formerly: Passenger charter carriers)

Sections

81.70.010	Business affected with the public interest—Declaration of purpose.
81.70.020	Definitions.
81.70.030	Exclusions.
81.70.220	Certificate or registration required—Penalty.
81.70.230	Certificates—Application, issuance.
81.70.240	Certificates—Transfer restricted.
81.70.250	Certificates—Grounds for cancellation.
81.70.260	Unlawful operation after certificate or registration canceled, etc.—Penalty.
81.70.270	Scope of regulation.
81.70.280	Insurance or bond for liability and property damage.
81.70.290	Self-insurers exempt as to insurance or bond.
81.70.310	Application of Title 81 RCW.
81.70.320	Fees—Amounts, deposit.
81.70.330	Vehicle identification.
81.70.340	Application to interstate or foreign carriers.
81.70.350	Annual regulatory fee—Delinquent fee payments.
81.70.360	Excursion service companies—Certificate.
81.70.370	Federal authority and registration for compensatory services.
81.70.380	Party buses—Alcohol consumption requirements, penalty.
81.70.390	Passenger smoking on board prohibited.

81.70.010 Business affected with the public interest—Declaration of purpose. The use of the public highways for the transportation of passengers for compensation is a business affected with the public interest. It is the purpose of this chapter to preserve for the public full benefit in use of public highways consistent with the needs of commerce, without unnecessary congestion or wear and tear upon such highways; to secure to the people safe, adequate and dependable transportation by carriers operating upon such highways; and to secure full and unrestricted flow of traffic by motor carriers over such highways which will adequately meet reasonable public demands by providing for the regulation of all transportation agencies with respect to safety of operations and accident indemnity so that safe, adequate and dependable service by all necessary transportation agencies shall be maintained, and the full use of the highway reserved to the public. [1965 c 150 § 2.]

81.70.020 Definitions. Unless the context otherwise requires, the definitions and general provisions in this section govern the construction of this chapter:

(1) Subject to the exclusions of RCW 81.70.030, "charter party carrier" means every person engaged in the transportation over any public highways in this state of a group of persons, who, pursuant to a common purpose and under a single contract, acquire the use of a motor vehicle to travel together as a group to a specified destination or for a particular itinerary, either agreed upon in advance or modified by the chartered group after leaving the place of origin;

(2) "Commission" means the Washington utilities and transportation commission;

(3) "Customer" means a person, corporation, or other entity that prearranges for transportation services with a charter party carrier or purchases a ticket for transportation services aboard an excursion service carrier;

(4) "Double-decker bus" means a motor vehicle with more than one passenger deck. A person using a double-decker bus must comply with the maximum height vehicle requirements contained in RCW 46.44.020;

(5) Subject to the exclusion of RCW 81.70.030, "excursion service carrier" means every person engaged in the transportation of persons for compensation over any public highway in this state from points of origin within the incorporated limits of any city or town or area, to any other location within the state of Washington and returning to that origin. The service must not pick up or drop off passengers after leaving and before returning to the area of origin. The excursions may be regularly scheduled. Compensation for the transportation offered or afforded must be computed, charged, or assessed by the excursion service company on an individual fare basis;

(6) "Motor vehicle" means every self-propelled vehicle with seating capacity for seven or more persons, excluding the driver;

(7) Subject to the exclusions of RCW 81.70.030, "party bus" means any motor vehicle whose interior enables passengers to stand and circulate throughout the vehicle because seating is placed around the perimeter of the bus or is nonexistent and in which food, beverages, or entertainment may be provided. A motor vehicle configured in the traditional manner of forward-facing seating with a center aisle is not a party bus. A person engaged in the transportation of persons by party bus over any public highway in this state is considered engaging in the business of a charter party carrier or excursion service carrier;

(8) "Permit holder" means a holder of an appropriate special permit issued under chapter 66.20 RCW who is twenty-one years of age or older and who is responsible for compliance with the requirements of RCW 81.70.380 and chapter 66.20 RCW during the provision of transportation services;

(9) "Person or persons" means an individual, a corporation, association, joint stock association, and partnership, their lessees, trustees, or receivers;

(10) "Public highway" includes every public street, road, or highway in this state. [2015 c 233 § 1; 2007 c 234 § 55; 1989 c 163 § 6; 1988 c 30 § 1; 1969 c 132 § 1; 1965 c 150 § 3.]

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

81.70.030 Exclusions. This chapter does not apply to:

(1) Persons or their lessees, receivers, or trustees insofar as they own, control, operate, or manage taxicabs, hotel buses, or school buses, when operated as such;

(2) Passenger vehicles carrying passengers on a noncommercial enterprise basis; or

(3) Limousine charter party carriers of passengers under chapter 46.72A RCW. [2015 c 233 § 2; 2007 c 234 § 56; 1989 c 283 § 17; 1965 c 150 § 4.]

81.70.220 Certificate or registration required—Penalty. (1) No person may engage in the business of a charter party carrier or excursion service carrier of passengers over any public highway without first having obtained a certificate from the commission to do so or having registered as an interstate carrier. For the purposes of this section, "engage in the business of a charter party carrier or excursion service carrier" includes advertising or soliciting, offering, or entering into an agreement to provide such service. Each advertise-

ment reproduced, broadcast, or displayed via a particular medium constitutes a separate violation under this chapter.

(2) Any person who engages in the business of a charter party carrier or excursion service carrier in violation of subsection (1) of this section is subject to a penalty of up to five thousand dollars per violation.

(3) An auto transportation company carrying passengers for compensation over any public highway in this state between fixed termini or over a regular route that is not required to hold an auto transportation certificate because of a commission finding under RCW 81.68.015 must obtain a certificate under this chapter. [2015 c 233 § 3; 2009 c 557 § 4; 1989 c 163 § 7; 1988 c 30 § 2.]

81.70.230 Certificates—Application, issuance. (1) Applications for certificates must be made to the commission in writing, verified under oath, and shall be in a form and contain information as the commission by regulation may require. Every application must be accompanied by a fee as the commission may prescribe by rule.

(2) A certificate must be issued to any applicant who establishes proof of safety fitness and insurance coverage under this chapter. [2007 c 234 § 57; 1988 c 30 § 3.]

81.70.240 Certificates—Transfer restricted. No certificate issued under this chapter or rights to conduct services under it may be leased, assigned, or otherwise transferred or encumbered, unless authorized by the commission. [1988 c 30 § 4.]

81.70.250 Certificates—Grounds for cancellation. The commission may cancel, revoke, or suspend any certificate issued under this chapter on any of the following grounds:

(1) The violation of any of the provisions of this chapter;

(2) The violation of an order, decision, rule, regulation, or requirement established by the commission under this chapter;

(3) Failure of a charter party carrier or excursion service carrier of passengers to pay a fee, under this chapter, imposed on the carrier within the time required by law; or

(4) Failure of a charter party carrier or excursion service carrier to maintain required insurance coverage in full force and effect. [2007 c 234 § 58; 1989 c 163 § 8; 1988 c 30 § 5.]

81.70.260 Unlawful operation after certificate or registration canceled, etc.—Penalty. (1) After the cancellation or revocation of a certificate or interstate registration or during the period of its suspension, it is unlawful for a charter party carrier or excursion service carrier of passengers to conduct any operations as such a carrier. For the purposes of this section, "conduct any operations" includes advertising or soliciting, offering, or entering into an agreement to provide such service. Each advertisement reproduced, broadcast, or displayed via a particular medium constitutes a separate violation under this chapter.

(2) Any person who conducts operations as a charter party carrier or excursion service carrier of passengers in violation of subsection (1) of this section is subject to a penalty of up to five thousand dollars per violation. [2015 c 233 § 4; 1989 c 163 § 9; 1988 c 30 § 6.]

81.70.270 Scope of regulation. It is the duty of the commission to regulate charter party carriers and excursion service carriers with respect to safety of equipment, driver qualifications, and safety of operations. The commission shall establish such rules and regulations and require such reports as are necessary to carry out the provisions of this chapter. [1989 c 163 § 10; 1988 c 30 § 7.]

81.70.280 Insurance or bond for liability and property damage. (1) In issuing certificates under this chapter, the commission shall require charter party carriers and excursion service carriers to procure and continue in effect during the life of the certificate, liability and property damage insurance from a company licensed to make liability insurance in the state of Washington or a surety bond of a company licensed to write surety bonds in the state of Washington on each motor-propelled vehicle used or to be used in transporting persons for compensation, in the following amounts:

(a) Not less than one hundred thousand dollars for any recovery for personal injury by one person; and

(b) Not less than three hundred thousand dollars for any vehicle having a capacity of sixteen passengers or less; and

(c) Not less than five hundred thousand dollars for any vehicle having a capacity of seventeen passengers or more for all receiving personal injury by at least one act of negligence; and

(d) Not less than fifty thousand dollars for damage to property of any person other than the insured.

(2) The commission shall fix the amount of the insurance policy or policies or security deposit by giving consideration to the character and amount of traffic, the number of persons affected, and the degree of danger which the proposed operation involves. The liability and property damage insurance or surety bond must be maintained in force on each motor-propelled vehicle while in use. Each policy for liability or property damage insurance or surety bond required by this section must be filed with the commission and kept in effect. Failure to file and maintain the required insurance is cause for the revocation of the certificate. [2007 c 234 § 59; 1989 c 163 § 11; 1988 c 30 § 8.]

81.70.290 Self-insurers exempt as to insurance or bond. A charter party carrier or excursion service carrier of passengers, authorized to transport persons for compensation on the highways and engaging in interstate, or interstate and intrastate, operations within the state of Washington which is or becomes qualified as a self-insurer with the federal motor carrier safety administration of the United States department of transportation in accordance with the United States interstate commerce act applicable to self-insurance by motor carriers, is exempt from RCW 81.70.280 relating to the carrying or filing of insurance policies or bonds in connection with carrier operations as long as the qualification remains effective.

The commission may require the charter party carrier or excursion service carrier to prove the existence and continuation of qualification with the federal motor carrier safety administration by affidavit in a form the commission may prescribe. [2007 c 234 § 60; 1989 c 163 § 12; 1988 c 30 § 9.]

81.70.310 Application of Title 81 RCW. All applicable provisions of this title relating to procedure, powers of the commission, and penalties shall apply to the operation and regulation of persons under this chapter, except as those provisions may conflict with the provisions of this chapter and rules and regulations issued thereunder by the commission. [1988 c 30 § 11.]

81.70.320 Fees—Amounts, deposit. (1) An application for a certificate, amendment of a certificate, or transfer of a certificate must be accompanied by a filing fee the commission may prescribe by rule. The fee must not exceed two hundred dollars.

(2) All fees paid to the commission under this chapter must be deposited in the state treasury to the credit of the public service revolving fund.

(3) It is the intent of the legislature that all fees collected under this chapter must reasonably approximate the cost of supervising and regulating charter party carriers and excursion service carriers subject thereto, and to that end the commission may decrease the schedule of fees provided for in RCW 81.70.350 by general order entered before March 1st of any year in which the commission determines that the moneys, then in the charter party carrier and excursion service carrier account of the public service revolving fund, and the fees currently owed will exceed the reasonable cost of supervising and regulating such carriers during the succeeding calendar year. Whenever the cost accounting records of the commission indicate that the schedule of fees previously reduced should be increased, the increase, not to exceed the schedule set forth in this chapter, may be effected by a similar general order entered before March 1st of any calendar year. [2015 c 233 § 5; 2007 c 234 § 61; 1989 c 163 § 13; 1988 c 30 § 12.]

81.70.330 Vehicle identification. (1) It is unlawful for a charter party carrier or excursion service carrier to operate a motor vehicle upon the highways of this state unless there is firmly affixed to both sides of the vehicle, the name of the carrier and the certificate or permit number of the carrier. The characters composing the identification must be of sufficient size to be clearly distinguishable at a distance of at least fifty feet from the vehicle.

(2) A charter party carrier or excursion service carrier holding both intrastate and interstate authority may identify its vehicles with either the commission permit number or the federal vehicle marking requirement established by the United States department of transportation for interstate motor carriers. [2007 c 234 § 62; 1989 c 163 § 14; 1988 c 30 § 13.]

81.70.340 Application to interstate or foreign carriers. This chapter applies to persons and motor carriers engaged in interstate or foreign commerce to the full extent permitted by the Constitution and laws of the United States. [2007 c 234 § 63; 1989 c 163 § 15; 1988 c 30 § 14.]

81.70.350 Annual regulatory fee—Delinquent fee payments. (1) The commission shall collect from each charter party carrier and excursion service carrier holding a certificate issued pursuant to this chapter and from each interstate

or foreign carrier subject to this chapter an annual regulatory fee, to be established by the commission but which in total shall not exceed the cost of supervising and regulating such carriers, for each bus used by such carrier.

(2) The fee prescribed under this section is due and payable on or before May 1st of each year, to cover operations during the calendar year in which the fee is paid.

(3) Any payment of the fee imposed by this section made after its due date shall include a late fee of two percent of the amount due. Delinquent fees shall accrue interest at the rate of one percent per month. [2015 c 233 § 6; 1994 c 83 § 3; 1989 c 163 § 16; 1988 c 30 § 15.]

81.70.360 Excursion service companies—Certificate.

No excursion service company may operate for the transportation of persons for compensation without first having obtained from the commission under the provisions of this chapter a certificate to do so. For the purposes of this section, "operate for the transportation of persons for compensation" includes advertising or soliciting, offering, or entering into an agreement to provide such service.

A certificate shall be issued to any qualified applicant therefor, authorizing the whole or any part of the operations covered by the application, if it is found that the applicant is fit, willing, and able to properly perform the services proposed and conform to the provisions of this chapter and the rules of the commission adopted under this chapter, and that such operations will be consistent with the public interest. Any right, privilege, or certificate held, owned, or obtained by an excursion service company may be sold, assigned, leased, transferred, or inherited as other property only upon authorization by the commission. For good cause shown the commission may refuse to issue the certificate, or issue it for the partial exercise only of the privilege sought, and may attach to the exercise of the rights granted by the certificate such terms and conditions as, in its judgment, the public interest may require. [2015 c 233 § 7; 1984 c 166 § 5. Formerly RCW 81.68.045.]

81.70.370 Federal authority and registration for compensatory services. It is unlawful for any motor carrier to perform a transportation service for compensation upon the public highways of this state without first having secured appropriate federal authority from the United States department of transportation, if such authority is required, and without first having registered with the commission either directly or through a federally authorized uniform registration program. [2007 c 234 § 54.]

81.70.380 Party buses—Alcohol consumption requirements, penalty. (1)(a) A charter party carrier or excursion service carrier operating a party bus must determine whether alcoholic beverages will be served or consumed in the passenger compartment of the vehicle. If it is expected that alcoholic beverages will be served or consumed in the passenger compartment, the permit holder must have obtained the appropriate liquor permit, provided a copy of the permit to the charter party carrier or excursion service carrier in advance of the trip, and be on the vehicle or reasonably proximate and available to the vehicle during the transporta-

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tion service. The company must maintain the copy of the permit required with the contract of carriage.

(b) If the charter party carrier or excursion service carrier operating a party bus is the permit holder, the carrier must have a person separate from the driver be responsible for the permit holder requirements in this section and either chapter 66.20 or 66.24 RCW.

(c) The permit holder must:

(i) Be on the party bus or reasonably proximate and available to the vehicle during the transportation service;

(ii) Monitor and control party activities in a manner to prevent the driver from being distracted by the party activities; and

(iii) Assume responsibility for compliance with the terms of the special permit, if a permit is required, including compliance with RCW 66.44.270 concerning the prohibition against furnishing liquor to minors.

(2) If at any time the charter party carrier or excursion service carrier operating a party bus believes that conditions aboard the vehicle are unsafe due to party activities involving alcohol, the carrier must remove all alcoholic beverages and lock them in the party bus trunk or other locked compartment. The carrier may cancel the trip and return the passengers to the place of origin.

(3) This section does not limit the right of a charter party carrier or excursion service carrier to prohibit the consumption of alcohol aboard the vehicle.

(4) This section does not limit the right of a permit holder to seek indemnity from any person, corporation, or other entity other than the charter party carrier or excursion service carrier.

(5) This section does not relieve a passenger of legal responsibility for his or her own conduct or the permit holder of legal responsibility for compliance with Title 66 RCW.

(6) Any charter party carrier or excursion service carrier in violation of this section is subject to a penalty of up to five thousand dollars per violation. [2015 c 233 § 8.]

81.70.390 Passenger smoking on board prohibited.

(1) A charter party carrier or excursion service carrier may not knowingly allow any passenger to smoke aboard a motor vehicle regulated under this chapter.

(2) For the purposes of this section, "smoke" has the same meaning as defined in RCW 70.160.020. [2015 c 233 § 9.]

Chapter 81.72 RCW TAXICAB COMPANIES

Sections

81.72.200	Legislative intent.
81.72.210	Local regulatory powers listed.
81.72.220	Cooperative agreements—Joint regulation.
81.72.240	Rate adjustments—Industrial insurance, other costs— Requirement to train for hire operator.

Transportation of passengers in for hire vehicles: Chapter 46.72 RCW.

81.72.200 Legislative intent. The legislature finds and declares that privately operated taxicab transportation service is a vital part of the transportation system within the state and provides demand-responsive services to state residents, tourists, and out-of-state business people. Consequently, the

safety, reliability, and economic viability and stability of privately operated taxicab transportation service are matters of statewide importance. The regulation of privately operated taxicab transportation services is thus an essential governmental function. Therefore, it is the intent of the legislature to permit political subdivisions of the state to regulate taxicab transportation services without liability under federal anti-trust laws. [1984 c 126 § 1.]

81.72.210 Local regulatory powers listed. To protect the public health, safety, and welfare, cities, towns, counties, and port districts of the state may license, control, and regulate privately operated taxicab transportation services operating within their respective jurisdictions. The power to regulate includes:

- (1) Regulating entry into the business of providing taxicab transportation services;
- (2) Requiring a license to be purchased as a condition of operating a taxicab and the right to revoke, cancel, or refuse to reissue a license for failure to comply with regulatory requirements;
- (3) Controlling the rates charged for providing taxicab transportation service and the manner in which rates are calculated and collected, including the establishment of zones as the basis for rates;
- (4) Regulating the routes of taxicabs, including restricting access to airports;
- (5) Establishing safety, equipment, and insurance requirements; and
- (6) Any other requirements adopted to ensure safe and reliable taxicab service. [1984 c 126 § 2.]

81.72.220 Cooperative agreements—Joint regulation. A city, town, county, or port district may enter into cooperative agreements with any other city, town, county, or port district for the joint regulation of taxicabs. Cooperative agreements may provide for, but are not limited to, the granting, revocation, and suspension of joint taxicab licenses. [1984 c 126 § 3.]

81.72.240 Rate adjustments—Industrial insurance, other costs—Requirement to train for hire operator. (1) Any city, town, county, or port district setting the rates charged for taxicab services under this chapter must adjust rates to accommodate changes in the cost of industrial insurance or in other industry-wide costs.

(2) Any business that as owner leases a taxicab licensed under this chapter to a for hire operator must make a reasonable effort to train the for hire operator in motor vehicle operation and safety requirements and monitor operator compliance. Monitoring operator compliance may include the use of vehicle operator monitoring cameras. [2011 c 190 § 8.]

Effective date—2011 c 190: See note following RCW 51.12.185.

Chapter 81.75 RCW TRANSPORTATION CENTERS

Sections

- 81.75.010 Authorization to own and operate—Purpose.
81.75.020 Method of acquisition and operation prescribed—Grants—Consolidation of activities.

81.75.030 Services available—Terms of usage.

81.75.010 Authorization to own and operate—Purpose. It is desirable to a transportation system that convenient and comfortable terminals be established and maintained with the services of all modes of public transportation available to the public at such a center to the extent feasible. It is proper that cities, towns, counties, public transportation benefit area authorities, and municipal corporations of this state be authorized to own and operate transportation centers. [1977 ex.s. c 217 § 1.]

81.75.020 Method of acquisition and operation prescribed—Grants—Consolidation of activities. Through its council or other legislative body, any city, town, county, public transportation benefit area authority, or other municipal corporation, authorized to operate public transportation services, may construct or otherwise acquire intermodal transportation centers by donation, lease, or purchase and may operate or let for purposes of leasing space at fair market value for the services set forth in RCW 81.75.030, and to perform other functions permitted by law, the centers or portions of the centers, for public or private purposes or for compensation or rental upon such conditions as its council or other legislative body shall from time to time prescribe. The city, town, county, public transportation benefit area authority, or municipal corporation, may apply for and receive grants from the federal government for purposes of funding a transportation center and may consolidate a transportation center with other lawful city or town activities. [1977 ex.s. c 217 § 2.]

81.75.030 Services available—Terms of usage. To the extent feasible, the services available to the public at any transportation center may include taxi, auto rental, passenger trains, motor buses, travel agents, restrooms, food, telegraph, baggage handling, transfer and delivery of light freight and packages, commercial airlines, air charter, place of temporary rest for citizens and travelers (but not overnight), mail, private auto parking for users of public transportation through the transportation center, local transit, limousine, and any other use necessary to the foregoing.

Any city, town, county, public transportation benefit area authority, or municipal corporation, which elects to operate a transportation center shall operate the center for the general public good. The operator may establish the terms of usage for the various modes of transportation and for others that utilize its facilities, may make reasonable rules concerning public and private use, and may exclude all persons therefrom who refuse to comply with the terms or rules of use. The operator may own, operate, maintain, and manage a transportation center, but shall not engage in providing a transportation or other related service at the center unless otherwise authorized by law. [1977 ex.s. c 217 § 3.]

Chapter 81.77 RCW SOLID WASTE COLLECTION COMPANIES

Sections

- 81.77.010 Definitions.
81.77.020 Compliance with chapter required—Exemption for cities.
81.77.0201 Jurisdiction of commission upon discontinuation of jurisdiction by municipality.

81.77.030	Supervision and regulation by commission.
81.77.040	Certificate of convenience and necessity required—Issuance—Transferability—Solid waste categories.
81.77.050	Filing fees.
81.77.060	Liability and property damage insurance—Surety bond.
81.77.080	Companies to file reports of gross operating revenue and pay fees—Legislative intent—Disposition of revenue.
81.77.090	Penalty.
81.77.100	Application to foreign or interstate commerce—Regulation of solid waste collection companies.
81.77.110	Temporary certificates.
81.77.120	Service to unincorporated areas of counties.
81.77.130	Application of chapter to collection or transportation of source separated recyclable materials.
81.77.140	Application of chapter—Collection and transportation of recyclable materials by recycling companies or nonprofit entities—Reuse or reclamation.
81.77.160	Pass-through rates—Rules.
81.77.170	Fees, charges, or taxes—Normal operating expense.
81.77.180	Recyclable materials collection—Processing and marketing.
81.77.185	Recyclable materials collection—Revenue sharing—Report.
81.77.190	Curbside recycling—Reduced rate.
81.77.195	Discounts for low-income customers.
81.77.200	Federal authority and registration for compensatory services.
81.77.210	Protection of records containing commercial information.

Unlawful diversion of recyclable material: RCW 70.95.235.

81.77.010 Definitions. As used in this chapter:

(1) "Motor vehicle" means any truck, trailer, semitrailer, tractor, or any self-propelled or motor driven vehicle used upon any public highway of this state for the purpose of transporting solid waste, for the collection or disposal, or both, of solid waste;

(2) "Public highway" means every street, road, or highway in this state;

(3) "Common carrier" means any person who collects and transports solid waste for disposal by motor vehicle for compensation, whether over regular or irregular routes, or by regular or irregular schedules;

(4) "Contract carrier" means all solid waste transporters not included under the terms "common carrier" and "private carrier," as defined in this section, and further, includes any person who under special and individual contracts or agreements transports solid waste by motor vehicle for compensation;

(5) "Private carrier" means a person who, in his or her own vehicle, transports solid waste purely as an incidental adjunct to some other established private business owned or operated by the person in good faith. A person who transports solid waste from residential sources in a vehicle designed or used primarily for the transport of solid waste is not a private carrier;

(6) "Vehicle" means every device capable of being moved upon a public highway and in, upon, or by which any solid waste is or may be transported or drawn upon a public highway, except devices moved by human or animal power or used exclusively upon stationary rail or tracks;

(7) "Solid waste collection company" means every person or his or her lessees, receivers, or trustees, owning, controlling, operating, or managing vehicles used in the business of transporting solid waste for collection or disposal, or both, for compensation, except septic tank pumpers, over any public highway in this state as a "common carrier" or as a "contract carrier";

(8) "Solid waste collection" does not include collecting or transporting recyclable materials from a drop-box or recycling buy-back center, or collecting or transporting recyclable materials by or on behalf of a commercial or industrial

generator of recyclable materials to a recycler for use or reclamation. Transportation of these materials is regulated under chapter 81.80 RCW;

(9) "Solid waste" means the same as defined under RCW 70.95.030, except for the purposes of this chapter solid waste does not include recyclable materials except for source separated recyclable materials collected from residences; and

(10) When the phrase "garbage and refuse" is used as a qualifying phrase or otherwise, it means "solid waste." [2007 c 234 § 65; 1989 c 431 § 17; 1961 c 295 § 2.]

81.77.020 Compliance with chapter required—Exemption for cities. No person, his or her lessees, receivers, or trustees, shall engage in the business of operating as a solid waste collection company in this state, except in accordance with the provisions of this chapter: PROVIDED, That the provisions of this chapter shall not apply to the operations of any solid waste collection company under a contract of solid waste disposal with any city or town, nor to any city or town which itself undertakes the disposal of solid waste. [2013 c 23 § 307; 1989 c 431 § 18; 1961 c 295 § 3.]

81.77.0201 Jurisdiction of commission upon discontinuation of jurisdiction by municipality. A city, town, or combined city-county may at any time reverse its decision to exercise its authority under RCW 81.77.020. In such an event, the commission shall issue a certificate to the last holder of a valid commission certificate of public convenience and necessity, or its successors or assigns, for the area reverting to commission jurisdiction. If there was no certificate existing for the area, or the previous holder was compensated for its certificate property right, the commission shall consider applications for authority under RCW 81.77.040. [1997 c 171 § 4.]

Additional notes found at www.leg.wa.gov

81.77.030 Supervision and regulation by commission. The commission shall supervise and regulate every solid waste collection company in this state,

(1) By fixing and altering its rates, charges, classifications, rules and regulations;

(2) By regulating the accounts, service, and safety of operations;

(3) By requiring the filing of annual and other reports and data;

(4) By supervising and regulating such persons or companies in all other matters affecting the relationship between them and the public which they serve;

(5) By requiring compliance with local solid waste management plans and related implementation ordinances;

(6) By requiring certificate holders under chapter 81.77 RCW to use rate structures and billing systems consistent with the solid waste management priorities set forth under RCW 70.95.010 and the minimum levels of solid waste collection and recycling services pursuant to local comprehensive solid waste management plans. The commission may order consolidated billing and provide for reasonable and necessary expenses to be paid to the administering company if more than one certificate is granted in an area.

The commission, on complaint made on its own motion or by an aggrieved party, at any time, after providing the

holder of any certificate with notice and an opportunity for a hearing at which it shall be proven that the holder has willfully violated or refused to observe any of the commission's orders, rules, or regulations, or has failed to operate as a solid waste collection company for a period of at least one year preceding the filing of the complaint, may suspend, revoke, alter, or amend any certificate issued under the provisions of this chapter. [2005 c 121 § 5; 1989 c 431 § 20; 1987 c 239 § 1; 1965 ex.s. c 105 § 1; 1961 c 295 § 4.]

81.77.040 Certificate of convenience and necessity required—Issuance—Transferability—Solid waste categories. A solid waste collection company shall not operate for the hauling of solid waste for compensation without first having obtained from the commission a certificate declaring that public convenience and necessity require such operation. Operating for the hauling of solid waste for compensation includes advertising, soliciting, offering, or entering into an agreement to provide that service. To operate a solid waste collection company in the unincorporated areas of a county, the company must comply with the solid waste management plan prepared under chapter 70.95 RCW in the company's franchise area.

Issuance of the certificate of necessity must be determined on, but not limited to, the following factors: The present service and the cost thereof for the contemplated area to be served; an estimate of the cost of the facilities to be utilized in the plant for solid waste collection and disposal, set out in an affidavit or declaration; a statement of the assets on hand of the person, firm, association, or corporation that will be expended on the purported plant for solid waste collection and disposal, set out in an affidavit or declaration; a statement of prior experience, if any, in such field by the petitioner, set out in an affidavit or declaration; and sentiment in the community contemplated to be served as to the necessity for such a service.

When an applicant requests a certificate to operate in a territory already served by a certificate holder under this chapter, the commission may, after notice and an opportunity for a hearing, issue the certificate only if the existing solid waste collection company or companies serving the territory will not provide service to the satisfaction of the commission or if the existing solid waste collection company does not object.

In all other cases, the commission may, with or without hearing, issue certificates, or for good cause shown refuse to issue them, or issue them for the partial exercise only of the privilege sought, and may attach to the exercise of the rights granted such terms and conditions as, in its judgment, the public convenience and necessity may require.

Any right, privilege, certificate held, owned, or obtained by a solid waste collection company may be sold, assigned, leased, transferred, or inherited as other property, only if authorized by the commission.

For purposes of issuing certificates under this chapter, the commission may adopt categories of solid wastes as follows: Garbage, refuse, recyclable materials, and demolition debris. A certificate may be issued for one or more categories of solid waste. Certificates issued on or before July 23, 1989, shall not be expanded or restricted by operation of this chap-

ter. [2010 c 24 § 1; 2007 c 234 § 66; 2005 c 121 § 6; 1989 c 431 § 21; 1987 c 239 § 2; 1961 c 295 § 5.]

Effective date—2010 c 24: "This act takes effect July 1, 2010." [2010 c 24 § 3.]

81.77.050 Filing fees. Any application for a certificate issued under this chapter or amendment thereof, or application to sell, lease, mortgage, or transfer a certificate issued under this chapter or any interest therein, shall be accompanied by such filing fee as the commission may prescribe by rule: PROVIDED, That such fee shall not exceed two hundred dollars. [1989 c 431 § 22; 1973 c 115 § 9; 1961 c 295 § 6.]

81.77.060 Liability and property damage insurance—Surety bond. The commission, in granting certificates to operate a solid waste collection company, shall require the owner or operator to first procure liability and property damage insurance from a company licensed to make liability insurance in the state or a surety bond of a company licensed to write surety bonds in the state, on each motor propelled vehicle used or to be used in transporting solid waste for compensation in the amount of not less than twenty-five thousand dollars for any recovery for personal injury by one person, and not less than ten thousand dollars and in such additional amount as the commission shall determine, for all persons receiving personal injury by reason of one act of negligence, and not less than ten thousand dollars for damage to property of any person other than the assured, and to maintain such liability and property damage insurance or surety bond in force on each motor propelled vehicle while so used. Each policy for liability or property damage insurance or surety bond required herein shall be filed with the commission and kept in full force and effect and failure so to do shall be cause for revocation of the delinquent's certificate. [1989 c 431 § 23; 1961 c 295 § 7.]

81.77.080 Companies to file reports of gross operating revenue and pay fees—Legislative intent—Disposition of revenue. Every solid waste collection company shall, on or before the date specified by the commission for filing annual reports under RCW 81.04.080, file with the commission a statement on oath showing its gross operating revenue from intrastate operations for the preceding calendar year, or portion thereof, and pay to the commission a fee equal to one percent of the amount of gross operating revenue: PROVIDED, That the commission may, by rule, set minimum fees that do not exceed the cost of collecting the fees. The commission may by rule waive any or all of the minimum fee established pursuant to this section.

It is the intent of the legislature that the fees collected under the provisions of this chapter shall reasonably approximate the cost of supervising and regulating motor carriers subject thereto, and to that end the utilities and transportation commission is authorized to decrease the schedule of fees provided in this section by general order entered before March 1st of any year in which it determines that the moneys then in the solid waste collection companies account of the public service revolving fund and the fees currently to be paid will exceed the reasonable cost of supervising and regulating such carriers.

All fees collected under this section or under any other provision of this chapter shall be paid to the commission and shall be by it transmitted to the state treasurer within thirty days to be deposited to the credit of the public service revolving fund. [2003 c 296 § 5; 1989 c 431 § 24; 1971 ex.s. c 143 § 3; 1969 ex.s. c 210 § 11; 1963 c 59 § 12; 1961 c 295 § 9.]

81.77.090 Penalty. (1) Every person who violates or fails to comply with, or who procures, aids, or abets in the violation of any provisions of this chapter, or who fails to obey, or comply with any order, decision, rule, regulation, direction, demand, or requirement of the commission, or any part or provision thereof, is guilty of a gross misdemeanor.

(2) Each advertisement reproduced, broadcast, or displayed via a particular medium constitutes a separate violation under this chapter. [2010 c 24 § 2; 1961 c 295 § 10.]

Effective date—2010 c 24: See note following RCW 81.77.040.

81.77.100 Application to foreign or interstate commerce—Regulation of solid waste collection companies. This chapter applies to persons and motor vehicles engaged in interstate or foreign commerce to the full extent permitted by the Constitution and laws of the United States.

To protect public health and safety and to ensure solid waste collection services are provided to all areas of the state, the commission, in accordance with this chapter, shall regulate all solid waste collection companies conducting business in the state. [2007 c 234 § 67; 1989 c 431 § 25; 1985 c 436 § 2; 1961 c 295 § 11.]

81.77.110 Temporary certificates. The commission may with or without a hearing issue temporary certificates to engage in the business of operating a solid waste collection company, but only after it finds that the issuance of such temporary certificate is consistent with the public interest. Such temporary certificate may be issued for a period up to one hundred eighty days where the area or territory covered thereby is not contained in the certificate of any other solid waste collection company. In all other cases such temporary certificate may be issued for a period not to exceed one hundred twenty days. The commission may prescribe such special rules and regulations and impose such special terms and conditions with reference thereto as in its judgment are reasonable and necessary in carrying out the provisions of this chapter. The commission shall collect a fee of twenty-five dollars for an application for such temporary certificate. [1989 c 431 § 26; 1965 ex.s. c 105 § 2.]

81.77.120 Service to unincorporated areas of counties. A county legislative authority shall periodically comment to the commission in writing concerning the authority's perception of the adequacy of service being provided by regulated franchisees serving the unincorporated areas of the county. The county legislative authority shall also receive and forward to the commission all letters of comment on services provided by regulated franchise holder(s) serving unincorporated areas of the county. Any such written comments or letters shall become part of the record of any rate, compliance, or any other hearing held by the commission on the issuance, revocation, or reissuance of a certificate provided for in RCW 81.77.040. [1987 c 239 § 3.]

81.77.130 Application of chapter to collection or transportation of source separated recyclable materials. The provisions of chapter 81.77 RCW shall not apply to the collection or transportation of source separated recyclable materials from residences under a contract with any county, city, or town, nor to any city or town which itself undertakes the collection and transportation of source separated recyclable materials from residences. [1989 c 431 § 19.]

81.77.140 Application of chapter—Collection and transportation of recyclable materials by recycling companies or nonprofit entities—Reuse or reclamation. Nothing in this chapter shall prevent a recycling company or nonprofit entity from collecting and transporting recyclable materials from a buy-back center, drop-box, or from a commercial or industrial generator of recyclable materials, or upon agreement with a solid waste collection company.

Nothing in this chapter shall be construed as prohibiting a commercial or industrial generator of commercial recyclable materials from selling, conveying, or arranging for transportation of such material to a recycler for reuse or reclamation. [1989 c 431 § 31.]

81.77.160 Pass-through rates—Rules. (1) The commission, in fixing and altering collection rates charged by every solid waste collection company under this section, shall include in the base for the collection rates:

(a) All charges for the disposal of solid waste at the facility or facilities designated by a local jurisdiction under a local comprehensive solid waste management plan or ordinance; and

(b) All known and measurable costs related to implementation of the approved county or city comprehensive solid waste management plan.

(2) If a solid waste collection company files a tariff to recover the costs specified under this section, and the commission suspends the tariff, the portion of the tariff covering costs specified in this section shall be placed in effect by the commission at the request of the company on an interim basis as of the originally filed effective date, subject to refund, pending the commission's final order. The commission may adopt rules to implement this section.

(3) This section applies to a solid waste collection company that has an affiliated interest under chapter 81.16 RCW with a facility, if the total cost of disposal, including waste transfer, transport, and disposal charges, at the facility is equal to or lower than any other reasonable and currently available option. [1997 c 434 § 1; 1989 c 431 § 30.]

81.77.170 Fees, charges, or taxes—Normal operating expense. For rate-making purposes, a fee, charge, or tax on the collection or disposal of solid waste is considered a normal operating expense of the solid waste collection company, including all taxes and fees imposed or increased under chapter 44, Laws of 2015 3rd sp. sess. Filing for pass-through of any such fee, charge, or tax is not considered a general rate proceeding. [2015 3rd sp.s. c 44 § 424; 1989 c 431 § 36.]

Effective date—2015 3rd sp.s. c 44: See note following RCW 46.68.395.

81.77.180 Recyclable materials collection—Processing and marketing. (1) A solid waste collection company collecting recyclable materials from residences shall utilize one or more private recycling businesses when arranging for the processing and marketing of such materials, if the following conditions are met:

(a) A recycling business is located within the county at the time the collection program commences or at any time that the solid waste collection company changes its existing processor;

(b) A local private recycling business is capable and competent to provide the processing and marketing service; and

(c) A local private recycling business offers to pay a price for the recyclable materials which is equal to or greater than the price offered by out-of-county private recyclers, or proposes a charge for the processing and marketing service which is equal to or less than the charge for the service available from an out-of-county private recycler.

(2) This section shall not apply to:

(a) Cities or towns who exercise their authority under RCW 81.77.130 to provide residential curbside collection of recyclable materials;

(b) A solid waste collection company that is directed by a city, town, or county to utilize a publicly owned recyclable processing facility located within such city, town, or county; or

(c) Counties which exercise their authority under RCW 36.58.040 to contract for the residential curbside collection of source separated recyclables.

This section shall not apply to programs for the collection of source separated recyclable materials where rates to implement the programs have been filed with the commission prior to May 21, 1991.

(3) For the purposes of this section, "private recycling business" means any private for-profit or private not-for-profit firm that engages in the processing and marketing of recyclable materials.

(4) This section is not enforceable by complaint filed with the commission. [1991 c 319 § 403.]

81.77.185 Recyclable materials collection—Revenue sharing—Report. (1) The commission shall allow solid waste collection companies collecting recyclable materials to retain up to fifty percent of the revenue paid to the companies for the material if the companies submit a plan to the commission that is certified by the appropriate local government authority as being consistent with the local government solid waste plan and that demonstrates how the revenues will be used to increase recycling. The remaining revenue shall be passed to residential customers.

(2) By December 2, 2005, the commission shall provide a report to the legislature that evaluates:

(a) The effectiveness of revenue sharing as an incentive to increase recycling in the state; and

(b) The effect of revenue sharing on costs to customers. [2010 c 154 § 3; 2002 c 299 § 6.]

Intent—Scope of authority—2010 c 154: See notes following RCW 70.95.080.

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81.77.190 Curbside recycling—Reduced rate. (1) If the commission authorizes a surcharge or reduced rate incentive based on a customer's participation in a company's curbside residential recycling program, customers participating in any other noncurbside recycling program approved by the jurisdiction shall be eligible for such incentives.

(2) For the purpose of this section, "reduced rate" means a residential solid waste collection rate incorporating a rebate, refund, or discount. It does not include any residential solid waste collection rate based on the volume or weight of solid waste set out for collection. [1991 c 319 § 406.]

81.77.195 Discounts for low-income customers. Upon request of a county, the commission may approve rates, charges, or services at a discount for low-income senior customers and low-income customers, as adopted by the county in its comprehensive solid waste management plan. Expenses and lost revenues as a result of these discounts must be included in the company's cost of service and recovered in rates to other customers. [2010 c 154 § 4.]

Intent—Scope of authority—2010 c 154: See notes following RCW 70.95.080.

81.77.200 Federal authority and registration for compensatory services. It is unlawful for any motor carrier to perform a transportation service for compensation upon the public highways of this state without first having secured appropriate federal authority from the United States department of transportation, if such authority is required, and without first having registered with the commission either directly or through a federally authorized uniform registration program. [2007 c 234 § 64.]

81.77.210 Protection of records containing commercial information. Records, subject to chapter 42.56 RCW, filed with the commission or the attorney general from any person that contain valuable commercial information, including trade secrets or confidential marketing, cost, or financial information, or customer-specific usage information, are not subject to inspection or copying under chapter 42.56 RCW: (1) Until notice to the person or persons directly affected has been given; and (2) if, within ten days of the notice, the person has obtained a superior court order protecting the records as confidential. The court must determine that the records are confidential and not subject to inspection and copying if disclosure is likely to result in private loss, including an unfair competitive disadvantage, and is not necessary for further public review and comment on the appropriate allocation of costs and revenues. When providing information to the commission or the attorney general, a person shall designate which records or portions of records contain valuable commercial information. Nothing in this section prevents the use of protective orders by the commission governing disclosure of proprietary or confidential information in contested proceedings. [2014 c 170 § 1.]

Chapter 81.80 RCW MOTOR FREIGHT CARRIERS

Sections

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(2018 Ed.)

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Taxation of motor carriers of freight for hire—Allocation of gross receipts: RCW 35.21.840.

81.80.010 Definitions. The definitions set forth in this section apply throughout this chapter.

(1) "Common carrier" means any person who undertakes to transport property for the general public by motor vehicle for compensation, whether over regular or irregular routes, or regular or irregular schedules, including motor vehicle operations of other carriers by rail or water and of express or forwarding companies.

(2) "Contract carrier" includes all motor vehicle operators not included under the terms "common carrier" and "private carrier" as defined in this section, and further includes any person who under special and individual contracts or agreements transports property by motor vehicle for compensation.

(3) "Common carrier" and "contract carrier" includes persons engaged in the business of providing, contracting for, or undertaking to provide transportation of property for com-

penation over the public highways of the state of Washington as brokers or forwarders.

(4) "Exempt carrier" means any person operating a vehicle exempted under RCW 81.80.040.

(5) "Household goods carrier" means a person who transports for compensation, by motor vehicle within this state, or who advertises, solicits, offers, or enters into an agreement to transport household goods as defined by the commission.

(6) "Motor carrier" includes "common carrier," "contract carrier," "private carrier," and "exempt carrier" as defined in this section.

(7) "Motor vehicle" means any truck, trailer, semitrailer, tractor, dump truck which uses a hydraulic or mechanical device to dump or discharge its load, or any self-propelled or motor-driven vehicle used upon any public highway of this state for the purpose of transporting property, but not including baggage, mail, and express transported on the vehicles of auto transportation companies carrying passengers.

(8) "Person" includes an individual, firm, copartnership, corporation, company, or association or their lessees, trustees, or receivers.

(9) A "private carrier" is a person who transports by his or her own motor vehicle, with or without compensation, property which is owned or is being bought or sold by the person, or property where the person is the seller, purchaser, lessee, or bailee and the transportation is incidental to and in furtherance of some other primary business conducted by the person in good faith.

(10) "Public highway" means every street, road, or highway in this state.

(11) "Vehicle" means every device capable of being moved upon a public highway and in, upon, or by which any person or property is or may be transported or drawn upon a public highway, except devices moved by human or animal power or used exclusively upon stationary rail or tracks. [2009 c 94 § 1; 2007 c 234 § 68; 1989 c 60 § 1; 1988 c 31 § 1; 1982 c 71 § 1; 1967 c 69 § 1; 1961 c 14 § 81.80.010. Prior: 1937 c 166 § 2; 1935 c 184 § 2; RRS § 6382-2.]

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

Additional notes found at www.leg.wa.gov

81.80.020 Declaration of policy. The business of operating as a motor carrier of freight for compensation along the highways of this state is declared to be a business affected with a public interest. The rapid increase of motor carrier freight traffic and the fact that under the existing law many motor trucks are not effectively regulated have increased the dangers and hazards on public highways and make it imperative that regulation to the fullest extent allowed under 49 U.S.C. Sec. 14501 should be employed to the end that the highways may be rendered safer for the use of the general public; that the wear of such highways may be reduced; that congestion on highways may be minimized; that the shippers of the state may be provided with a stabilized service and rate structure; that sound economic conditions in such transportation and among such carriers may be fostered in the public interest; that adequate, economical, and efficient service by motor carriers, and reasonable charges therefor, without unjust discrimination, undue preferences or advantages, or

unfair or destructive competitive practices may be promoted; that the common carriage of commodities by motor carrier may be preserved in the public interest; that the relations between, and transportation by and regulation of, motor carriers and other carriers may be improved and coordinated so that the highways of the state of Washington may be properly developed and preserved, and the public may be assured adequate, complete, dependable, and stable transportation service in all its phases. [2007 c 234 § 69; 1961 c 14 § 81.80.020. Prior: 1937 c 166 § 1; 1935 c 184 § 1; RRS § 6382-1.]

81.80.040 Exempt vehicles. (1) The provisions of this chapter, except where specifically otherwise provided, and except the provisions providing for licenses, shall not apply to:

(a) Motor vehicles when operated in transportation exclusively within the corporate limits of any city or town of less than ten thousand population unless contiguous to a city or town of ten thousand population or over, nor between contiguous cities or towns both or all of which are less than ten thousand population;

(b) Motor vehicles when operated in transportation wholly within the corporate limits of cities or towns of ten thousand or more but less than thirty thousand population, or between such cities or towns when contiguous, as to which the commission, after investigation and the issuance of an order thereon, has determined that no substantial public interest exists which requires that such transportation be subject to regulation under this chapter;

(c) Motor vehicles when transporting exclusively the United States mail or in the transportation of newspapers or periodicals;

(d) Motor vehicles owned and operated by the United States, the state of Washington, or any county, city, town, or municipality therein, or by any department of them, or either of them;

(e) Motor vehicles specially constructed for towing not more than two disabled, unauthorized, or repossessed motor vehicles, wrecking, or exchanging an operable vehicle for a disabled vehicle and not otherwise used in transporting goods for compensation. For the purposes of this subsection (1)(e), a vehicle is considered to be repossessed only from the time of its actual repossession through the end of its initial tow;

(f) Motor vehicles normally owned and operated by farmers in the transportation of their own farm, orchard, or dairy products, including livestock and plant or animal wastes, from point of production to market, or in the infrequent or seasonal transportation by one farmer for another farmer, if their farms are located within twenty miles of each other, of products of the farm, orchard, or dairy, including livestock and plant or animal wastes, or of supplies or commodities to be used on the farm, orchard, or dairy;

(g) Motor vehicles when transporting exclusively water in connection with construction projects only;

(h) Motor vehicles of less than 8,000 pounds gross vehicle weight when transporting exclusively legal documents, pleadings, process, correspondence, depositions, briefs, medical records, photographs, books or papers, cash or checks, when moving shipments of the documents described at the direction of an attorney as part of providing legal services.

(2) The exemptions set forth in subsection (1)(a) and (b) of this section do not apply to household goods carriers. [2009 c 94 § 2; 1993 c 121 § 4; 1984 c 171 § 1; 1979 ex.s. c 6 § 1; 1963 c 59 § 7; 1961 c 14 § 81.80.040. Prior: 1957 c 205 § 4; 1949 c 133 § 1; 1947 c 263 § 1; 1937 c 166 § 4; 1935 c 184 § 3; Rem. Supp. 1949 § 6382-3.]

81.80.045 Exemption—Freight consolidators. This chapter does not apply to the operations of a shipper or a group or association of shippers in consolidating or distributing freight for themselves or for their members on a nonprofit basis for the purpose of securing the benefits of carload, truckload, or other volume rates, when the services of a common carrier are used for the transportation of such shipments. [2007 c 234 § 70; 1979 ex.s. c 138 § 1.]

81.80.050 Compliance required. It shall be unlawful for any person to operate as a "motor carrier" on any public highway of this state except in accordance with the provisions of this chapter. [1961 c 14 § 81.80.050. Prior: 1935 c 184 § 4; RRS § 6382-4.]

81.80.060 Combination of services. Every person who engages for compensation to perform a combination of services, a substantial portion of which includes transportation of property of others upon the public highways, is subject to the jurisdiction of the commission as to such transportation and shall not engage in such transportation without first having obtained a common carrier or contract carrier permit to do so. A combination of services includes, but is not limited to, the delivery of household appliances for others where the delivering carrier also unpacks or uncrates the appliances and makes the initial installation. Any person engaged in extracting or processing, or both, and, in connection therewith, hauling materials exclusively for the maintenance, construction, or improvement of a public highway is not engaged in performing a combination of services. [2007 c 234 § 71; 1969 ex.s. c 210 § 17; 1969 c 33 § 1. Prior: 1967 ex.s. c 145 § 77; 1967 c 69 § 2; 1965 ex.s. c 170 § 40; 1961 c 14 § 81.80.060; prior: 1937 c 166 § 5; RRS § 6382-4a.]

Additional notes found at www.leg.wa.gov

81.80.070 Common carriers, contract carriers, and temporary carriers—Permit required. (1) A common carrier, contract carrier, or temporary carrier shall not operate for the transportation of property for compensation in this state without first obtaining from the commission a permit for such operation.

(2) The commission shall issue a common carrier permit to any qualified applicant if it is found the applicant is fit, willing, and able to perform the service and conform to the provisions of this chapter and the rules and regulations of the commission.

(3) Before a permit is issued, the commission shall require the applicant to establish safety fitness and proof of minimum financial responsibility as provided in this chapter. [2009 c 94 § 3; 2007 c 234 § 72; 1999 c 79 § 1; 1963 c 242 § 1; 1961 c 14 § 81.80.070. Prior: 1953 c 95 § 17; 1947 c 264 § 2; 1941 c 163 § 1; 1937 c 166 § 6; 1935 c 184 § 5; Rem. Supp. 1947 § 6382-5.]

81.80.075 Household goods carriers—Permit required, penalty, cease and desist orders. (1) No person shall engage in business as a household goods carrier without first obtaining a household goods carrier permit from the commission.

(2) Permits issued to any household goods carrier must be exercised by the carrier to the fullest extent to render reasonable service to the public. Applications for household goods carrier permits or permit extensions must be on file for a period of at least thirty days before issuance unless the commission finds that special conditions require earlier issuance.

(3) The commission must issue a permit or permit extension to any qualified applicant, authorizing the whole or any part of the operations covered by the application, if it is found that: The applicant is fit, willing, and able to perform the services proposed and conform to this chapter and the requirements, rules, and regulations of the commission; the operations are consistent with the public interest; and, in the case of common carriers, they are required by the present or future public convenience and necessity; otherwise, the application must be denied.

(4) Any person who engages in business as a household goods carrier in violation of subsection (1) of this section is subject to a penalty of up to five thousand dollars per violation.

(a) If the basis for the violation is advertising, each advertisement reproduced, broadcast, or displayed via a particular medium constitutes a separate violation.

(b) In deciding the amount of penalty to be imposed per violation, the commission shall consider the following factors:

(i) The carrier's willingness to comply with the requirements of RCW 81.80.070 and the commission's rules under this chapter; and

(ii) The carrier's history with respect to compliance with this section.

(5) Any person who engages in business as a household goods carrier in violation of a cease and desist order issued by the commission under RCW 81.04.510 is subject to a penalty of up to ten thousand dollars per violation. [2009 c 94 § 4.]

81.80.080 Application for permit. Application for permits must be made to the commission in writing and must state the ownership, financial condition, equipment to be used and physical property of the applicant, the territory or route or routes in or over which the applicant proposes to operate, the nature of the transportation to be engaged in, and other information as the commission may require. [2007 c 234 § 73; 1991 c 41 § 1; 1961 c 14 § 81.80.080. Prior: 1935 c 184 § 6; RRS § 6382-6.]

81.80.090 Form of application—Filing fees. The commission shall prescribe forms of application for permits and for extensions thereof for the use of prospective applicants, and for transfer of permits and for acquisition of control of carriers holding permits, and shall make regulations for the filing thereof. Any such application shall be accompanied by such filing fee as the commission may prescribe by rule: PROVIDED, That such fee shall not exceed five hundred fifty dollars. [1993 c 97 § 5; 1973 c 115 § 10; 1961 c 14

§ 81.80.090. Prior: 1941 c 163 § 2; 1937 c 166 § 7; 1935 c 184 § 7; RRS § 6382-7.]

81.80.100 Form and contents of permit. Permits granted by the commission shall be in such form as the commission shall prescribe and shall set forth the name and address of the person to whom the permit is granted, the nature of the transportation service to be engaged in and the principal place of operation, termini or route to be used or territory to be served by the operation. No permit holder shall operate except in accordance with the permit issued to him or her. [2013 c 23 § 308; 1961 c 14 § 81.80.100. Prior: 1935 c 194 § 8; RRS § 6382-8.]

81.80.110 Limitation on renewal of application. No person whose application for a permit has been denied after hearing under any of the provisions of this chapter shall be eligible to renew the application for a period of six months from the date of the order denying such application. [1961 c 14 § 81.80.110. Prior: 1947 c 264 § 3; 1935 c 184 § 9; Rem. Supp. 1947 § 6382-9.]

81.80.115 Fees imposed under this chapter—Procedure for contesting—Rules. If a person seeks to contest the imposition of a fee imposed under this chapter, the person shall pay the fee and request a refund within six months of the due date for the payment by filing a petition for a refund with the commission. The commission shall establish by rule procedures for handling refund petitions and may delegate the decisions on refund petitions to the secretary of the commission. [1993 c 97 § 6.]

81.80.120 Classification of carriers. The commission may from time to time establish such just and reasonable classifications of the groups of carriers included in the terms "common carriers" and "contract carriers" as the special nature of the services performed by such carriers shall require, and such just and reasonable rules, regulations and requirements, consistent with the provisions of this chapter, to be observed by the carriers so classified or grouped, as the commission deems necessary or advisable in the public interest. [1961 c 14 § 81.80.120. Prior: 1937 c 166 § 8; 1935 c 184 § 10; RRS § 6382-10.]

81.80.130 Regulatory power over common carriers. To the extent allowed under 49 U.S.C. Sec. 14501, the commission shall: Supervise and regulate every common carrier in this state; make, fix, alter, and amend, just, fair, reasonable, minimum, maximum, or minimum and maximum, rates, charges, classifications, rules, and regulations for all common carriers; regulate the accounts, service, and safety of operations thereof; require the filing of reports and other data thereby; and supervise and regulate all common carriers in all other matters affecting their relationship with competing carriers of every kind and the shipping and general public. The commission may by order approve rates filed by common carriers in respect to certain designated commodities and services when, in the opinion of the commission, it is impractical for the commission to make, fix, or prescribe rates covering the commodities and services. [2007 c 234 § 74; 1961 c

14 § 81.80.130. Prior: 1957 c 205 § 5; 1937 c 166 § 9; 1935 c 184 § 11; RRS § 6382-11.]

81.80.132 Common carriers—Estimate of charges for household goods—Penalty. When a common carrier gives an estimate of charges for services in carrying household goods, the carrier will endeavor to accurately reflect the actual charges. The carrier is subject to a monetary penalty not to exceed one thousand dollars per violation when the actual charges exceed the percentages allowed by the commission. [1993 c 392 § 1.]

81.80.140 Regulatory power over contract carriers. To the extent allowed under 49 U.S.C. Sec. 14501, the commission shall: Supervise and regulate every contract carrier in this state; fix, alter, and amend, just, fair, and reasonable classifications, rules, and regulations and minimum rates and charges of each contract carrier; regulate the account, service, and safety of contract carriers' operations; require the filing of reports and of other data thereby; and supervise and regulate contract carriers in all other matters affecting their relationship with both the shipping and the general public. [2007 c 234 § 75; 1961 c 14 § 81.80.140. Prior: 1937 c 166 § 11; 1935 c 184 § 12; RRS § 6382-12.]

81.80.150 Tariffs to be compiled and sold. The commission shall make, fix, construct, compile, promulgate, publish, and distribute tariffs containing compilations of rates, charges, classifications, rules, and regulations to be used by all household goods carriers. In compiling these tariffs, the commission shall include within any given tariff compilation the carriers, groups of carriers, commodities, or geographical areas it determines are in the public interest. The compilations and publications may be made by the commission by compiling the rates, charges, classifications, rules, and regulations now in effect, and as they may be amended and altered from time to time after notice and hearing, by issuing and distributing revised pages or supplements to the tariffs or reissues of tariffs in accordance with the orders of the commission. The commission, upon good cause shown, may establish temporary rates, charges, or classification changes which may be made permanent only after publication in an applicable tariff for not less than sixty days and a determination by the commission that the rates, charges, or classifications are just, fair, and reasonable. If a shipper or common carrier, or representative of either, files a protest with the commission, within sixty days from the date of publication, stating that the temporary rates are unjust, unfair, or unreasonable, the commission must hold a hearing to consider the protest. Publication of these temporary rates in the tariff is adequate public notice. The commission may, upon notice and hearing, fix and determine just, fair, and reasonable rates, charges, and classifications. Each common carrier shall purchase from the commission and post tariffs applicable to its authority. The commission shall set fees for the sale, supplements, and corrections of the tariffs at rates to cover all costs of making, fixing, constructing, compiling, promulgating, publishing, and distributing the tariffs. The proper tariff, or tariffs, applicable to a carrier's operations must be available to the public at each agency and office of all common carriers operating within this state. The compilations and publications must be sold by

the commission for the established fee. However, copies may be furnished for free to other regulatory bodies and departments of government and to colleges, schools, and libraries. All copies of the compilations, whether sold or given for free, must be issued and distributed under rules fixed by the commission. The commission may by order authorize common carriers to publish and file tariffs with the commission and be governed by the tariffs in respect to certain designated commodities and services when, in the opinion of the commission, it is impractical for the commission to make, fix, construct, compile, publish, and distribute tariffs covering such commodities and services. [2007 c 234 § 76; 1993 c 97 § 4; 1981 c 116 § 2; 1973 c 115 § 11; 1961 c 14 § 81.80.150. Prior: 1959 c 248 § 5; 1957 c 205 § 6; 1947 c 264 § 4; 1941 c 163 § 3; 1937 c 166 § 10; Rem. Supp. 1947 § 6382-11a.]

81.80.170 Temporary permits. The commission may issue temporary permits to temporary household goods carriers for no more than one hundred eighty days, but only after the commission finds that the issuance of the temporary permits is consistent with the public interest. The commission may prescribe special rules and regulations and impose special terms and conditions as in its judgment are reasonable and necessary in carrying out the provisions of this chapter.

The commission may also issue temporary permits pending the determination of an application filed with the commission for approval of a consolidation or merger of the properties of two or more household goods carriers or of a purchase or lease of one or more household goods carriers. [2007 c 234 § 77; 1963 c 242 § 2; 1961 c 14 § 81.80.170. Prior: 1953 c 95 § 18; 1947 c 264 § 5; 1937 c 166 § 12; 1935 c 184 § 14; Rem. Supp. 1947 § 6382-14.]

81.80.190 Insurance or deposit of security required. The commission shall, in issuing permits to common carriers and contract carriers under this chapter, require the carriers to either procure and file liability and property damage insurance from a company licensed to write such insurance in the state of Washington, or deposit security, for the limits of liability and on terms and conditions that the commission determines are necessary for the reasonable protection of the public against damage and injury for which the carrier may be liable by reason of the operation of any motor vehicle.

In fixing the amount of the insurance policy or policies, or deposit of security, the commission shall consider the character and amount of traffic and the number of persons affected and the degree of danger that the proposed operation involves. [2007 c 234 § 78; 1986 c 191 § 5; 1961 c 14 § 81.80.190. Prior: 1935 c 184 § 16; RRS § 6382-16.]

Additional notes found at www.leg.wa.gov

81.80.195 Liability insurance requirements exclusive. This chapter shall exclusively govern the liability insurance requirements for motor vehicle common and contract carriers. Any motor vehicle that meets the public liability requirements prescribed under RCW 81.80.190 shall not be required to comply with any ordinances of a city or county prescribing insurance requirements. [1989 c 264 § 2.]

Additional notes found at www.leg.wa.gov

81.80.200 Conditions may be attached to permits.

The commission is hereby vested with power and authority in issuing permits to any of the carriers classified in accordance with RCW 81.80.120 to attach thereto such terms and conditions and to require such insurance or security as it may deem necessary for the protection of the public highways and to be for the best interest of the shipping and the general public. All such regulations and conditions shall be deemed temporary and may be revoked by the commission upon recommendation of the state or county authorities in charge of highway maintenance or safety when in the judgment of such authorities such revocation is required in order to protect the public or preserve the public highways. [1961 c 14 § 81.80.200. Prior: 1937 c 166 § 14; 1935 c 184 § 17; RRS § 6382-17.]

81.80.211 Hours of operators—Rules and regulations. The commission may adopt rules and regulations relating to the hours of duty of motor carrier drivers and operators. [1961 c 14 § 81.80.211. Prior: 1953 c 95 § 23.]

81.80.220 Tariff rates to be charged. A household goods carrier shall not collect or receive a greater, less, or different remuneration for the transportation of property or for any service in connection therewith than the rates and charges that are either legally established and filed with the commission or are specified in the contract or contracts filed. A household goods carrier shall not refund or remit in any manner or by any device any portion of the rates and charges required to be collected by each tariff or contract or filing with the commission.

The commission may check the records of all carriers under this chapter and of those employing the services of the carrier to discover all discriminations, under or overcharges, and rebates, and may suspend or revoke permits for violations of this section.

The commission may refuse to accept any time schedule, tariff, or contract that, in the opinion of the commission, limits the service of a carrier to profitable trips only or to the carrying of high class commodities in competition with other carriers who give a complete service affording one carrier an unfair advantage over a competitor. [2007 c 234 § 79; 1961 c 14 § 81.80.220. Prior: 1937 c 166 § 16; 1935 c 184 § 19; RRS § 6382-19.]

81.80.230 Penalty for rebating, etc.—Procedure for collection. Any person, whether a household goods carrier subject to this chapter, shipper, or consignee, or any officer, employee, agent, or representative thereof, who: (1) Offers, grants, gives, solicits, accepts, or receives any rebate, concession, or discrimination in violation of this chapter; (2) by means of any false statement or representation, or by the use of any false or fictitious bill, bill of lading, receipt, voucher, roll, account, claim, certificate, affidavit, deposition, lease, or bill of sale, or by any other means or device assists, suffers, or permits any person or persons, natural or artificial, to obtain transportation of property subject to this chapter for less than the applicable rate, fare, or charge; or (3) fraudulently seeks to evade or defeat regulation of motor carriers under this chapter is subject to a civil penalty of not more than one hundred dollars for each violation. Each and every violation is a separate and distinct offense, and in case of a

continuing violation every day's continuance is a separate and distinct violation. Every act or omission that procures, aids, or abets in the violation is also a violation under this section and subject to the penalty under this section.

The penalty under this section is due and payable when the person incurring the penalty receives a notice in writing from the commission describing the violation with reasonable particularity and advising the person that the penalty is due. The commission may, upon a written application received within fifteen days, remit or mitigate any penalty under this section or discontinue any prosecution to recover the penalty upon such terms as the commission in its discretion deems proper. The commission may ascertain the facts on all applications. If the penalty is not paid to the commission within fifteen days after receipt of the notice imposing the penalty, or the application for remission or mitigation is not made within fifteen days after the violator has received notice of the disposition of the application, the attorney general shall bring an action in the name of the state of Washington in the superior court of Thurston county or another county where the violator may do business, to recover the penalty. In all such actions, the procedure and rules of evidence are the same as in an ordinary civil action except as otherwise provided in this section. All penalties recovered under this section must be paid into the state treasury and credited to the public service revolving fund. [2007 c 234 § 80; 1980 c 132 § 2; 1961 c 14 § 81.80.230. Prior: 1947 c 264 § 6; Rem. Supp. 1947 § 6382-19a.]

Additional notes found at www.leg.wa.gov

81.80.250 Bond to protect shippers and consignees.

The commission may require any household goods carrier to file a surety bond, or deposit security, in an amount determined by the commission, that is conditioned on the carrier compensating the shippers and consignees for all money belonging to the shippers and consignees, and coming into the possession of the carrier in connection with its transportation service. Any household goods carrier required by law to compensate a shipper or consignee for any loss, damage, or default, for which a connecting common carrier is legally responsible, must be subrogated to the rights of the shipper or consignee under any bond or deposit of security to the extent of the amount paid. [2007 c 234 § 81; 1961 c 14 § 81.80.250. Prior: 1935 c 184 § 21; RRS § 6382-21.]

81.80.260 Operation in more than one class. It is unlawful for any household goods carrier to operate any vehicle at the same time in more than one class of operation, except upon approval of the commission and a finding that the operation is in the public interest.

An exempt carrier shall not transport property for compensation except as provided under this chapter. [2007 c 234 § 82; 1967 c 69 § 3; 1961 c 14 § 81.80.260. Prior: 1935 c 184 § 22; RRS § 6382-22.]

Additional notes found at www.leg.wa.gov

81.80.270 Permits—Acquisition of carrier holding permit—Commission approval—Duties on cessation of operation. Permits issued under this chapter are neither irrevocable nor subject to transfer or assignment except upon a

proper showing that property rights might be affected thereby, and then in the discretion of the commission.

Any person, partnership, or corporation, singly or in combination with any other person, partnership, or corporation, whether a household goods carrier holding a permit or otherwise, or any combination of such, shall not acquire control or enter into any agreement or arrangement to acquire control of a household goods carrier holding a permit through ownership of its stock or through purchase, lease, or contract to manage the business, or otherwise, except after and with the approval and authorization of the commission. However, upon the dissolution of a partnership, which holds a permit, because of the death, bankruptcy, or withdrawal of a partner where the partner's interest is transferred to his or her spouse or to one or more remaining partners, or in the case of a corporation which holds a permit, in the case of the death of a shareholder where a shareholder's interest upon death is transferred to his or her spouse or to one or more of the remaining shareholders, the commission shall transfer the permit to the newly organized partnership that is substantially composed of the remaining partners, or continue the corporation's permit without hearing and protest. In all other cases, any transaction either directly or indirectly entered into without approval of the commission is void, and it is unlawful for any person seeking to acquire or divest control of the permit to be a party to the transaction without approval of the commission.

Every carrier who ceases operation and abandons his or her rights under the permits issued to him or her shall notify the commission within thirty days of the cessation or abandonment. [2007 c 234 § 83; 1973 c 115 § 12; 1969 ex.s. c 210 § 12; 1965 ex.s. c 134 § 1; 1963 c 59 § 6; 1961 c 14 § 81.80.270. Prior: 1959 c 248 § 24; 1937 c 166 § 18; 1935 c 184 § 23; RRS § 6382-23.]

81.80.272 Transfer of decedent's interest—Temporary continuance of operations. Except as otherwise provided in RCW 81.80.270, any permit granted or issued to any household goods carrier under this chapter and held by a person alone or in conjunction with others other than as stockholders in a corporation at the time of his or her death is transferable as any other right or interest of the person's estate subject to the following:

(1) Application for transfer must be made to the commission in a form and contain information prescribed by the commission. The transfer described in the application must be approved if it appears from the application or from any hearing held thereon or from any investigation thereof that the proposed transferee is fit, willing, and able properly to perform the services authorized by the permit to be transferred and to conform to the provisions of this chapter and the requirements, rules, and regulations of the commission, otherwise the application must be denied.

(2) Temporary continuance of motor carrier operations without prior compliance with this section is recognized as justified by the public interest when the personal representatives, heirs, or surviving spouses of deceased persons desire to continue the operations of the carriers whom they succeed in interest subject to reasonable rules and regulations prescribed by the commission.

In case of temporary continuance under this section, the successor shall immediately procure insurance or deposit security as required by RCW 81.80.190.

Immediately upon any temporary continuance of motor carrier operations and in any event not more than thirty days thereafter, the successor shall give notice of the succession by written notice to the commission containing information prescribed by the commission. [2007 c 234 § 84; 1973 c 115 § 13; 1965 ex.s. c 134 § 2.]

81.80.280 Cancellation, suspension, and alteration of permits—Notice by household goods carriers. (1) Permits may be canceled, suspended, altered, or amended by the commission upon complaint by any interested party, or upon the commission's own motion after notice and opportunity for hearing, when the permittee or permittee's agent has repeatedly violated this chapter, the rules and regulations of the commission, or the motor laws of this state or of the United States, or the household goods carrier has made unlawful rebates or has not conducted its operation in accordance with the permit. The commission may enjoin any person from any violation of this chapter, or any order, rule, or regulation made by the commission pursuant to the terms hereof. If the suit is instituted by the commission, a bond is not required as a condition to the issuance of the injunction.

(2) When the commission has canceled a household goods carrier permit, the carrier must, when directed by the commission, provide notice to every customer that its permit has been canceled, and provide proof of such notice to the commission. [2009 c 94 § 7; 2007 c 234 § 85; 1987 c 209 § 1; 1961 c 14 § 81.80.280. Prior: 1935 c 184 § 24; RRS § 6382-24.]

81.80.290 Rules and regulations. The commission shall have power and authority, by general order or otherwise, to prescribe rules and regulations in conformity with this chapter to carry out the purposes thereof, applicable to any and all "motor carriers," or to any persons transporting property by motor vehicle for compensation even though they do not come within the term "motor carrier" as herein defined.

The commission shall mail each holder of a permit under this chapter a copy of such rules and regulations. [1961 c 14 § 81.80.290. Prior: 1935 c 184 § 25; RRS § 6382-25.]

Violation of rules pertaining to vehicle equipment on motor carriers transporting hazardous material: RCW 46.48.175.

81.80.305 Markings required—Exemptions. (1) All motor vehicles, other than those exempt under subsection (2) of this section, must display a permanent marking identifying the name or number, or both, on each side of the power units. For a motor vehicle that is a common or contract carrier under permit by the commission as described in subsection (3)(a) of this section, a private carrier under subsection (4) of this section, or a leased carrier as described in subsection (5) of this section, any required identification that is added, modified, or renewed after September 1, 1991, must be displayed on the driver and passenger doors of the power unit. The identification must be in a clearly legible style with letters no less than three inches high and in a color contrasting with the surrounding body panel.

(2) This section does not apply to (a) vehicles exempt under RCW 81.80.040, and (b) vehicles operated by private carriers that singly or in combination are less than thirty-six thousand pounds gross vehicle weight.

(3) If the motor vehicle is operated as (a) a common or contract carrier under a permit by the commission, the identification must contain the name of the permittee, or business name, and the permit number, or (b) a common or contract carrier holding both intrastate and interstate authority, the identification may be either the commission permit number or the federal vehicle marking requirement established by the United States department of transportation for interstate motor carriers.

(4) If the motor vehicle is a private carrier, the identification must contain the name and address of either the business operating the vehicle or the registered owner.

(5) If the motor vehicle is operated under lease, the vehicle must display either permanent markings or placards on the driver and passenger doors of the power unit. A motor vehicle under lease (a) that is operated as a common or contract carrier under permit by the commission must display identification as provided in subsection (3)(a) of this section, and (b) that is operated as a private carrier must display identification as provided in subsection (4) of this section. [2007 c 234 § 86; 1991 c 241 § 1.]

81.80.321 Regulatory fee—Based on gross income—Legislative intent—Delinquent fee payments—Public service revolving fund. In addition to all other fees to be paid, a common carrier and contract carrier shall pay a regulatory fee of no more than 0.0025 of its gross income from intrastate operations for the previous calendar year, or such other period as the commission designates by rule. The carrier shall pay the fee no later than four months after the end of the appropriate period and shall include with the payment such information as the commission requires by rule.

The legislature intends that the fees collected under this chapter shall reasonably approximate the cost of supervising and regulating motor carriers subject to this chapter, and to that end the commission may by general order decrease fees provided in this section if it determines that the moneys then in the motor carrier account of the public service revolving fund and the fees currently to be paid will exceed the reasonable cost of supervising and regulating carriers.

Any payment of the fee imposed by this section made after its due date shall include a late fee of two percent of the amount due. Delinquent fees shall accrue interest at the rate of one percent per month.

All fees collected under any other provision of this chapter must be paid to the commission. The commission shall transmit the fees to the state treasurer within thirty days for deposit to the credit of the public service revolving fund. [1994 c 83 § 4; 1993 c 97 § 3.]

Additional notes found at www.leg.wa.gov

81.80.330 Enforcement of chapter. The commission may administer and enforce all provisions of this chapter and inspect the vehicles, books, and documents of all motor carriers and the books, documents, and records of those using the service of the carriers for the purpose of discovering all discriminations and rebates and other information pertaining to

the enforcement of this chapter and shall prosecute violations thereof. The commission shall employ auditors, inspectors, clerks, and assistants necessary for the enforcement of this chapter. The Washington state patrol shall perform all motor carrier safety inspections required by this chapter, including terminal safety audits, except for (1) those carriers subject to the economic regulation of the commission, or (2) a vehicle owned or operated by a carrier affiliated with a solid waste company subject to economic regulation by the commission. The Washington state patrol and the sheriffs of the counties shall make arrests and the county attorneys shall prosecute violations of this chapter. [2007 c 234 § 87; 1995 c 272 § 5; 1980 c 132 § 3; 1961 c 14 § 81.80.330. Prior: 1935 c 184 § 29; RRS § 6382-29.]

Additional notes found at www.leg.wa.gov

81.80.345 Venue—Hearings on applications. Hearings on applications shall be heard in the county or adjoining county for which authority to operate is being applied. If more than one county is involved, the commission may hold the hearings at a location that will afford the greatest opportunity for testimony by witnesses representing the area for which authority to operate is being applied. [1988 c 58 § 1; 1963 c 242 § 3.]

81.80.355 Unlawful advertising—Penalty. Any person not holding a permit authorizing him or her to operate as a common carrier, contract carrier, or temporary carrier for the transportation of property for compensation in this state, or an exempt carrier, who displays on any building, vehicle, billboard, or in any manner, any advertisement of, or by circular, letter, newspaper, magazine, poster, card, or telephone directory, advertises the transportation of property for compensation shall be guilty of a misdemeanor and punishable as such. [2013 c 23 § 309; 1961 c 14 § 81.80.355. Prior: 1957 c 205 § 8; 1953 c 95 § 22.]

81.80.357 Advertising—Household goods—Permit number required—Penalty. (1) No person in the business of transporting household goods as defined by the commission in intrastate commerce shall advertise without listing the carrier's Washington utilities and transportation commission permit number, physical address, and telephone number in the advertisement.

(2) All advertising, contracts, correspondence, cards, signs, posters, papers, and documents, including web sites or other online advertising, which show a household goods carrier name shall also show the carrier's Washington utilities and transportation commission permit number, physical address, and telephone number. The alphabetized listing of household goods carriers appearing in the advertising sections of telephone books or other directories and all advertising that shows the carrier's name or address shall show the carrier's current Washington utilities and transportation commission permit number.

(3) Radio or television advertising need not contain the carrier's Washington utilities and transportation commission permit number if the carrier provides its permit number, physical address, and telephone number to the person selling the advertisement and it is recorded in the advertising contract.

(4) No person shall falsify a Washington utilities and transportation commission permit number or use a false or inaccurate Washington utilities and transportation commission permit number in connection with any solicitation or identification as an authorized household goods carrier.

(5) If, upon investigation, the commission determines that a household goods carrier or person acting in the capacity of a household goods carrier has violated this section, the commission may issue a penalty not to exceed five hundred dollars for every violation. [2009 c 94 § 6; 1994 c 168 § 1.]

81.80.360 Procedure—Penalties—General statute invoked. All applicable provisions of this title, relating to procedure, powers of the department and penalties, shall apply to the operation and regulation of persons under this chapter, except insofar as such provisions may conflict with provisions of this chapter and rules and regulations issued thereunder by the commission. [1961 c 14 § 81.80.360. Prior: 1937 c 166 § 22; RRS § 6382-31a.]

81.80.370 Application to interstate and foreign commerce. This chapter applies to persons and motor vehicles engaged in interstate or foreign commerce to the full extent permitted by the Constitution and laws of the United States. [2007 c 234 § 88; 1961 c 14 § 81.80.370. Prior: 1935 c 184 § 32; RRS § 6382-32.]

81.80.371 Federal authority and registration for compensatory services. It is unlawful for any motor carrier to perform a transportation service for compensation upon the public highways of this state without first having secured appropriate federal authority from the United States department of transportation, if the authority is required, and without first having registered with the commission either directly or through a federally authorized uniform registration program. [2007 c 234 § 89; 1963 c 59 § 9.]

81.80.372 Rights or privileges for compensatory services. This chapter does not confer on any person or persons the exclusive right or privilege of transporting property for compensation over the public highways of the state. [2009 c 94 § 5.]

81.80.430 Brokers and forwarders. (1) A person who provides brokering or forwarding services for the transportation of property in intrastate commerce shall file with the commission and keep in effect, a surety bond or deposit of satisfactory security, in a sum to be determined by the commission, but not less than five thousand dollars, conditioned upon the broker or forwarder compensating shippers, consignees, and carriers for all moneys belonging to them and coming into the broker's or forwarder's possession in connection with the transportation service.

(2) Failure to file the bond or deposit security is sufficient cause for the commission to refuse to grant the application for a permit or registration. Failure to maintain the bond or the deposit of security is sufficient cause for cancellation of a permit or registration. [2007 c 234 § 90; 1991 c 146 § 1; 1990 c 109 § 1; 1989 c 60 § 2; 1988 c 31 § 2.]

81.80.470 Recyclable materials collection and transportation—Construction. (1) The collection or transportation of recyclable materials from a drop box or recycling buy-back center, or collection or transportation of recyclable materials by or on behalf of a commercial or industrial generator of recyclable materials to a recycler for use or reclamation is subject to regulation under this chapter.

(2) Nothing in this chapter changes RCW 81.77.010(8), to allow any entity, other than a solid waste collection company authorized by the commission or an entity collecting solid waste from a city or town under chapter 35.21 or 35A.21 RCW, to collect solid waste that may incidentally contain recyclable materials. [2007 c 234 § 91.]

81.80.900 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. For the purposes of this chapter, the terms spouse, marriage, marital, husband, wife, widow, widower, next of kin, and family shall be interpreted as applying equally to state registered domestic partnerships or individuals in state registered domestic partnerships as well as to marital relationships and married persons, and references to dissolution of marriage shall apply equally to state registered domestic partnerships that have been terminated, dissolved, or invalidated, to the extent that such interpretation does not conflict with federal law. Where necessary to implement chapter 521, Laws of 2009, gender-specific terms such as husband and wife used in any statute, rule, or other law shall be construed to be gender neutral, and applicable to individuals in state registered domestic partnerships. [2009 c 521 § 188.]

Chapter 81.84 RCW COMMERCIAL FERRIES

Sections

81.84.010	Certificate of convenience and necessity required—Recreation exemption—Service initiation—Progress reports.
81.84.020	Application—Hearing—Issuance of certificate—Determining factors.
81.84.025	Certificate—Insurance or bond required—Amounts.
81.84.030	Certificate—Transfer.
81.84.040	Filing fees.
81.84.050	Penalties—Remission, mitigation.
81.84.060	Certificate—Grounds for cancellation, revocation, suspension, alteration, or amendment.
81.84.070	Temporary certificate—Immediate and urgent need—Waiver of provisions during state of emergency.

Cities and towns may acquire and operate ferries: RCW 35.21.110.

Department of transportation as common carrier: RCW 47.60.220.

Excessive steam in boilers: RCW 70.54.080.

Lien on ships, equipment for labor, material, handling cargo, etc.: Chapter 60.36 RCW.

Navigation and harbor improvements: Title 88 RCW.

Privately owned ferries, county licensing: Chapter 36.53 RCW.

Tidelands, shorelands, harbor areas: Chapters 79.115, 79.125 RCW.

81.84.010 Certificate of convenience and necessity required—Recreation exemption—Service initiation—Progress reports. (1) A commercial ferry may not operate any vessel or ferry for the public use for hire between fixed termini or over a regular route upon the waters within this state, including the rivers and lakes and Puget Sound, without first applying for and obtaining from the commission a certificate declaring that public convenience and necessity require

such operation. Service authorized by certificates issued to a commercial ferry operator must be exercised by the operator in a manner consistent with the conditions established in the certificate and tariff filed under chapter 81.28 RCW. However, a certificate is not required for a vessel primarily engaged in transporting freight other than vehicles, whose gross earnings from the transportation of passengers or vehicles, or both, are not more than ten percent of the total gross annual earnings of such vessel.

(2) If the commission finds, after a hearing, that an existing or a proposed commercial ferry service does not serve an essential transportation purpose and is solely for recreation, the commission may, by order, exempt that service from the requirements of certification and regulation under this chapter. If the nonessential service is a proposed service not already provided by an existing certificate holder, the commission must also find, after notice to any existing certificate holder operating within the same territory and an opportunity to be heard, that the proposed service would not adversely affect the rates or services of any existing certificate holder.

(3) This section does not affect the right of any county public transportation benefit area or other public agency within this state to construct, condemn, purchase, operate, or maintain, itself or by contract, agreement, or lease, with any person, firm, or corporation, ferries or boats across the waters within this state, including rivers and lakes and Puget Sound, if the operation is not over the same route or between the same districts being served by a certificate holder without first acquiring the rights granted to the certificate holder under the certificate.

(4) The holder of a certificate of public convenience and necessity granted under this chapter must initiate service within five years of obtaining the certificate, except that the holder of a certificate of public convenience and necessity for passenger-only ferry service in Puget Sound must initiate service within twenty months of obtaining the certificate. The certificate holder shall report to the commission every six months after the certificate is granted on the progress of the certificated route. The reports shall include, but not be limited to, the progress of environmental impact, parking, local government land use, docking, and financing considerations. Except in the case of passenger-only ferry service in Puget Sound, if service has not been initiated within five years of obtaining the certificate, the commission may extend the certificate on a twelve-month basis for up to three years if the six-month progress reports indicate there is significant advancement toward initiating service. [2009 c 557 § 2; 2007 c 234 § 92. Prior: 2003 c 373 § 4; 2003 c 83 § 211; 1993 c 427 § 2; 1961 c 14 § 81.84.010; prior: 1950 ex.s. c 6 § 1, part; 1927 c 248 § 1, part; RRS § 10361-1, part.]

Findings—Intent—2003 c 373: See note following RCW 47.64.090.

Findings—Intent—Captions, part headings not law—Severability—Effective date—2003 c 83: See notes following RCW 36.57A.200.

81.84.020 Application—Hearing—Issuance of certificate—Determining factors. (1) Upon the filing of an application, the commission shall give reasonable notice to the department, affected cities, counties, and public transportation benefit areas and any common carrier which might be adversely affected, of the time and place for hearing on such application. The commission may, after notice and an oppor-

tunity for a hearing, issue the certificate as prayed for, or refuse to issue it, or issue it for the partial exercise only of the privilege sought, and may attach to the exercise of the rights granted by the certificate any terms and conditions as in its judgment the public convenience and necessity may require; but the commission may not grant a certificate to operate between districts or into any territory prohibited by RCW 47.60.120 or already served by an existing certificate holder, unless the existing certificate holder has failed or refused to furnish reasonable and adequate service, has failed to provide the service described in its certificate or tariffs after the time allowed to initiate service has elapsed, or has not objected to the issuance of the certificate as prayed for.

(2) Before issuing a certificate, the commission shall determine that the applicant has the financial resources to operate the proposed service for at least twelve months, based upon the submission by the applicant of a pro forma financial statement of operations. Issuance of a certificate must be determined upon, but not limited to, the following factors: Ridership and revenue forecasts; the cost of service for the proposed operation; an estimate of the cost of the assets to be used in providing the service; a statement of the total assets on hand of the applicant that will be expended on the proposed operation; and a statement of prior experience, if any, in such field by the applicant. The documentation required of the applicant under this section must comply with the provisions of RCW 9A.72.085.

(3) In granting a certificate for passenger-only ferries and determining what conditions to place on the certificate, the commission shall consider and give substantial weight to the effect of its decisions on public agencies operating, or eligible to operate, passenger-only ferry service.

(4) Until July 1, 2007, the commission shall not accept or consider an application for passenger-only ferry service serving any county in the Puget Sound area with a population of over one million people. Applications for passenger-only ferry service serving any county in the Puget Sound area with a population of over one million pending before the commission as of May 9, 2005, must be held in abeyance and not be considered before July 1, 2007. [2007 c 234 § 93; 2006 c 332 § 11. Prior: 2005 c 313 § 609; 2005 c 121 § 7; 2003 c 373 § 5; 2003 c 83 § 212; 1993 c 427 § 3; 1961 c 14 § 81.84.020; prior: 1950 ex.s. c 6 § 1, part; 1927 c 248 § 1, part; RRS § 10361-1, part.]

Findings—Intent—2003 c 373: See note following RCW 47.64.090.

Findings—Intent—Captions, part headings not law—Severability—Effective date—2003 c 83: See notes following RCW 36.57A.200.

Additional notes found at www.leg.wa.gov

81.84.025 Certificate—Insurance or bond required—Amounts. The commission, in granting a certificate to operate as a commercial ferry, shall require the operator to first obtain liability and property damage insurance from a company licensed to write liability insurance in the state or a surety bond of a company licensed to write surety bonds in the state, on each vessel or ferry to be used, in the amount of not less than one hundred thousand dollars for any recovery for personal injury by one person, and not less than one million dollars and in such additional amount as the commission shall determine, for all persons receiving personal injury and property damage by reason of one act of negligence, and not

less than fifty thousand dollars for damage to property of any person other than the insured; or combined bodily injury and property damage liability insurance of not less than one million dollars, and to maintain such liability and property damage insurance or surety bond in force on each vessel or ferry while so used. Each policy for liability or property damage insurance or surety bond required by this section must be filed with the commission and kept in full force and effect, and failure to do so is cause for revocation of the operator's certificate. [1993 c 427 § 4.]

81.84.030 Certificate—Transfer. No certificate or any right or privilege thereunder held, owned, or obtained under the provisions of this chapter shall be sold, assigned, leased, mortgaged, or in any manner transferred, either by the act of the parties or by operation of law, except upon authorization by the commission first obtained. [1993 c 427 § 5; 1961 c 14 § 81.84.030. Prior: 1950 ex.s. c 6 § 1, part; 1927 c 248 § 1, part; RRS § 10361-1, part.]

81.84.040 Filing fees. Any application for a certificate of public convenience and necessity or amendment thereof, or application to sell, lease, mortgage, or transfer a certificate of public convenience and necessity or any interest therein, shall be accompanied by such filing fee as the commission may prescribe by rule: PROVIDED, That such fee shall not exceed two hundred dollars. [1973 c 115 § 14; 1961 c 14 § 81.84.040. Prior: 1955 c 125 § 10; prior: 1939 c 123 § 3, part; 1937 c 158 § 4, part; RRS § 10417-3, part.]

81.84.050 Penalties—Remission, mitigation. Every commercial ferry and every officer, agent, or employee of any commercial ferry who violates or who procures, aids, or abets in the violation of any provision of this title, or any order, rule, regulation, or decision of the commission shall incur a penalty of one hundred dollars for every such violation. Each and every such violation shall be a separate and distinct offense, and in case of a continuing violation every day's continuance shall be and be deemed to be a separate and distinct violation. Every act of commission or omission which procures, aids, or abets in the violation shall be considered a violation under the provisions of this section and subject to the penalty herein provided for.

The penalty herein provided for shall become due and payable when the person incurring the same receives a notice in writing from the commission describing such violation with reasonable particularity and advising such person that the penalty is due.

The commission may, upon written application therefor, received within fifteen days, remit or mitigate any penalty provided for in this section or discontinue any prosecution to recover the same upon such terms as it in its discretion shall deem proper, and shall have authority to ascertain the facts upon all such applications in such manner and under such regulations as it may deem proper.

If the amount of such penalty is not paid to the commission within fifteen days after receipt of notice imposing the same or, if application for remission or mitigation has not been made, within fifteen days after the violator has received notice of the disposition of such application, the attorney general shall bring an action to recover the penalty in the name of

the state of Washington in the superior court of Thurston county or of some other county in which such violator may do business. In all such actions the procedure and rules of evidence shall be the same as in ordinary civil actions except as otherwise herein provided. All penalties recovered by the state under this chapter shall be paid into the state treasury and credited to the public service revolving fund. [1993 c 427 § 6; 1961 c 14 § 81.84.050. Prior: 1937 c 169 § 6; RRS § 10361-2.]

81.84.060 Certificate—Grounds for cancellation, revocation, suspension, alteration, or amendment. The commission, upon complaint by an interested party, or upon its own motion after notice and opportunity for hearing, may cancel, revoke, suspend, alter, or amend a certificate issued under this chapter on any of the following grounds:

(1) Failure of the certificate holder to initiate service by the conclusion of the fifth year after the certificate has been granted or by the conclusion of an extension granted under *RCW 81.84.010(2), if the commission has considered the progress report information required under *RCW 81.84.010(2);

(2) Failure of a certificate holder for passenger-only ferry service in Puget Sound to initiate service by the conclusion of the twentieth month after the certificate has been granted;

(3) Failure of the certificate holder to file an annual report;

(4) The filing by a certificate holder of an annual report that shows no revenue in the previous twelve-month period after service has been initiated;

(5) The violation of any provision of this chapter;

(6) The violation of or failure to observe the provisions or conditions of the certificate or tariffs;

(7) The violation of an order, decision, rule, regulation, or requirement established by the commission under this chapter;

(8) Failure of a certificate holder to maintain the required insurance coverage in full force and effect; or

(9) Failure or refusal to furnish reasonable and adequate service after initiating service.

The commission shall take appropriate action within thirty days upon a complaint by an interested party or of its own finding that a provision of this section has been violated. [2007 c 234 § 97; 2003 c 373 § 6; 2003 c 83 § 213; 1993 c 427 § 7.]

***Reviser's note:** RCW 81.84.010 was amended by 2009 c 557 § 2, changing subsection (2) to subsection (4).

Findings—Intent—2003 c 373: See note following RCW 47.64.090.

Findings—Intent—Captions, part headings not law—Severability—Effective date—2003 c 83: See notes following RCW 36.57A.200.

81.84.070 Temporary certificate—Immediate and urgent need—Waiver of provisions during state of emergency. The commission may, with or without a hearing, issue temporary certificates to operate under this chapter, but only after it finds that the issuance of the temporary certificate is necessary due to an immediate and urgent need and is otherwise consistent with the public interest. The certificate may be issued for a period of up to one hundred eighty days. The commission may prescribe such special rules and impose

special terms and conditions on the granting of the certificate as in its judgment are reasonable and necessary in carrying out this chapter. The commission shall collect a filing fee, not to exceed two hundred dollars, for each application for a temporary certificate. The commission shall not issue a temporary certificate to operate on a route for which a certificate has been issued or for which an application by another commercial ferry operator is pending.

During a state of emergency declared under RCW 43.06.010(12), the governor may waive or suspend the operation or enforcement of this section or any portion of this section or under any administrative rule, and issue any orders to facilitate the operation of state or local government or to promote and secure the safety and protection of the civilian population. [2008 c 181 § 416; 1993 c 427 § 8.]

Part headings not law—2008 c 181: See note following RCW 43.06.220.

Chapter 81.88 RCW

GAS AND HAZARDOUS LIQUID PIPELINES

Sections

81.88.005	Intent—Findings.
81.88.010	Definitions.
81.88.020	Pipeline corporations—Regulation—Eminent domain.
81.88.030	Pipeline carriers regulated as common carriers.
81.88.040	Violations—Rules—Penalties—Injunctive relief.
81.88.050	Pipeline safety account.
81.88.060	Hazardous liquid pipelines—Safety—Commission's duties.
81.88.065	Gas pipelines—Safety—Commission's duties.
81.88.070	Prevention of third-party excavation damage—Development and distribution of training curricula.
81.88.080	Pipeline mapping system—Commission specifications and evaluations.
81.88.090	Federal certification for pipeline safety program—Commission's duties.
81.88.100	Commission inspection of records, maps, or written procedures.
81.88.110	Pipeline company duties after notice of excavation.
81.88.140	Citizens committee on pipeline safety—Duties—Membership.
81.88.900	Conflict with federal requirements—2000 c 191.
81.88.901	Short title—2000 c 191.
81.88.902	Effective date—2000 c 191.

81.88.005 Intent—Findings. (1) The intent of chapter 191, Laws of 2000 is to protect the health and safety of the citizens of the state of Washington and the quality of the state's environment by developing and implementing environmental and public safety measures applicable to persons transporting hazardous liquids and gas by pipeline within the state of Washington. The legislature finds that public safety and the environment may best be protected by adopting standards that are equal to, or more stringent than, those adopted by the federal government, so long as they do not impermissibly interfere with interstate commerce.

(2) The legislature recognizes that additional federal authority is needed to implement a comprehensive pipeline safety program and by chapter 191, Laws of 2000 and other measures directs the state to seek that authority.

(3) It is also the intent of the legislature that the governor work with the state congressional delegation in seeking:

(a) To amend the federal pipeline safety act to delegate authority to qualified states to adopt and enforce standards equal to or more stringent than federal standards;

(b) State authority to administer and enforce federal requirements related to pipeline safety; and

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(c) Higher levels of funding for state and federal pipeline safety activities and for states to respond to pipeline accident emergencies.

(4) While the legislature acknowledges that serious accidents have occurred for hazardous liquid and gas pipelines in this nation and elsewhere, it recognizes that there are fundamental differences between hazardous liquid pipelines and gas pipelines and that a different system of safety regulations must be applied for each kind of pipeline. [2000 c 191 § 1.]

81.88.010 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Commission" means the utilities and transportation commission.

(2) "Gas" means natural gas, flammable gas, or toxic or corrosive gas.

(3) "Gas pipeline" means all parts of a pipeline facility through which gas moves in transportation, including, but not limited to, line pipe, valves, and other appurtenances connected to line pipe, compressor units, metering stations, regulator stations, delivery stations, holders, and fabricated assemblies. "Gas pipeline" does not include any pipeline facilities, other than a master meter system, owned by a consumer or consumers of the gas, located exclusively on the consumer or consumers' property, and none of the gas leaves that property through a pipeline.

(4) "Gas pipeline company" means a person or entity constructing, owning, or operating a gas pipeline for transporting gas. "Gas pipeline company" includes a person or entity owning or operating a master meter system. "Gas pipeline company" does not include excavation contractors or other contractors that contract with a gas pipeline company.

(5) "Hazardous liquid" means: (a) Petroleum, petroleum products, or anhydrous ammonia as those terms are defined in 49 C.F.R. Part 195; and (b) carbon dioxide.

(6) "Hazardous liquid pipeline" means all parts of a pipeline facility through which a hazardous liquid moves in transportation including, but not limited to, line pipe, valves, and other appurtenances connected to line pipe, pumping units, fabricated assemblies associated with pumping units, metering and delivery stations and fabricated assemblies therein, and breakout tanks. "Hazardous liquid pipeline" does not include all parts of a pipeline facility through which a hazardous liquid moves in transportation through refining or manufacturing facilities or storage or in-plant piping systems associated with such facilities, a pipeline subject to safety regulations of the United States coast guard, or a pipeline that serves refining, manufacturing, or truck, rail, or vessel terminal facilities, if the pipeline is less than one mile long, measured outside facility grounds, and does not cross an offshore area or a waterway used for commercial navigation.

(7) "Hazardous liquid pipeline company" means a person or entity constructing, owning, or operating a hazardous liquid pipeline. "Hazardous liquid pipeline company" does not include excavation contractors or other contractors that contract with a hazardous liquid pipeline company.

(8) "Line pipe" means a tube, usually cylindrical, through which a hazardous liquid or gas is transported from one point to another.

(9) "Local government" means a political subdivision of the state.

(10) "Master meter system" means a pipeline system for distributing gas within, but not limited to, a definable area, such as a mobile home park, housing project, or apartment complex, where the operator purchases metered gas from an outside source for resale through a gas distribution pipeline system. The gas distribution pipeline system supplies the ultimate consumer who either purchases the gas directly through a meter or by any other means, such as by rents.

(11) "Person" means an individual, partnership, franchise holder, association, corporation, a state, a city, a town, a county, or any other political subdivision or instrumentality of a state, and its employees, agents, or legal representatives.

(12) "Pipeline company," without further qualification, means a hazardous liquid pipeline company or a gas pipeline company. [2007 c 142 § 1; 2001 c 238 § 6; 2000 c 191 § 2.]

Intent—Finding—Effective date—2001 c 238: See notes following RCW 80.24.060.

81.88.020 Pipeline corporations—Regulation—Eminent domain. All corporations having for one of their principal purposes the construction, maintenance and operation of pipelines and appurtenances for the conveyance and transportation as common carriers of oils, gas, gasoline and other petroleum products shall be subject to control and regulation by the commission in the same manner and to the same extent as other public service corporations. The power of eminent domain is hereby conferred upon such corporations to be used for acquiring rights-of-way for common carrier pipelines and they shall have the right to condemn and appropriate lands and property and interests therein for their use under the same procedure as is provided for the condemnation and appropriation of private property by railway companies, but no private property shall be taken or damaged until the compensation to be made therefor shall have been ascertained and paid as provided in the case of condemnation and appropriation by railway companies. Any property or interest therein acquired by any corporation under the provisions of this section by the exercise of the right of eminent domain shall be used exclusively for the purposes for which it was acquired. In all actions brought under this section to enforce the right of eminent domain, courts wherein such actions are brought may give such actions preference over all other civil actions in the matter of setting the same for hearing or trial and in hearing the same. [1961 c 14 § 81.88.020. Prior: 1951 c 94 § 2; 1915 c 132 § 2; RRS § 9965.]

81.88.030 Pipeline carriers regulated as common carriers. Every person, copartnership, corporation or other association now or hereafter engaged in the business of producing from natural deposits and/or carrying or transporting natural gas and/or crude oil or petroleum or the products thereof for hire, by pipelines within this state shall be a common carrier within the meaning and subject to the provisions of this title: PROVIDED, HOWEVER, That the provisions of this section shall not apply to distribution systems owned and operated under franchise for the sale, delivery, or distribution of natural gas at retail. [1961 c 14 § 81.88.030. Prior: 1933 ex.s. c 61 § 1; RRS § 9965-1.]

81.88.040 Violations—Rules—Penalties—Injunctive relief. (1) A person, officer, agent, or employee of a pipeline company who, as an individual or acting as an officer, agent, or employee of such a company, violates or fails to comply with this chapter or a rule adopted under RCW 81.88.060 or 81.88.065, or who procures, aids, or abets another person or entity in the violation of or noncompliance with this chapter or a rule adopted under RCW 81.88.060 or 81.88.065, is guilty of a gross misdemeanor.

(2)(a) A pipeline company, or any person, officer, agent, or employee of a pipeline company that violates a provision of this chapter, or a rule adopted under RCW 81.88.060 or 81.88.065, is subject to a civil penalty to be assessed by the commission.

(b) The commission shall adopt rules: (i) Setting penalty amounts, but may not exceed the penalties specified in the federal pipeline safety laws, 49 U.S.C. Sec. 60101 et seq.; and (ii) establishing procedures for mitigating penalties assessed.

(c) In determining the amount of the penalty in a particular instance, the commission shall consider: (i) The appropriateness of the penalty in relation to the position of the person charged with the violation; (ii) the gravity of the violation; and (iii) the good faith of the person or company charged in attempting to achieve compliance after notification of the violation.

(d) The amount of the penalty may be recovered in a civil action in the superior court of Thurston county or of some other county in which the violator may do business. In all actions for recovery, the rules of evidence shall be the same as in ordinary civil actions. All penalties recovered under this section must be paid into the state treasury and credited to the pipeline safety account.

(3) The commission shall adopt rules incorporating by reference other substances designated as hazardous by the secretary of transportation under 49 U.S.C. Sec. 60101(a)(4).

(4) The commission may seek injunctive relief to enforce the provisions of this chapter.

(5) Nothing in this section duplicates the authority of the energy facility site evaluation council under chapter 80.50 RCW. [2007 c 142 § 2; 2000 c 191 § 3; 1998 c 123 § 1.]

81.88.050 Pipeline safety account. The pipeline safety account is created in the custody of the state treasurer. All fees received by the commission for the pipeline safety program according to RCW 80.24.060 and 81.24.090 and all receipts from the federal office of pipeline safety and any other state or federal funds provided for pipeline safety shall be deposited in the account. Any penalties collected under this chapter, or otherwise designated to this account must be deposited in the account. Moneys in the account may be spent only after appropriation. Expenditures from the account may be used only for funding pipeline safety. [2007 c 142 § 3; 2001 c 238 § 7; 2000 c 191 § 4.]

Intent—Finding—Effective date—2001 c 238: See notes following RCW 80.24.060.

81.88.060 Hazardous liquid pipelines—Safety—Commission's duties. (1) Each hazardous liquid pipeline company shall design, construct, operate, and maintain its hazardous liquid pipeline so that it is safe and efficient. Each

hazardous liquid pipeline company is responsible for the conduct of its contractors regarding compliance with pipeline safety requirements.

(2) The commission shall develop and administer a comprehensive program of pipeline safety in accordance with this chapter.

(3) The commission may adopt rules to carry out the purposes of this chapter as long as the rules are compatible with minimum federal requirements.

(4) The commission shall coordinate information related to hazardous liquid pipeline safety by providing technical assistance to local planning and siting authorities. [2007 c 142 § 4; 2001 c 238 § 9; 2000 c 191 § 5.]

Intent—Finding—Effective date—2001 c 238: See notes following RCW 80.24.060.

81.88.065 Gas pipelines—Safety—Commission's duties. (1) Each gas pipeline company shall design, construct, operate, and maintain its gas pipeline so that it is safe and efficient. Each gas pipeline company is responsible for the conduct of its contractors regarding compliance with pipeline safety requirements.

(2) The commission shall develop and administer a comprehensive program of gas pipeline safety in accordance with this chapter.

(3) The commission may adopt rules to carry out the purposes of this chapter as long as the rules are compatible with minimum federal requirements.

(4) The commission shall coordinate information related to natural gas pipeline safety by providing technical assistance to local planning and siting authorities. [2007 c 142 § 5.]

81.88.070 Prevention of third-party excavation damage—Development and distribution of training curricula.

(1) The commission shall develop, in consultation with representatives of hazardous liquid pipeline companies, gas pipeline companies, local governments, and the excavation and construction industries: (a) A curricula aimed at the prevention of third-party excavation damage to hazardous liquid pipelines and gas pipelines; and (b) a plan for distribution of the curricula.

(2) The curricula shall include training on:

(a) Prevention of damage to hazardous liquid and gas pipelines;

(b) The danger involved if a hazardous liquid or gas pipeline is damaged;

(c) The significance of hazardous liquid or gas pipeline damage that does not cause immediate failure; and

(d) The importance of immediately reporting damage to a hazardous liquid or gas pipeline and the importance of immediately repairing a damaged hazardous liquid or gas pipeline. [2000 c 191 § 6.]

81.88.080 Pipeline mapping system—Commission specifications and evaluations. (1) The commission shall require hazardous liquid pipeline companies, and gas pipeline companies with interstate pipelines, or gas pipelines operating over two hundred fifty pounds per square inch gauge, to provide accurate maps of these pipelines to speci-

cations developed by the commission sufficient to meet the needs of first responders.

(2) The commission shall evaluate the sufficiency of the maps and consolidate the maps into a statewide geographic information system. The commission shall assist local governments in obtaining hazardous liquid and gas pipeline location information and maps. The maps shall be made available to the one-number locator services as provided in chapter 19.122 RCW. The mapping system shall be consistent with the United States department of transportation national pipeline mapping program.

(3) The commission shall periodically update the mapping system. [2007 c 142 § 6; 2000 c 191 § 7.]

81.88.090 Federal certification for pipeline safety program—Commission's duties. The commission shall maintain federal certification for the state's pipeline safety program. The commission, at a minimum, shall do the following:

(1) Inspect hazardous liquid pipelines and gas pipelines periodically as specified in the inspection program;

(2) Collect fees;

(3) Order and oversee the testing of hazardous liquid pipelines and gas pipelines as authorized by federal law and regulation; and

(4) File reports with the United States secretary of transportation as required to maintain federal certification. [2007 c 142 § 7; 2001 c 238 § 10; 2000 c 191 § 9.]

Intent—Finding—Effective date—2001 c 238: See notes following RCW 80.24.060.

81.88.100 Commission inspection of records, maps, or written procedures. The commission may inspect any record, map, or written procedure required by federal law to be kept by a pipeline company concerning releases, and the design, construction, testing, or operation and maintenance of pipelines. Nothing in this section affects the commission's access to records under any other provision of law. [2007 c 142 § 8; 2000 c 191 § 11.]

81.88.110 Pipeline company duties after notice of excavation. A pipeline company that has been notified by an excavator that excavation work will occur near a hazardous liquid pipeline shall ensure that the pipeline company's representative consults with the excavator on-site prior to the excavation. The pipeline company has the discretion to require that the pipeline section in the vicinity of the excavation is fully uncovered and examined for damage prior to being reburied. [2000 c 191 § 21.]

81.88.140 Citizens committee on pipeline safety—Duties—Membership. (1) The citizens committee on pipeline safety is established to advise the state agencies and other appropriate federal and local government agencies and officials on matters relating to hazardous liquid and gas pipeline safety, routing, construction, operation, and maintenance. The committee shall serve as an advisory committee for the commission on matters relating to the commission's pipeline safety programs and activities. The commission shall consult with and provide periodic reports to the committee on matters related to the commission's pipeline safety programs and

activities, including but not limited to the development and regular review of funding elements for pipeline safety programs and activities.

(2) The committee shall have thirteen total members who shall be appointed by the governor to staggered three-year terms and shall consist of: (a) Nine members representing local government, including elected officials and the public; and (b) four nonvoting members, representing owners and operators of hazardous liquid and gas pipelines. All members of the committee, voting and nonvoting, may participate fully in the committee's meetings, activities, and deliberations and shall timely receive all notices and information related to committee business and decisions.

(3) The committee shall review and comment on proposed rules and the operation of the state pipeline safety programs.

(4) The committee may create one or more technical advisory committees comprised of gas and hazardous liquid pipeline owners or operators, agency representatives, natural resource and environmental interests, or other interested parties.

(5) The committee established in this section constitutes a class one group under RCW 43.03.220. Expenses for this group, as well as staff support, shall be provided by the utilities and transportation commission. [2001 c 238 § 11; 2000 c 191 § 14.]

Intent—Finding—Effective date—2001 c 238: See notes following RCW 80.24.060.

81.88.900 Conflict with federal requirements—2000 c 191. If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state, the conflicting part of this act is inoperative solely to the extent of the conflict and with respect to the agencies directly affected, and this finding does not affect the operation of the remainder of this act in its application to the agencies concerned. Rules adopted under this act must meet federal requirements that are a necessary condition to the receipt of federal funds by the state. [2000 c 191 § 26.]

81.88.901 Short title—2000 c 191. This act may be known and cited as the Washington state pipeline safety act. [2000 c 191 § 27.]

81.88.902 Effective date—2000 c 191. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 28, 2000]. [2000 c 191 § 29.]

Chapter 81.96 RCW

WESTERN REGIONAL SHORT-HAUL AIR TRANSPORTATION COMPACT

Sections

81.96.010	Ratification and approval—Adherence.
81.96.020	Terms and provisions.
81.96.030	Service of secretary of transportation as state member—Execution of compact.

81.96.010 Ratification and approval—Adherence.

The western regional short-haul air transportation compact proposed for adoption by the states of Alaska, Arizona, California, Colorado, Hawaii, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, and Wyoming, is hereby ratified and approved and the adherence of this state to the provisions of this compact, upon its ratification and approval by at least six of the other twelve states, is hereby declared. [1972 ex.s. c 36 § 2.]

81.96.020 Terms and provisions. The terms and provisions of the compact referred to in RCW 81.96.010 are as follows:

WESTERN REGIONAL SHORT-HAUL AIR TRANSPORTATION COMPACT

Article I PURPOSE

The party states recognize that short-haul air transportation is essential to a balanced and efficient transportation system in the West, meeting special needs created by particular geographic and population patterns in both rural and urban areas. They further recognize that it is not economically feasible for the commercial airlines to provide a full complement of short-haul air services or to explore fully the capabilities and limitations of the various types and locations of such services. They also recognize that careful planning, experimentation, and testing are needed before appropriate short-haul air transportation can be developed for all the situations in which it would be beneficial to the economy and general welfare of the western states. To meet this need, the party states agree that a regional compact should be established for the purpose of organizing and conducting a series of demonstration programs to test the feasibility of new short-haul air transportation concepts in the West.

Article II REGIONAL COMMISSION

A. There is hereby established an agency of the party states to be known as the Western Regional Short-Haul Air Transportation Commission (hereinafter called the "Commission").

B. The Commission shall be composed of one member from each party state and one federal member, if authorized by federal law, who shall be the Secretary of Transportation or his designee. Each state member shall be appointed, suspended, or removed and shall serve subject to and in accordance with the laws of the state which he represents.

C. The state members shall each be entitled to one vote on the Commission. No action of the Commission shall be binding unless taken at a meeting at which a majority of all members representing the party states are present, and unless a majority of the total number of votes on the Commission are cast in favor thereof. The federal member shall not be entitled to a vote on the Commission unless authorized by a majority vote of the state members. The state members may provide that decisions of the Commission shall require the affirmative vote of the federal member and of a majority of the state members, if such provision is necessary in order to meet the requirements of federal law. In matters coming

before the Commission, the state members shall, to the extent practicable, consult with representatives of appropriate local subdivisions within their respective states and the federal member, if any, shall consult with the federal departments and agencies having an interest in the subject matter.

D. The state members of the Commission shall elect annually, from among their number, a chairman and a vice chairman. The state members may provide that the chairman so elected shall be designated as the state cochairman and the federal member shall be designated as the federal cochairman, if such provision is necessary in order to meet the requirements of federal law.

E. Each state member shall have an alternate appointed in accordance with the laws of the state which he represents. The federal member, if any, shall have an alternate appointed in accordance with federal law. An alternate shall be entitled to vote in the event of the absence, death, disability, removal, or resignation of the state or federal member for whom he is an alternate.

Article III

FUNCTIONS OF THE COMMISSION

A. It shall be the primary function of the Commission to authorize and effect a series of demonstration programs to test the feasibility of new short-haul air transportation concepts in the West. To carry out this function, the Commission shall have power to:

- (1) Establish basic regional demonstration policy and coordinate with federal policymakers where appropriate;
- (2) Create a management plan and implement programs through a suitable staff;
- (3) Designate demonstration arenas and facilities;
- (4) Select demonstration operators;
- (5) Establish a funding plan for the demonstration programs selected; and
- (6) Establish means of monitoring and evaluating the demonstration programs.

Article IV

ADMINISTRATIVE POWERS AND DUTIES OF THE COMMISSION

A. The Commission shall adopt bylaws, rules, and regulations for the conduct of its business and the performance of its functions, and shall have the power to amend and rescind such bylaws, rules, and regulations. The Commission shall publish its bylaws, rules, and regulations in convenient form and shall file a copy thereof, and shall also file a copy of any amendment thereto, with the appropriate agency or officer in each of the party states.

B. The Commission may accept, use, and dispose of gifts or donations of services or property, real, personal, or mixed, tangible or intangible, for any of its purposes and functions under this compact.

C. The Commission may enter into and perform such contracts, leases, cooperative agreements, or other transactions as may be necessary in carrying out its functions and on such terms as it may deem appropriate, with any department, agency, or instrumentality of the United States or with any state, or any political subdivision, agency, or instrumentality thereof, or with any person, firm, association, or corporation.

D. In order to obtain information needed to carry out its duties, the Commission may hold such hearings, sit and act at such times and places, take such testimony, receive such evidence, and print or otherwise reproduce and distribute so much of its proceedings and reports thereon as it may deem advisable. The chairman of the Commission, or any member designated by the Commission for the purpose, shall have authority to administer oaths when it is determined by the Commission that testimony shall be taken or evidence received under oath.

E. The Commission may arrange for the head of any federal, state, or local department or agency to furnish to the Commission such information as may be available to or procurable by such department or agency, relating to the duties and functions of the Commission.

F. The Commission annually shall make to the Governor of each party state, a report covering the activities of the Commission for the preceding year, and embodying such recommendations as may have been adopted by the Commission, which report shall be transmitted to the legislature of said state. The Commission may issue such additional reports as it may deem desirable.

Article V

FINANCES

A. The members of the Commission shall serve without compensation from the Commission, but the compensation and expenses of each state member in attending Commission meetings may be paid by the state he represents in accordance with the laws of that state. All other expenses incurred by the Commission shall be paid by the Commission.

B. The Commission shall submit periodically to the executive head or designated officer of each party state a budget of its estimated expenditures for such period as may be required by the laws of that state for presentation to the legislature thereof. Each such budget shall contain specific recommendations of the amount or amounts to be appropriated by each of the party states. The share to be paid by each party state shall be determined by a majority vote of the state members of the Commission. The federal member, if any, shall not participate or vote in such determination. The costs shall be allocated equitably among the party states in accordance with their respective interests.

C. The Commission may meet any of its obligations in whole or in part with funds available to it from the federal government or other sources under Article IV(B) of this compact, provided that the Commission takes specific action setting aside such funds prior to the incurring of any obligation to be met in whole or in part in this manner. Except where the Commission makes use of funds available to it under Article IV(B) of this compact, the Commission shall not incur any obligation prior to the allotment of funds by the party states adequate to meet the same.

Article VI

PERSONNEL

A. The Commission may appoint and fix the compensation of an Executive Director, who shall be responsible for the day-to-day management of the operations conducted by the Commission. The Executive Director shall act as secretary-treasurer for the Commission and he, together with such

other personnel as the Commission may direct, shall be bonded in such amounts as the Commission may require.

B. The Executive Director shall, with the approval of the Commission, appoint and remove or discharge such technical, clerical or other personnel on a regular, part-time, or consulting basis as may be necessary for the performance of the Commission's functions.

C. Officers and employees of the Commission shall be eligible for social security coverage in respect to old age and survivors' insurance provided the Commission takes such steps as may be necessary pursuant to federal law to participate in such program of insurance as a governmental agency or unit. The Commission may establish and maintain or participate in such additional programs of employee benefits as may be appropriate to afford the officers and employees of the Commission terms and conditions of employment similar to those enjoyed by employees of the party states generally. The Commission shall not be bound by any statute or regulation of any party state in the employment or discharge of any officer or employee.

Article VII RECORDS AND AUDIT

A. The Commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the Commission shall be subject to the audit and accounting procedures established under its bylaws. All receipts and disbursements of funds handled by the Commission shall be audited yearly by a certified or licensed public accountant and the report of the audit shall be included in and become a part of the annual report of the Commission.

B. The audit authorities of each of the party states and of the appropriate federal departments and agencies, or any of their duly authorized representatives, shall have access for the purpose of audit and examination to any books, documents, papers, and records of the Commission that are pertinent.

C. The Commission shall keep books and records in compliance with federal requirements and standards where necessary to qualify for federal assistance, including records which fully disclose the amount and disposition of the proceeds of federal assistance the Commission has received, the total cost of the plan, program, or project or undertaking in connection with which such assistance is given or used, and the amount and nature of that portion of the cost of the plan, program, or project or undertaking supplied by other sources, and such other records as will facilitate an effective audit.

Article VIII ELIGIBLE PARTIES, ENTRY INTO FORCE AND WITHDRAWAL

A. Any or all of the states of Alaska, Arizona, California, Colorado, Hawaii, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, and Wyoming shall be eligible to become party to this compact.

B. As to any eligible party state, this compact shall become effective when its legislature shall have enacted the same into law; provided, that it shall not become initially effective until enacted into law by 7 states.

C. Any party state may withdraw from this compact by enacting a statute repealing the same, but no such withdrawal

shall take effect until one year after the Governor of the withdrawing state has given notice to the Governors of all other party states. No withdrawal shall affect any liability already incurred by or chargeable to a party state prior to the time of such withdrawal.

Article IX CONSTRUCTION AND SEVERABILITY

It is intended that the provisions of this compact shall be reasonably and liberally construed to effectuate its purposes. The provisions of this compact shall be severable and if any phrase, clause, sentence, or provision of this compact is declared to be contrary to the constitution of any party state or of the United States, or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person, or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any party state, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters. [1972 ex.s. c 36 § 3.]

81.96.030 Service of secretary of transportation as state member—Execution of compact. The secretary of transportation or his or her designee may serve as the Washington state member to the western regional short-haul air transportation compact and may execute the compact on behalf of this state with any other state or states legally joining therein. [2013 c 23 § 310; 1984 c 7 § 376; 1972 ex.s. c 36 § 4.]

Chapter 81.100 RCW HIGH OCCUPANCY VEHICLE SYSTEMS

Sections

81.100.010	Purpose.
81.100.020	Definitions.
81.100.030	Employer tax.
81.100.040	Adoption of goals.
81.100.050	Survey of tax use.
81.100.060	Imposition of surcharge <i>(as amended by 2006 c 311)</i> .
81.100.060	Excise tax <i>(as amended by 2006 c 318)</i> .
81.100.070	High occupancy vehicle account.
81.100.080	Use of funds.
81.100.090	Interlocal agreements.
81.100.100	Urban public transportation system.
81.100.900	Construction—Severability—Headings—1990 c 43.

Use of moneys, construction priority: See 1990 c 298 § 35.

81.100.010 Purpose. The need for mobility, growing travel demand, and increasing traffic congestion in urban areas necessitate accelerated development and increased utilization of the high occupancy vehicle system. RCW 81.100.030 and 81.100.060 provide taxing authority that counties or regional transportation investment districts can use in the near term to accelerate development and increase utilization of the high occupancy vehicle system by supplementing available federal, state, and local funds. [2002 c 56 § 409; 1990 c 43 § 12.]

Additional notes found at www.leg.wa.gov

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

(1) "Transit agency" means a city that operates a transit system, a public transportation benefit area, a county transportation authority, or a metropolitan municipal corporation.

(2) The "high occupancy vehicle system" includes high occupancy vehicle lanes, related high occupancy vehicle facilities, and high occupancy vehicle programs.

(3) "High occupancy vehicle lanes" mean lanes reserved for public transportation vehicles only or public transportation vehicles and private vehicles carrying no fewer than a specified number of passengers under RCW 46.61.165.

(4) "Related facilities" means park and ride lots, park and pool lots, ramps, bypasses, turnouts, signal preemption, and other improvements designed to maximize use of the high occupancy vehicle system.

(5) "High occupancy vehicle program" means advertising the high occupancy vehicle system, promoting carpool, vanpool, and transit use, providing vanpool vehicles, and enforcement of driving restrictions governing high occupancy vehicle lanes. [1990 c 43 § 13.]

81.100.030 Employer tax. (1) A county with a population of one million or more, or a county with a population of from two hundred ten thousand to less than one million that is adjoining a county with a population of one million or more, and having within its boundaries existing or planned high occupancy vehicle lanes on the state highway system, or a regional transportation investment district for capital improvements, but only to the extent that the tax has not already been imposed by the county, may, with voter approval impose an excise tax of up to two dollars per employee per month on all employers or any class or classes of employers, public and private, including the state located in the agency's jurisdiction, measured by the number of full-time equivalent employees. In no event may the total taxes imposed under this section exceed two dollars per employee per month for any single employer. The county or investment district imposing the tax authorized in this section may provide for exemptions from the tax to such educational, cultural, health, charitable, or religious organizations as it deems appropriate.

Counties or investment districts may contract with the state department of revenue or other appropriate entities for administration and collection of the tax. Such contract shall provide for deduction of an amount for administration and collection expenses.

(2) The tax shall not apply to employment of a person when the employer has paid for at least half of the cost of a transit pass issued by a transit agency for that employee, valid for the period for which the tax would otherwise be owed.

(3) A county or investment district shall adopt rules that exempt from all or a portion of the tax any employer that has entered into an agreement with the county or investment district that is designed to reduce the proportion of employees who drive in single-occupant vehicles during peak commuting periods in proportion to the degree that the agreement is designed to meet the goals for the employer's location adopted under RCW 81.100.040.

The agreement shall include a list of specific actions that the employer will undertake to be entitled to the exemption. Employers having an exemption from all or part of the tax through this subsection shall annually certify to the county or investment district that the employer is fulfilling the terms of the agreement. The exemption continues as long as the employer is in compliance with the agreement.

If the tax authorized in RCW 81.100.060 is also imposed, the total proceeds from both tax sources each year shall not exceed the maximum amount which could be collected under RCW 81.100.060. [2002 c 56 § 410; 1991 c 363 § 153; 1990 c 43 § 14.]

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

81.100.040 Adoption of goals. The legislature encourages counties, in conjunction with cities, metropolitan planning organizations, and transit agencies in metropolitan areas to adopt goals for reducing the proportion of commuters who drive in single-occupant vehicles during peak commuting periods. Any county imposing a tax under this chapter must adopt such goals. In adopting these goals, counties shall consider at least the following:

(1) Existing and anticipated levels of peak-period traffic congestion on roadways used by employees in commuting to work;

(2) Existing and anticipated levels of transit and vanpool service and carpool programs available to and from the worksite;

(3) Variations in employment density and employer size;

(4) Availability and cost of parking; and

(5) Consistency of the goals with the regional transportation plan. [1990 c 43 § 15.]

81.100.050 Survey of tax use. The department of transportation shall include in the annual transit report under RCW 35.58.2795 and 35.58.2796 an element describing actions taken under this chapter. On at least two occasions prior to December 31, 1998, the department shall include an evaluation of the effectiveness of such actions. [1990 c 43 § 16.]

81.100.060 Imposition of surcharge (as amended by 2006 c 311). A county with a population of one million or more and a county with a population of from two hundred ten thousand to less than one million that is adjoining a county with a population of one million or more, having within their boundaries existing or planned high occupancy vehicle lanes on the state highway system, or a regional transportation investment district (~~for capital improvements~~), but only to the extent that the surcharge has not already been imposed by the county, may, with voter approval, impose a local surcharge of not more than three-tenths of one percent in the case of a county, or eight-tenths of one percent in the case of a regional transportation investment district, of the value on vehicles registered to a person residing within the county or investment district and not more than 13.64 percent on the state sales and use taxes paid under the rate in RCW 82.08.020(2) on retail car rentals within the county or investment district. A county may impose the surcharge only to the extent that it has not been imposed by the district. No surcharge may be imposed on vehicles licensed under *RCW 46.16.070 except vehicles with an unladen weight of six thousand pounds or less, RCW **46.16.079, **46.16.085, or *46.16.090.

Counties or investment districts imposing a ~~((tax))~~ surcharge under this section shall contract, before the effective date of the resolution or ordinance imposing a surcharge, administration and collection to the state department of licensing, and department of revenue, as appropriate, which shall deduct ~~((an))~~ a percentage amount, as provided by contract, not to exceed ***two percent of the taxes, for administration and collection expenses incurred by

the department. All administrative provisions in chapters 82.03, 82.32, and ~~82.44~~ RCW shall, insofar as they are applicable to motor vehicle excise taxes, be applicable to surcharges imposed under this section. All administrative provisions in chapters 82.03, 82.08, 82.12, and 82.32 RCW shall, insofar as they are applicable to state sales and use taxes, be applicable to surcharges imposed under this section. A surcharge imposed under this section, or a change to the surcharge, shall take effect no sooner than seventy-five days after the department of licensing or the department of revenue receives notice of the surcharge or change to the surcharge, and shall take effect only on the first day of January, April, July, or October. Unless waived by the department of licensing or the department of revenue, notice includes providing the appropriate department with digital mapping and legal descriptions of areas in which the ****tax will be collected.

If the tax authorized in RCW 81.100.030 is also imposed, the total proceeds from tax sources imposed under this section and RCW 81.100.030 each year shall not exceed the maximum amount which could be collected under this section. [2006 c 311 § 15; 2002 c 56 § 411; 1998 c 321 § 34 (Referendum Bill No. 49, approved November 3, 1998); 1992 c 194 § 12; 1991 c 363 § 154; 1990 c 43 § 17.]

Reviser's note: *(1) RCW 46.16.070 and 46.16.090 were recodified as RCW 46.16A.455 and 46.16A.425, respectively, pursuant to 2010 c 161 § 1217, effective July 1, 2011.

** (2) RCW 46.16.079 and 46.16.085 were repealed by 2010 c 161 § 438, effective July 1, 2011.

*** (3) RCW 82.44.135 authorizes a one percent deduction for the administration and collection of the vehicle surcharge. Both deduction percentages were enacted during the 2006 legislative session. See RCW 1.12.025 for rule of construction.

**** (4) The term "tax" referred to here apparently refers to the term "surcharge" as implemented in 2006 c 311 § 15.

Findings—2006 c 311: See note following RCW 36.120.020.

81.100.060 Excise tax (as amended by 2006 c 318). A county with a population of one million or more and a county with a population of from two hundred ten thousand to less than one million that is adjoining a county with a population of one million or more, having within their boundaries existing or planned high occupancy vehicle lanes on the state highway system, or a regional transportation investment district for capital improvements, but only to the extent that the surcharge has not already been imposed by the county, may, with voter approval, impose a local surcharge of not more than three-tenths of one percent of the value on vehicles registered to a person residing within the county and not more than 13.64 percent on the state sales and use taxes paid under the rate in RCW 82.08.020(2) on retail car rentals within the county or investment district. A county may impose the surcharge only to the extent that it has not been imposed by the district. No surcharge may be imposed on vehicles licensed under *RCW 46.16.070 except vehicles with an unladen weight of six thousand pounds or less, RCW **46.16.079, **46.16.085, or *46.16.090.

Counties or investment districts imposing a tax under this section shall contract, before the effective date of the resolution or ordinance imposing a surcharge, administration and collection to the state department of licensing, and department of revenue, as appropriate, which shall deduct an amount, as provided by contract, for administration and collection expenses incurred by the department. All administrative provisions in chapters 82.03, 82.32, and 82.44 RCW, as existing on January 1, 2006, shall, insofar as they are applicable to motor vehicle excise taxes, be applicable to surcharges imposed under this section before June 7, 2006. Motor vehicles subject to the local surcharge authorized in this section shall be administered in accordance with ***this act if the surcharge is first imposed on or after June 7, 2006. All administrative provisions in chapters 82.03, 82.08, 82.12, and 82.32 RCW shall, insofar as they are applicable to state sales and use taxes, be applicable to surcharges imposed under this section.

If the tax authorized in RCW 81.100.030 is also imposed, the total proceeds from tax sources imposed under this section and RCW 81.100.030 each year shall not exceed the maximum amount which could be collected under this section. [2006 c 318 § 2; 2002 c 56 § 411; 1998 c 321 § 34 (Referendum Bill No. 49, approved November 3, 1998); 1992 c 194 § 12; 1991 c 363 § 154; 1990 c 43 § 17.]

Reviser's note: *(1) RCW 46.16.070 and 46.16.090 were recodified as RCW 46.16A.455 and 46.16A.425, respectively, pursuant to 2010 c 161 § 1217, effective July 1, 2011.

** (2) RCW 46.16.079 and 46.16.085 were repealed by 2010 c 161 § 438, effective July 1, 2011.

*** (3) RCW 82.44.135 authorizes a one percent deduction for the administration and collection of the vehicle surcharge. Both deduction per-

centages were enacted during the 2006 legislative session. See RCW 1.12.025 for rule of construction.

(4) RCW 81.100.060 was amended twice during the 2006 legislative session, each without reference to the other. For rule of construction concerning sections amended more than once during the same legislative session, see RCW 1.12.025.

Purpose—Severability—1998 c 321: See notes following RCW 35.58.410.

Legislative intent—1992 c 194: See note following RCW 82.08.020.

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

Changes in tax law—Liability: RCW 82.08.064, 82.14.055, and 82.32.430.

Additional notes found at www.leg.wa.gov

81.100.070 High occupancy vehicle account. Funds collected by the department of revenue or other entity under RCW 81.100.030, or by the department of licensing under RCW 81.100.060, less the deduction for collection expenses, shall be deposited in the high occupancy vehicle account hereby created in the custody of the state treasurer. On the first day of the months of January, April, July, and October of each year, the state treasurer shall distribute the funds in the account to the counties on whose behalf the funds were received. The state treasurer shall make the distribution under this section without appropriation. [1991 sp.s. c 13 §§ 105, 119; 1990 c 43 § 18.]

Additional notes found at www.leg.wa.gov

81.100.080 Use of funds. (1) Funds collected under RCW 81.100.030 or 81.100.060 and any investment earnings accruing thereon shall be used by the county or the regional transportation investment district in a manner consistent with the regional transportation plan only for costs of collection, costs of preparing, adopting, and enforcing agreements under RCW 81.100.030(3), for construction of high occupancy vehicle lanes and related facilities, mitigation of environmental concerns that result from construction or use of high occupancy vehicle lanes and related facilities, payment of principal and interest on bonds issued for the purposes of this section, for high occupancy vehicle programs as defined in RCW 81.100.020(5), or for commuter rail projects in accordance with RCW 81.104.120. Except for funds raised by an investment district, no funds collected under RCW 81.100.030 or 81.100.060 after June 30, 2000, may be pledged for the payment or security of the principal or interest on any bonds issued for the purposes of this section. Not more than ten percent of the funds may be used for transit agency high occupancy vehicle programs.

(2) Notwithstanding the limitations in this chapter, a regional transportation investment district may use funds collected under RCW 81.100.030 or 81.100.060 and any investment earnings accruing thereon for projects contained in a plan developed under chapter 36.120 RCW. These expenditures shall not be limited to high occupancy vehicle systems.

(3) Priorities for construction of high occupancy vehicle lanes and related facilities shall be as follows:

(a)(i) To accelerate construction of high occupancy vehicle lanes on the interstate highway system, as well as related facilities;

(ii) To finance or accelerate construction of high occupancy vehicle lanes on the noninterstate state highway system, as well as related facilities.

(b) To finance construction of high occupancy vehicle lanes on local arterials, as well as related facilities.

(4) Moneys received by a county under this chapter shall be used in addition to, and not as a substitute for, moneys currently used by the county for the purposes specified in this section.

(5) Counties and investment districts may contract with cities or the state department of transportation for construction of high occupancy vehicle lanes and related facilities, and may issue general obligation bonds to fund such construction and use funds received under this chapter to pay the principal and interest on such bonds. [2006 c 311 § 14; 1990 c 43 § 19.]

Findings—2006 c 311: See note following RCW 36.120.020.

81.100.090 Interlocal agreements. Counties imposing a tax under this chapter shall enter into an agreement through the interlocal cooperation act with the department of transportation. The agreement shall provide an opportunity for the department of transportation, cities and transit agencies having within their boundaries a portion of the existing or planned high occupancy vehicle system as contained in the regional transportation plan, to coordinate programming and operational decisions affecting the high occupancy vehicle system. If two or more adjoining counties impose a tax under RCW 81.100.030 or 81.100.060, the counties shall jointly enter one interlocal agreement with the department of transportation. [1990 c 43 § 20.]

81.100.100 Urban public transportation system. The high occupancy vehicle system is an urban public transportation system as defined in RCW 47.04.082. [1990 c 43 § 21.]

81.100.900 Construction—Severability—Headings—1990 c 43. See notes following RCW 81.100.010.

Chapter 81.104 RCW

HIGH CAPACITY TRANSPORTATION SYSTEMS

Sections

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81.104.010 Purpose. Increasing congestion on Washington's roadways calls for identification and implementation of high capacity transportation system alternatives. The legislature believes that local jurisdictions should coordinate and be responsible for high capacity transportation policy development, program planning, and implementation. The state should assist by working with local agencies on issues involving rights-of-way, partially financing projects meeting established state criteria including development and completion of the high occupancy vehicle lane system, authorizing local jurisdictions to finance high capacity transportation systems through voter-approved tax options, and providing technical assistance and information. [1992 c 101 § 18; 1991 c 318 § 1; 1990 c 43 § 22.]

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

(1) "High capacity transportation corridor area" means a quasi-municipal corporation and independent taxing authority within the meaning of Article VII, section 1 of the state Constitution, and a taxing district within the meaning of Article VII, section 2 of the state Constitution, created by a transit agency governing body.

(2) "High capacity transportation system" means a system of public transportation services within an urbanized region operating principally on exclusive rights-of-way, and the supporting services and facilities necessary to implement such a system, including interim express services and high occupancy vehicle lanes, which taken as a whole, provides a substantially higher level of passenger capacity, speed, and service frequency than traditional public transportation systems operating principally in general purpose roadways.

(3) "Rail fixed guideway public transportation system" means a rail fixed guideway system, but does not include a system that is not public transportation, such as seasonal, tourist, or intraterminal service.

(4) "Rail fixed guideway system" means a light, heavy, or rapid rail system, monorail, inclined plane, funicular, trolley, or other fixed rail guideway component of a high capacity transportation system that is not regulated by the federal railroad administration, or its successor. "Rail fixed guideway system" does not mean elevators, moving sidewalks or stairs, and vehicles suspended from aerial cables, unless they are an integral component of a station served by a rail fixed guideway system.

(5) "Regional transit system" means a high capacity transportation system under the jurisdiction of one or more transit agencies except where a regional transit authority created under chapter 81.112 RCW exists, in which case "regional transit system" means the high capacity transportation system under the jurisdiction of a regional transit authority.

(6) "Transit agency" means city-owned transit systems, county transportation authorities, metropolitan municipal corporations, and public transportation benefit areas. [2016 c 33 § 7; 2009 c 280 § 1; 1999 c 202 § 9; 1992 c 101 § 19.]

Effective date—2016 c 33: See note following RCW 81.104.115.

Additional notes found at www.leg.wa.gov

81.104.020 State policy roles. The department of transportation's current policy role in transit is expanded to include other high capacity transportation development as part of a multimodal transportation system.

(1) The department of transportation shall implement a program for high capacity transportation coordination, planning, and technical studies with appropriations from the *high capacity transportation account.

(2) The department shall assist local jurisdictions and regional transportation planning organizations with high capacity transportation planning efforts. [1991 c 318 § 2; 1990 c 43 § 23.]

*Reviser's note: RCW 47.78.010, the high capacity transportation account, was repealed by 2017 3rd sp.s. c 25 § 39.

81.104.030 Policy development outside central Puget Sound—Voter approval. (1) In any county that has a population of one hundred seventy-five thousand or more and has an interstate highway within its borders, except for any county having a population of more than one million or a county that has a population more than four hundred thousand and is adjacent to a county with a population of more than one million, transit agencies may elect to establish high capacity transportation service. Such agencies shall form a regional policy committee with proportional representation based upon population distribution within the designated service area and a representative of the department of transportation, or such agencies may use the designated metropolitan planning organization as the regional policy committee.

Transit agencies participating in joint regional policy committees shall seek voter approval within their own service boundaries of a high capacity transportation system plan and financing plan. For transit agencies in counties adjoining state or international boundaries where the high capacity transportation system plan and financing plan propose a bistate or international high capacity transportation system, such voter approval shall be required from only those voters residing within the service area in the state of Washington.

(2) Transit agencies in counties adjoining state or international boundaries are authorized to participate in the regional high capacity transportation programs of an adjoining state or Canadian province. [1995 2nd sp.s. c 14 § 541; 1993 c 428 § 1; 1992 c 101 § 20; 1991 c 318 § 3; 1991 c 309 § 2; (1991 c 363 § 155 repealed by 1991 c 309 § 6); 1990 c 43 § 24.]

Additional notes found at www.leg.wa.gov

81.104.040 Policy development in central Puget Sound—Voter approval. Transit agencies in each county with a population of one million or more, and in each county with a population of from two hundred ten thousand to less than one million bordering a county with a population of one million or more that are authorized on January 1, 1991, to provide high capacity transportation planning and operating services must establish through interlocal agreements a joint regional policy committee with proportional representation based upon the population distribution within each agency's

designated service area, as determined by the parties to the agreement.

(1) The membership of the joint regional policy committee shall consist of locally elected officials who serve on the legislative authority of the existing transit systems and a representative from the department of transportation. Nonvoting membership for elected officials from adjoining counties may be allowed at the committee's discretion.

(2) The joint regional policy committee shall be responsible for the preparation and adoption of a regional high capacity transportation implementation program, which shall include the system plan, project plans, and a financing plan. This program shall be in conformance with the regional transportation planning organization's regional transportation plan and consistent with RCW 81.104.080.

(3) The joint regional policy committee shall present an adopted high capacity transportation system plan and financing plan to the boards of directors of the transit agencies within the service area or to the regional transit authority, if such authority has been formed. The authority shall proceed as prescribed in RCW 81.112.030. [1992 c 101 § 21; 1991 c 318 § 4; 1990 c 43 § 25.]

81.104.050 Expansion of service. Regional high capacity transportation service may be expanded beyond the established district boundaries through interlocal agreements among the transit agencies and any regional transit authorities in existence. [1992 c 101 § 22; 1991 c 318 § 5; 1990 c 43 § 26.]

81.104.060 State role in planning and implementation. (1) The state's planning role in high capacity transportation development as one element of a multimodal transportation system should facilitate cooperative state and local planning efforts.

(2) The department of transportation may serve as a contractor for high capacity transportation system and project design, administer construction, and assist agencies authorized to provide service in the acquisition, preservation, and joint use of rights-of-way.

(3) The department and local jurisdictions shall continue to cooperate with respect to the development of high occupancy vehicle lanes and related facilities, associated roadways, transfer stations, people mover systems developed either by the public or private sector, and other related projects.

(4) The department in cooperation with local jurisdictions shall develop policies which enhance the development of high speed interregional systems by both the private and the public sector. These policies may address joint use of rights-of-way, identification and preservation of transportation corridors, and joint development of stations and other facilities. [1991 c 318 § 6; 1990 c 43 § 27.]

81.104.070 Responsibility for system implementation. (1) The state shall not become an operating agent for regional high capacity transportation systems.

(2) Agencies providing high capacity transportation service are responsible for planning, construction, operations, and funding including station area design and development, and parking facilities. Agencies may implement necessary

contracts, joint development agreements, and interlocal government agreements. Agencies providing service shall consult with affected local jurisdictions and cooperate with comprehensive planning processes. [1990 c 43 § 28.]

81.104.080 Regional transportation planning. Where applicable, regional transportation plans and local comprehensive plans shall address the relationship between urban growth and an effective high capacity transportation system plan, and provide for cooperation between local jurisdictions and transit agencies.

(1) Regional high capacity transportation plans shall be included in the designated regional transportation planning organization's regional transportation plan review and update process to facilitate development of a coordinated multimodal transportation system and to meet federal funding requirements.

(2) Interlocal agreements between transit authorities, cities, and counties shall set forth conditions for assuring land uses compatible with development of high capacity transportation systems. These include developing sufficient land use densities through local actions in high capacity transportation corridors and near passenger stations, preserving transit rights-of-way, and protecting the region's environmental quality. The implementation program for high capacity transportation systems shall favor cities and counties with supportive land use plans. In developing local actions intended to carry out these policies cities and counties shall insure the opportunity for public comment and participation in the siting of such facilities, including stations or transfer facilities. Agencies providing high capacity transportation services, in cooperation with public and private interests, shall promote transit-compatible land uses and development which includes joint development.

(3) Interlocal agreements shall be consistent with state planning goals as set forth in chapter 36.70A RCW. Agreements shall also include plans for concentrated employment centers, mixed-use development, and housing densities that support high capacity transportation systems.

(4) Agencies providing high capacity transportation service and other transit agencies shall develop a cooperative process for the planning, development, operations, and funding of feeder transportation systems. Feeder systems may include existing and future intercity passenger systems and alternative technology people mover systems which may be developed by the private or public sector.

(5) Cities and counties along corridors designated in a high capacity transportation system plan shall enter into agreements with their designated regional transportation planning organizations, for the purpose of participating in a right-of-way preservation review process which includes activities to promote the preservation of the high capacity transportation rights-of-way. The regional transportation planning organization shall serve as the coordinator of the review process.

(a) Cities and counties shall forward all development proposals for projects within and adjoining to the rights-of-way proposed for preservation to the designated regional transportation planning organizations, which shall distribute the proposals for review by parties to the right-of-way preservation review process.

(b) The regional transportation planning organizations shall also review proposals for conformance with the regional transportation plan and associated regional development strategies. The designated regional transportation planning organization shall within ninety days compile local and regional agency comments and communicate the same to the originating jurisdiction and the joint regional policy committee. [1991 c 318 § 7; 1990 c 43 § 29.]

81.104.090 Department of transportation responsibilities—Funding of planning projects. The department of transportation shall be responsible for distributing amounts appropriated from the *high capacity transportation account, which shall be allocated by the department of transportation based on criteria in subsection (2) of this section. The department shall assemble and participate in a committee comprised of transit agencies eligible to receive funds from the *high capacity transportation account for the purpose of reviewing fund applications.

(1) State *high capacity transportation account funds may provide up to eighty percent matching assistance for high capacity transportation planning efforts.

(2) Authorizations for state funding for high capacity transportation planning projects shall be subject to the following criteria:

(a) Conformance with the designated regional transportation planning organization's regional transportation plan;

(b) Local matching funds;

(c) Demonstration of projected improvement in regional mobility;

(d) Conformance with planning requirements prescribed in RCW 81.104.100, and if five hundred thousand dollars or more in state funding is requested, conformance with the requirements of RCW 81.104.110; and

(e) Establishment, through interlocal agreements, of a joint regional policy committee as defined in RCW 81.104.030 or 81.104.040.

(3) The department of transportation shall provide general review and monitoring of the system and project planning process prescribed in RCW 81.104.100. [1995 c 269 § 2602; 1993 c 393 § 2; 1991 c 318 § 8; 1990 c 43 § 30.]

**Reviser's note:* RCW 47.78.010, the high capacity transportation account, was repealed by 2017 3rd sp.s. c 25 § 39.

Additional notes found at www.leg.wa.gov

81.104.100 Planning process. To assure development of an effective high capacity transportation system, local authorities shall follow the following planning process only if their system plan includes a rail fixed guideway system component or a bus rapid transit component that is planned by a regional transit authority:

(1) Regional, multimodal transportation planning is the ongoing urban transportation planning process conducted in each urbanized area by its regional transportation planning organization. During this process, regional transportation goals are identified, travel patterns are analyzed, and future land use and travel are projected. The process provides a comprehensive view of the region's transportation needs but does not select specified modes to serve those needs. The process shall identify a priority corridor or corridors for fur-

ther study of high capacity transportation facilities if it is deemed feasible by local officials.

(2) High capacity transportation system planning is the detailed evaluation of a range of high capacity transportation system options, including: Do nothing, low capital, and ranges of higher capital facilities. To the extent possible this evaluation shall take into account the urban mass transportation administration's requirements identified in subsection (3) of this section.

High capacity transportation system planning shall proceed as follows:

(a) Organization and management. The responsible local transit agency or agencies shall define roles for various local agencies, review background information, provide for public involvement, and develop a detailed work plan for the system planning process.

(b) Development of options. Options to be studied shall be developed to ensure an appropriate range of technologies and service policies can be evaluated. A do-nothing option and a low capital option that maximizes the current system shall be developed. Several higher capital options that consider a range of capital expenditures for several candidate technologies shall be developed.

(c) Analysis methods. The local transit agency shall develop reports describing the analysis and assumptions for the estimation of capital costs, operating and maintenance costs, methods for travel forecasting, a financial plan and an evaluation methodology.

(d) The system plan submitted to the voters pursuant to RCW 81.104.140 shall address, but is not limited to the following issues:

(i) Identification of level and types of high capacity transportation services to be provided;

(ii) A plan of high occupancy vehicle lanes to be constructed;

(iii) Identification of route alignments and station locations with sufficient specificity to permit calculation of costs, ridership, and system impacts;

(iv) Performance characteristics of technologies in the system plan;

(v) Patronage forecasts;

(vi) A financing plan describing: Phasing of investments; capital and operating costs and expected revenues; cost-effectiveness represented by a total cost per system rider and new rider estimate; estimated ridership and the cost of service for each individual high capacity line; and identification of the operating revenue to operating expense ratio.

The financing plan shall specifically differentiate the proposed use of funds between high capacity transportation facilities and services, and high occupancy vehicle facilities;

(vii) Description of the relationship between the high capacity transportation system plan and adopted land use plans;

(viii) An assessment of social, economic, and environmental impacts; and

(ix) Mobility characteristics of the system presented, including but not limited to: Qualitative description of system/service philosophy and impacts; qualitative system reliability; travel time and number of transfers between selected residential, employment, and activity centers; and system and activity center mode splits.

(3) High capacity transportation project planning is the detailed identification of alignments, station locations, equipment and systems, construction schedules, environmental effects, and costs. High capacity transportation project planning shall proceed as follows: The local transit agency shall analyze and produce information needed for the preparation of environmental impact statements. The impact statements shall address the impact that development of such a system will have on abutting or nearby property owners. The process of identification of alignments and station locations shall include notification of affected property owners by normal legal publication. At minimum, such notification shall include notice on the same day for at least three weeks in at least two newspapers of general circulation in the county where such project is proposed. Special notice of hearings by the conspicuous posting of notice, in a manner designed to attract public attention, in the vicinity of areas identified for station locations or transfer sites shall also be provided.

In order to increase the likelihood of future federal funding, the project planning processes shall follow the urban mass transportation administration's requirements as described in "Procedures and Technical Methods for Transit Project Planning", published by the United States department of transportation, urban mass transportation administration, September 1986, or the most recent edition. Nothing in this subsection shall be construed to preclude detailed evaluation of more than one corridor in the planning process.

The department of transportation shall provide system and project planning review and monitoring in cooperation with the expert review panel identified in RCW 81.104.110. In addition, the local transit agency shall maintain a continuous public involvement program and seek involvement of other government agencies. [2011 c 127 § 1; 1992 c 101 § 23; 1991 sp.s. c 15 § 68; 1991 c 318 § 9; 1990 c 43 § 31.]

Additional notes found at www.leg.wa.gov

81.104.110 Independent system plan oversight. (1) The legislature recognizes that the planning processes described in RCW 81.104.100 provide a recognized framework for guiding high capacity transportation studies. However, the process cannot guarantee appropriate decisions unless key study assumptions are reasonable.

(2) To assure appropriate system plan assumptions and to provide for review of system plan results, an expert review panel shall be appointed to provide independent technical review for development of any system plan which:

(a) Is to be funded in whole or in part by the imposition of any voter-approved local option funding sources enumerated in RCW 81.104.140; and

(b) Includes a rail fixed guideway system component or a bus rapid transit component that is planned by a regional transit authority.

(3) The expert review panel shall consist of five to ten members who are recognized experts in relevant fields, such as transit operations, planning, emerging transportation technologies, engineering, finance, law, the environment, geography, economics, and political science.

(4) The expert review panel shall be selected cooperatively by the chairs of the senate and house transportation committees, the secretary of the department of transportation, and the governor to assure a balance of disciplines. In the

case of counties adjoining another state or Canadian province the expert review panel membership shall be selected cooperatively with representatives of the adjoining state or Canadian province.

(5) The chair of the expert review panel shall be designated by the appointing authorities.

(6) The expert review panel shall serve without compensation but shall be reimbursed for expenses according to RCW 43.03.050 and 43.03.060. Reimbursement shall be paid from within the existing resources of the local authority planning under this chapter.

(7) The panel shall carry out the duties set forth in subsections (8) and (9) of this section until the date on which an election is held to consider the high capacity transportation system and financing plans.

(8) The expert panel shall review all reports required in RCW 81.104.100(2) and shall concentrate on service modes and concepts, costs, patronage and financing evaluations.

(9) The expert panel shall provide timely reviews and comments on individual reports and study conclusions to the department of transportation, the regional transportation planning organization, the joint regional policy committee, and the submitting lead transit agency. In the case of counties adjoining another state or Canadian province, the expert review panel shall provide its reviews, comments, and conclusions to the representatives of the adjoining state or Canadian province.

(10) The local authority planning under this chapter shall contract for consulting services for expert review panels. The amount of consultant support shall be negotiated with each expert review panel by the local authority and shall be paid from within the local authority's existing resources. [2011 c 127 § 2; 2005 c 319 § 136; 1998 c 245 § 165. Prior: 1991 c 318 § 10; 1991 c 309 § 3; 1990 c 43 § 32.]

Findings—Intent—Part headings—Effective dates—2005 c 319: See notes following RCW 43.17.020.

81.104.115 Rail fixed guideway public transportation system—State safety oversight agency—Safety program plan and security and emergency preparedness plan—Penalties, sanctions—Rules—Annual report.

(1) The department of transportation is established as the state safety oversight agency. As such, the department is subject to the following conditions:

(a) The department must be financially and legally independent from any public transportation agency that the department is obliged to oversee;

(b) The department must not directly provide public transportation services in an area with a rail fixed guideway public transportation system that the department is obliged to oversee;

(c) The department must not employ any individual who is also responsible for administering a rail fixed guideway public transportation system that the department is obliged to oversee; and

(d) The department has investigative and enforcement authority with respect to the safety and security of all rail fixed guideway public transportation systems in Washington state. The department shall adopt rules with respect to its investigative and enforcement authority.

(2) The department shall collect, audit, review, approve, oversee, and enforce the system safety program plan and the system security and emergency preparedness plan prepared by each owner or operator of a rail fixed guideway public transportation system operating in Washington state. In carrying out this function, the department shall adopt rules specifying the elements and standard to be contained in a system safety program plan and a system security and emergency preparedness plan, and the content of any investigation report, corrective action plan, and accompanying implementation schedule resulting from any reportable incident, accident, security breach, hazard, or security vulnerability. These rules must include due dates for the department's timely receipt of and response to required documents.

(3) The department, in carrying out the duties in this section, shall compel the rail fixed guideway public transportation systems to comply with state and federal safety and security regulations for rail fixed guideway public transportation systems. The department may also impose financial penalties for noncompliance with state or federal regulations, or both, related to state safety and security oversight. Specific financial penalties, if imposed, must be determined by rule. When reportable safety or security deficiencies are identified and not addressed in a timely manner by rail fixed guideway public transportation system owners and operators, the department may require the suspension or modification of service or the suspended use or removal of equipment. The department may impose sanctions upon owners and operators of rail fixed guideway public transportation systems for failure to meet deadlines of submissions of required reports and audits.

(4) The system security and emergency preparedness plan as described in RCW 35.21.228(1), 35A.21.300(1), 36.01.210(1), 36.57.120(1), 36.57A.170(1), and 81.112.180(1) is exempt from public disclosure under chapter 42.56 RCW by the department when collected from the owners and operators of rail fixed guideway public transportation systems. However, the system safety program plan as described in RCW 35.21.228, 35A.21.300, 36.01.210, 36.57.120, 36.57A.170, and 81.112.180 is not exempt from public disclosure.

(5) The department shall audit each system safety program plan and each system security and emergency preparedness plan at least once every three years. The department may contract with other persons or entities for the performance of duties required by this subsection. The department shall provide at least thirty days' advance notice to the owner or operator of a rail fixed guideway public transportation system before commencing the audit.

(6) In the event of any reportable incident, accident, security breach, hazard, or security vulnerability, the department shall review the investigation report, corrective action plan, and accompanying implementation schedule, submitted by the owner or operator of the rail fixed guideway public transportation system to safeguard against a recurrence of the incident, accident, security breach, hazard, or security vulnerability.

(a) The department may, at its option, perform a separate, independent investigation of any reportable incident, accident, security breach, hazard, or security vulnerability.

The department may contract with other persons or entities for the performance of duties required by this subsection.

(b) If the department does not concur with the investigation report, corrective action plan, and accompanying implementation schedule, submitted by the owner or operator, the department shall notify that owner or operator in writing within forty-five days of its receipt of the complete investigation report, corrective action plan, and accompanying implementation schedule.

(7) The secretary may adopt rules to implement this section and RCW 35.21.228, 35A.21.300, 36.01.210, 36.57.120, 36.57A.170, and 81.112.180, including rules establishing procedures and timelines for owners and operators of rail fixed guideway public transportation systems to comply with RCW 35.21.228, 35A.21.300, 36.01.210, 36.57.120, 36.57A.170, and 81.112.180 and the rules adopted under this section. If noncompliance by an owner or operator of a rail fixed guideway public transportation system results in the loss of federal funds to the state of Washington or a political subdivision of the state, the owner or operator is liable to the affected entity or entities for the amount of the lost funds.

(8) The department and its employees shall have no liability for any actions taken pursuant to this chapter arising from: The adoption of rules; the review of or concurrence in a system safety program plan and a system security and emergency preparedness plan; the separate, independent investigation of any reportable incident, accident, security breach, hazard, or security vulnerability; and the review of or concurrence in a corrective action plan for any reportable incident, accident, security breach, hazard, or security vulnerability.

(9) At least once every year, the department shall report the status of the safety and security of each rail fixed guideway public transportation system to the governor, the federal transit administration, the board of directors or equivalent entity of the rail fixed guideway public transportation system, and the transportation committees of the legislature. [2016 c 33 § 8; 2007 c 422 § 7; 2005 c 274 § 359; 2001 c 127 § 1; 1999 c 202 § 7.]

Effective date—2016 c 33: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 25, 2016]." [2016 c 33 § 9.]

Additional notes found at www.leg.wa.gov

81.104.120 Commuter rail service—Voter approval.

(1) Transit agencies and regional transit authorities may operate or contract for commuter rail service where it is deemed to be a reasonable alternative transit mode. A reasonable alternative is one whose passenger costs per mile, including costs of trackage, equipment, maintenance, operations, and administration are equal to or less than comparable bus, entrained bus, trolley, or personal rapid transit systems.

(2) A county may use funds collected under RCW 81.100.030 or 81.100.060 to contract with one or more transit agencies or regional transit authorities for planning, operation, and maintenance of commuter rail projects which: (a) Are consistent with the regional transportation plan; (b) have met the project planning and oversight requirements of RCW 81.104.100 and 81.104.110; and (c) have been approved by the voters within the service area of each transit agency or regional transit authority participating in the project. For tran-

sit agencies in counties adjoining state or international boundaries where the high capacity transportation system plan and financing plan propose a bistate or international high capacity transportation system, such voter approval shall be required from only those voters residing within the service area in the state of Washington. The phrase "approved by the voters" includes specific funding authorization for the commuter rail project.

(3) The utilities and transportation commission shall maintain safety responsibility for passenger rail service operating on freight rail lines. Agencies providing passenger rail service on lines other than freight rail lines shall maintain safety responsibility for that service. [1993 c 428 § 2; 1992 c 101 § 24; 1990 c 43 § 33.]

81.104.130 Financial responsibility. Agencies providing high capacity transportation service shall determine optimal debt-to-equity ratios, establish capital and operations allocations, and establish fare-box recovery return policy. [1990 c 43 § 34.]

81.104.140 Dedicated funding sources. (1) Agencies authorized to provide high capacity transportation service, including transit agencies and regional transit authorities, and regional transportation investment districts acting with the agreement of an agency, are hereby granted dedicated funding sources for such systems. These dedicated funding sources, as set forth in RCW 81.104.150, 81.104.160, 81.104.170, and 81.104.175, are authorized only for agencies located in (a) each county with a population of two hundred ten thousand or more and (b) each county with a population of from one hundred twenty-five thousand to less than two hundred ten thousand except for those counties that do not border a county with a population as described under (a) of this subsection. In any county with a population of one million or more or in any county having a population of four hundred thousand or more bordering a county with a population of one million or more, these funding sources may be imposed only by a regional transit authority or a regional transportation investment district. Regional transportation investment districts may, with the approval of the regional transit authority within its boundaries, impose the taxes authorized under this chapter, but only upon approval of the voters and to the extent that the maximum amount of taxes authorized under this chapter have not been imposed.

(2) Agencies planning to construct and operate a high capacity transportation system should also seek other funds, including federal, state, local, and private sector assistance.

(3) Funding sources should satisfy each of the following criteria to the greatest extent possible:

- (a) Acceptability;
- (b) Ease of administration;
- (c) Equity;
- (d) Implementation feasibility;
- (e) Revenue reliability; and
- (f) Revenue yield.

(4)(a) Agencies participating in regional high capacity transportation system development are authorized to levy and collect the following voter-approved local option funding sources:

(i) Employer tax as provided in RCW 81.104.150, other than by regional transportation investment districts;

(ii) Special motor vehicle excise tax as provided in RCW 81.104.160;

(iii) Regular property tax as provided in RCW 81.104.175; and

(iv) Sales and use tax as provided in RCW 81.104.170.

(b) Revenues from these taxes may be used only to support those purposes prescribed in subsection (10) of this section. Before the date of an election authorizing an agency to impose any of the taxes enumerated in this section and authorized in RCW 81.104.150, 81.104.160, 81.104.170, and 81.104.175, the agency must comply with the process prescribed in RCW 81.104.100 (1) and (2) and 81.104.110. No construction on exclusive right-of-way may occur before the requirements of RCW 81.104.100(3) are met.

(5) Except for the regular property tax authorized in RCW 81.104.175, the authorization in subsection (4) of this section may not adversely affect the funding authority of transit agencies not provided for in this chapter. Local option funds may be used to support implementation of interlocal agreements with respect to the establishment of regional high capacity transportation service. Except when a regional transit authority exists, local jurisdictions must retain control over moneys generated within their boundaries, although funds may be commingled with those generated in other areas for planning, construction, and operation of high capacity transportation systems as set forth in the agreements.

(6) Except for the regular property tax authorized in RCW 81.104.175, agencies planning to construct and operate high capacity transportation systems may contract with the state for collection and transference of voter-approved local option revenue.

(7) Dedicated high capacity transportation funding sources authorized in RCW 81.104.150, 81.104.160, 81.104.170, and 81.104.175 are subject to voter approval by a simple majority. A single ballot proposition may seek approval for one or more of the authorized taxing sources. The ballot title must reference the document identified in subsection (8) of this section.

(8) Agencies must provide to the registered voters in the area a document describing the systems plan and the financing plan set forth in RCW 81.104.100. It must also describe the relationship of the system to regional issues such as development density at station locations and activity centers, and the interrelationship of the system to adopted land use and transportation demand management goals within the region. This document must be provided to the voters at least twenty days prior to the date of the election.

(9) For any election in which voter approval is sought for a high capacity transportation system plan and financing plan pursuant to RCW 81.104.040, a local voter's pamphlet must be produced as provided in chapter 29A.32 RCW.

(10)(a) Agencies providing high capacity transportation service must retain responsibility for revenue encumbrance, disbursement, and bonding. Funds may be used for any purpose relating to planning, construction, and operation of high capacity transportation systems and commuter rail systems, personal rapid transit, busways, bus sets, and entrained and linked buses.

(b) A regional transit authority that imposes a motor vehicle excise tax after July 15, 2015, imposes a property tax, or increases a sales and use tax to more than nine-tenths of one percent must undertake a process in which the authority's board formally considers inclusion of the name, Scott White, in the naming convention associated with either the University of Washington or Roosevelt stations. [2015 3rd sp.s. c 44 § 318; 2002 c 56 § 202; 1992 c 101 § 25. Prior: 1991 c 318 § 11; 1991 c 309 § 4; (1991 c 363 § 157 repealed by 1991 c 309 § 6); 1990 c 43 § 35.]

Effective date—2015 3rd sp.s. c 44: See note following RCW 46.68.395.

81.104.150 Employer tax. Cities that operate transit systems, county transportation authorities, metropolitan municipal corporations, public transportation benefit areas, high capacity transportation corridor areas, and regional transit authorities may submit an authorizing proposition to the voters and if approved may impose an excise tax of up to two dollars per month per employee on all employers located within the applicable jurisdiction, measured by the number of full-time equivalent employees, solely for the purpose of providing high capacity transportation service. The rate of tax shall be approved by the voters. This tax may not be imposed by: (1) A transit agency or high capacity transportation corridor area when the county within which it is located is imposing an excise tax pursuant to RCW 81.100.030; or (2) a regional transit authority when any county within the authority's boundaries is imposing an excise tax pursuant to RCW 81.100.030. The agency or high capacity transportation corridor area imposing the tax authorized in this section may provide for exemptions from the tax to such educational, cultural, health, charitable, or religious organizations as it deems appropriate. [2009 c 280 § 3; 1992 c 101 § 26; 1990 c 43 § 41.]

81.104.160 Motor vehicle excise tax for regional transit authorities—Sales and use tax on car rentals—Former motor vehicle excise tax repealed. (1) Regional transit authorities that include a county with a population of more than one million five hundred thousand may submit an authorizing proposition to the voters, and if approved, may levy and collect an excise tax, at a rate approved by the voters, but not exceeding eight-tenths of one percent on the value, under chapter 82.44 RCW, of every motor vehicle owned by a resident of the taxing district, solely for the purpose of providing high capacity transportation service. The maximum tax rate under this subsection does not include a motor vehicle excise tax approved before July 15, 2015, if the tax will terminate on the date bond debt to which the tax is pledged is repaid. This tax does not apply to vehicles licensed under RCW 46.16A.455 except vehicles with an unladen weight of six thousand pounds or less, RCW 46.16A.425 or 46.17.335(2). Notwithstanding any other provision of this subsection or chapter 82.44 RCW, a motor vehicle excise tax imposed by a regional transit authority before or after July 15, 2015, must comply with chapter 82.44 RCW as it existed on January 1, 1996, until December 31st of the year in which the regional transit authority repays bond debt to which a motor vehicle excise tax was pledged before July 15, 2015. Motor vehicle taxes collected by regional transit authorities after December

31st of the year in which a regional transit authority repays bond debt to which a motor vehicle excise tax was pledged before July 15, 2015, must comply with chapter 82.44 RCW as it existed on the date the tax was approved by voters.

(2) An agency and high capacity transportation corridor area may impose a sales and use tax solely for the purpose of providing high capacity transportation service, in addition to the tax authorized by RCW 82.14.030, upon retail car rentals within the applicable jurisdiction that are taxable by the state under chapters 82.08 and 82.12 RCW. The rate of tax may not exceed 2.172 percent. The rate of tax imposed under this subsection must bear the same ratio of the 2.172 percent authorized that the rate imposed under subsection (1) of this section bears to the rate authorized under subsection (1) of this section. The base of the tax is the selling price in the case of a sales tax or the rental value of the vehicle used in the case of a use tax.

(3) Any motor vehicle excise tax previously imposed under the provisions of RCW 81.104.160(1) shall be repealed, terminated, and expire on December 5, 2002, except for a motor vehicle excise tax for which revenues have been contractually pledged to repay a bonded debt issued before December 5, 2002, as determined by *Pierce County et al. v. State*, 159 Wn.2d 16, 148 P.3d 1002 (2006). In the case of bonds that were previously issued, the motor vehicle excise tax must comply with chapter 82.44 RCW as it existed on January 1, 1996.

(4) If a regional transit authority imposes the tax authorized under subsection (1) of this section, the authority may not receive any state grant funds provided in an omnibus transportation appropriations act except transit coordination grants created in chapter 11, Laws of 2015 3rd sp. sess. [2015 3rd sp.s. c 44 § 319; 2010 c 161 § 903; 2009 c 280 § 4; 2003 c 1 § 6 (Initiative Measure No. 776, approved November 5, 2002); 1998 c 321 § 35 (Referendum Bill No. 49, approved November 3, 1998). Prior: 1992 c 194 § 13; 1992 c 101 § 27; 1991 c 318 § 12; 1990 c 43 § 42.]

Reviser's note: In *Pierce Cty. v. State*, 159 Wn.2d 16, 148 P.3d 1002 (2006), the Washington state supreme court held that section 6, chapter 1, Laws of 2003 (Initiative Measure No. 776) impermissibly impairs the contractual obligations between Sound Transit and its bondholders in violation of the contract clause and, as a result, has no legal effect of preventing Sound Transit from continuing to fulfill its contractual obligation to levy the motor vehicle excise tax for so long as the bonds remain outstanding.

Effective date—2015 3rd sp.s. c 44: See note following RCW 46.68.395.

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.

Repeal of taxes by 2003 c 1 § 6 (Initiative Measure No. 776): "If the repeal of taxes in section 6 of this act affects any bonds previously issued for any purpose relating to light rail, the people expect transit agencies to retire these bonds using reserve funds including accrued interest, sale of property or equipment, new voter approved tax revenues, or any combination of these sources of revenue. Taxing districts should abstain from further bond sales for any purpose relating to light rail until voters decide this measure. The people encourage transit agencies to put another tax revenue measure before voters if they want to continue with a light rail system dramatically changed from that previously represented to and approved by voters." [2003 c 1 § 7 (Initiative Measure No. 776, approved November 5, 2002).]

Construction—Intent—2003 c 1 (Initiative Measure No. 776): See notes following RCW 46.16A.455.

Purpose—Severability—1998 c 321: See notes following RCW 82.14.045.

Legislative intent—1992 c 194: See note following RCW 82.08.020.

Additional notes found at www.leg.wa.gov

81.104.170 Sales and use tax—Maximum rates. (1) Cities that operate transit systems, county transportation authorities, metropolitan municipal corporations, public transportation benefit areas, high capacity transportation corridor areas, and regional transit authorities may submit an authorizing proposition to the voters and if approved by a majority of persons voting, fix and impose a sales and use tax in accordance with the terms of this chapter, solely for the purpose of providing high capacity transportation service.

(2) The tax authorized pursuant to this section is in addition to the tax authorized by RCW 82.14.030 and must be collected from those persons who are taxable by the state pursuant to chapters 82.08 and 82.12 RCW upon the occurrence of any taxable event within the taxing district.

(a) Except for the tax imposed under (b) of this subsection by regional transit authorities that include a county with a population of more than one million five hundred thousand, the maximum rate of such tax must be approved by the voters and may not exceed one percent of the selling price (in the case of a sales tax) or value of the article used (in the case of a use tax). The maximum rate of such tax that may be imposed may not exceed nine-tenths of one percent in any county that imposes a tax under RCW 82.14.340, or within a regional transit authority if any county within the authority imposes a tax under RCW 82.14.340.

(b) The maximum rate of such tax that may be imposed by a regional transit authority that includes a county with a population of more than one million five hundred thousand must be approved by the voters and may not exceed 1.4 percent. If a regional transit authority imposes the tax authorized under this subsection (2)(b) in excess of 0.9 percent, the authority may not receive any state grant funds provided in an omnibus transportation appropriations act except transit coordination grants created in chapter 11, Laws of 2015 3rd sp. sess.

(3)(a) The exemptions in RCW 82.08.820 and 82.12.820 are for the state portion of the sales and use tax and do not extend to the tax authorized in this section.

(b) The exemptions in RCW 82.08.962 and 82.12.962 are for the state and local sales and use taxes and include the tax authorized by this section. [2015 3rd sp.s. c 44 § 320. Prior: 2009 c 469 § 106; 2009 c 280 § 5; 1997 c 450 § 5; 1992 c 101 § 28; 1990 2nd ex.s. c 1 § 902; 1990 c 43 § 43.]

Effective date—2015 3rd sp.s. c 44: See note following RCW 46.68.395.

Effective date—2009 c 469: See note following RCW 82.08.962.

Findings—Intent—Report—Effective date—1997 c 450: See notes following RCW 82.08.820.

Changes in tax law—Liability: RCW 82.08.064, 82.14.055, and 82.32.430.

Local retail sales and use taxes: Chapter 82.14 RCW.

Sales tax imposed—Retail sales—Retail car rental: RCW 82.08.020.

Use tax imposed: RCW 82.12.020.

Additional notes found at www.leg.wa.gov

81.104.175 Property tax levy for regional transit authorities. (1) A regional transit authority that includes a county with a population of more than one million five hundred thousand may impose a regular property tax levy in an

amount not to exceed twenty-five cents per thousand dollars of the assessed value of property in the regional transit authority district in accordance with the terms of this section.

(2) Any tax imposed under this section must be used for the purpose of providing high capacity transportation service, as set forth in a proposition that is approved by a majority of the registered voters that vote on the proposition.

(3) Property taxes imposed under this section may be imposed for the period of time required to pay the cost to plan, design, construct, operate, and maintain the transit facilities set forth in the approved proposition. Property taxes pledged to repay bonds may be imposed at the pledged amount until the bonds are retired. After the bonds are retired, property taxes authorized under this section must be:

(a) Reduced to the level required to operate and maintain the regional transit authority's transit facilities; or

(b) Terminated, unless the taxes have been extended by public vote.

(4) The limitations in RCW 84.52.043 do not apply to the tax authorized in this section.

(5) The limitation in RCW 84.55.010 does not apply to the first levy imposed under this section.

(6) If a regional transit authority imposes the tax authorized under subsection (1) of this section, the authority may not receive any state grant funds provided in an omnibus transportation appropriations act except transit coordination grants created in chapter 11, Laws of 2015 3rd sp. sess.

(7) Property taxes imposed under this section may not be imposed on less than a whole parcel. [2018 c 81 § 1; 2015 3rd sp.s. c 44 § 321.]

Effective date—2018 c 81: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 15, 2018]." [2018 c 81 § 2.]

Effective date—2015 3rd sp.s. c 44: See note following RCW 46.68.395.

81.104.180 Pledge of revenues for bond retirement.

Cities that operate transit systems, county transportation authorities, metropolitan municipal corporations, public transportation benefit areas, high capacity transportation corridor areas, and regional transit authorities are authorized to pledge revenues from the employer tax authorized by RCW 81.104.150, the taxes authorized by RCW 81.104.160, the sales and use tax authorized by RCW 81.104.170, and the property tax authorized by RCW 81.104.175, to retire bonds issued solely for the purpose of providing high capacity transportation service. [2015 3rd sp.s. c 44 § 327; 2009 c 280 § 6; 1992 c 101 § 29; 1990 c 43 § 44.]

Effective date—2015 3rd sp.s. c 44: See note following RCW 46.68.395.

81.104.190 Contract for collection of taxes. Cities that operate transit systems, county transportation authorities, metropolitan municipal corporations, public transportation benefit areas, high capacity transportation corridor areas, and regional transit systems may contract with the state department of revenue or other appropriate entities for administration and collection of any tax authorized by RCW 81.104.150, 81.104.160, and 81.104.170. [2009 c 280 § 7; 1992 c 101 § 30; 1990 c 43 § 45.]

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81.104.200 High capacity transportation corridor areas. (1) A governing body of a transit agency in a county that has a population of more than four hundred thousand and that adjoins a state boundary may establish one or more high capacity transportation corridor areas within all or a portion of the boundaries of the transit agency establishing the high capacity transportation corridor area. A high capacity transportation corridor area may include all or a portion of a city or town as long as all or a portion of the city or town boundaries are within the boundaries of the establishing transit agency. The members of the transit agency governing body proposing to establish the high capacity transportation corridor area, acting ex officio and independently, shall constitute the governing body of the high capacity transportation corridor area.

(2) A high capacity transportation corridor area may establish, finance, and provide a high capacity transportation system within its boundaries in the same manner as authorized for transit agencies under this chapter, subject to the following restrictions:

(a) Any combined tax rates imposed under this chapter within the boundaries of the transit agency establishing a high capacity transportation corridor area or areas may not exceed the maximum rates authorized under RCW 81.104.150, 81.104.160, and 81.104.170;

(b) If a majority of the voters within the boundaries of a high capacity transportation corridor area approve a proposition imposing any high capacity transportation taxes, the governing body of the high capacity transportation corridor area may not seek subsequent voter approval of any additional high capacity transportation taxes, notwithstanding any remaining authorized taxing capacity; and

(c) The governing body of a high capacity transportation corridor area may not submit any authorizing proposition for voter-approved taxes prior to July 1, 2012.

(3) A high capacity transportation corridor area constitutes a body corporate and possesses all the usual powers of a corporation for public purposes as well as all other powers that may be conferred by statute including, but not limited to, the authority to hire employees, staff, and services, to enter into contracts, to acquire, hold, and dispose of real and personal property, and to sue and be sued. Public works contract limits applicable to the transit agency that established the high capacity transportation corridor area apply to the area.

(4) A high capacity transportation corridor area may exercise the power of eminent domain to obtain property for its authorized purposes in the same manner as authorized for the transit agency that established the area.

(5) A high capacity transportation corridor area may be dissolved by a majority vote of the governing body when all obligations under any general obligation bonds issued by the high capacity transportation corridor area have been discharged and any other contractual obligations of the high capacity transportation corridor area have either been discharged or assumed by another governmental entity. [2009 c 280 § 2.]

81.104.210 High capacity transportation corridor areas—Issuance of bonds. (1) To carry out the purposes of this chapter, a high capacity transportation corridor area may issue general obligation bonds, not to exceed an amount,

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together with any other outstanding nonvoter-approved general obligation indebtedness, equal to one and one-half percent of the value of the taxable property within the area, as the term "value of the taxable property" is defined in RCW 39.36.015. A high capacity transportation corridor area may also issue general obligation bonds for capital purposes only, together with any outstanding general obligation indebtedness, not to exceed an amount equal to five percent of the value of the taxable property within the area, as the term "value of the taxable property" is defined in RCW 39.36.015, when authorized by the voters of the area pursuant to Article VIII, section 6 of the state Constitution.

(2) General obligation bonds with a maturity in excess of twenty-five years shall not be issued. The governing body of the high capacity transportation corridor area shall by resolution determine for each general obligation bond issue the amount, date, terms, conditions, denominations, maximum fixed or variable interest rate or rates, maturity or maturities, redemption rights, registration privileges, manner of execution, manner of sale, callable provisions, if any, covenants, and form, including registration as to principal and interest, registration as to principal only, or bearer. Registration may include, but not be limited to: (a) A book entry system of recording the ownership of a bond whether or not physical bonds are issued; or (b) recording the ownership of a bond together with the requirement that the transfer of ownership may only be effected by the surrender of the old bond and either the reissuance of the old bond or the issuance of a new bond to the new owner. Facsimile signatures may be used on the bonds and any coupons. Refunding general obligation bonds may be issued in the same manner as general obligation bonds are issued.

(3) Whenever general obligation bonds are issued to fund specific projects or enterprises that generate revenues, charges, user fees, or special assessments, the high capacity transportation corridor area may specifically pledge all or a portion of the revenues, charges, user fees, or special assessments to refund the general obligation bonds. The high capacity transportation corridor area may also pledge any other revenues that may be available to the area.

(4) In addition to general obligation bonds, a high capacity transportation corridor area may issue revenue bonds to be issued and sold in accordance with chapter 39.46 RCW. [2009 c 280 § 8.]

Chapter 81.108 RCW

LOW-LEVEL RADIOACTIVE WASTE SITES

Sections

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81.108.110	Competitive companies—Exemptions—Waiver of provisions during state of emergency.
81.108.900	Construction.
81.108.901	Effective dates—1991 c 272.

81.108.010 Purpose. State and national policy directs that the management of low-level radioactive waste be accomplished by a system of interstate compacts and the development of regional disposal sites. The Northwest regional compact, comprised of the states of Alaska, Hawaii, Idaho, Montana, Oregon, Utah, and Washington, has as its disposal facility the low-level radioactive waste disposal site located near Richland, Washington. This site is expected to be the sole site for disposal of low-level radioactive waste for compact members effective January 1, 1993. Future closure of this site will require significant financial resources.

Low-level radioactive waste is generated by essential activities and services that benefit the citizens of the state. Washington state's low-level radioactive waste disposal site has been used by the nation and the Northwest compact as a disposal site since 1965. The public has come to rely on access to this site for disposal of low-level radioactive waste, which requires separate handling from other solid and hazardous wastes. The price of disposing of low-level radioactive waste at the Washington state low-level radioactive waste disposal site is anticipated to increase when the federal low-level radioactive waste policy amendments act of 1985 is implemented and waste generated outside the Northwest compact states is excluded.

When these events occur, to protect Washington and other Northwest compact states' businesses and services, such as electrical production, medical and university research, and private industries, upon which the public relies, there will be a need to regulate the rates charged by the operator of Washington's low-level radioactive waste disposal site. This chapter is adopted pursuant to section 8, chapter 21, Laws of 1990. [1991 c 272 § 1.]

81.108.020 Definitions. Definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Commission" means the Washington utilities and transportation commission.

(2) "Effective rate" means the highest permissible rate, calculated as the lowest contract rate plus an administrative fee, if applicable, determined pursuant to RCW 81.108.040.

(3) "Extraordinary volume" means volumes of low-level radioactive waste delivered to a site caused by nonrecurring events, outside normal operations of a generator, that are in excess of twenty thousand cubic feet or twenty percent of the preceding year's total volume at such site, whichever is less.

(4) "Extraordinary volume adjustment" means a mechanism that allocates the potential rate reduction benefits of an extraordinary volume between all generators and the generator responsible for such extraordinary volume as described in RCW 81.108.070.

(5) "Generator" means a person, partnership, association, corporation, or any other entity whatsoever that, as a part of its activities, produces low-level radioactive waste.

(6) "Inflation adjustment" means a mechanism that adjusts the maximum disposal rate by a percentage equal to the change in price levels in the preceding period, as measured by a common, verifiable price index as determined in RCW 81.108.040.

(7) "Initial rate proceeding" means the proceeding described in RCW 81.108.040.

(8) "Maximum disposal rate" means the rate described in RCW 81.108.050.

(9) "Site" means a location, structure, or property used or to be used for the storage, treatment, or disposal of low-level radioactive waste for compensation within the state of Washington.

(10) "Site operator" means a low-level radioactive waste site operating company as defined in RCW 81.04.010.

(11) "Volume adjustment" means a mechanism that adjusts the maximum disposal rate in response to material changes in volumes of waste deposited at the site during the preceding period so as to provide a level of total revenues sufficient to recover the costs to operate and maintain the site. [1991 c 272 § 2.]

81.108.030 Commission—Powers. (1) The commission shall have jurisdiction over the sites and site operators as set forth in this chapter.

(2)(a) The commission shall establish rates to be charged by site operators. In establishing the rates, the commission shall assure that they are fair, just, reasonable, and sufficient considering the value of the site operator's leasehold and license interests, the unique nature of its business operations, the site operator's liability associated with the site, its investment incurred over the term of its operations, and the rate of return equivalent to that earned by comparable enterprises. The rates shall only take effect following a finding that the site operator is a monopoly pursuant to RCW 81.108.100.

(b) In exercising the power in this subsection the commission may use any standard, formula, method, or theory of valuation reasonably calculated to arrive at the objective of prescribing and authorizing fair, just, reasonable, and sufficient rates. The relation of site operator expenses to site operator revenues may be deemed the proper test of a reasonable return.

(3) In all respects in which the commission has power and authority under this chapter, applications and complaints may be made and filed with it, process issued, hearings held, opinions, orders, and decisions made and filed, petitions for rehearing filed and acted upon, and petitions for review to the superior court filed therewith, appeals filed with the appellate courts of this state, considered and disposed of by said courts in the manner, under the conditions, and subject to the limitations, and with the effect specified in this title for public service companies generally.

(4) At any time after January 1, 1992, the commission may: (a) Prescribe a system of accounts for site operators using as a starting point the existing system used by site operators; (b) audit the books of site operators; (c) obtain books and records from site operators; (d) assess penalties; and (e) require semiannual reports regarding the results of operations for the site.

(5) The commission may adopt rules necessary to carry out its functions under this chapter. [1991 c 272 § 4.]

81.108.040 Rates—Initial determination—Fees. (1) On or before March 1, 1992, site operators shall file a request with the commission to establish an initial maximum disposal rate. The filing shall include, at a minimum, testimony, exhibits, workpapers, summaries, annual reports, cost stud-

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ies, proposed tariffs, and other documents as required by the commission in rate cases generally under its jurisdiction.

(2) After receipt of a request, the commission shall set the request for a hearing and require the site operator to provide for notice to all known customers that ship or deliver waste to the site. The proceedings before the commission shall be conducted in accordance with chapter 34.05 RCW and rules of procedure established by the commission.

(3) No later than January 1, 1993, the commission shall establish the initial maximum disposal rates that may be charged by site operators.

(4) In the initial rate proceeding the commission also shall determine the factors necessary to calculate the inflation, volume, and extraordinary volume adjustments.

(5) The commission also shall determine the administrative fee, which shall be a percentage or an amount that represents increased administrative costs associated with acceptance of small volumes of waste by a site operator. The administrative fee may be revised by the commission from time to time upon its own motion or upon the petition of an interested person.

(6) The rates specified in this section shall only take effect following a finding that the site operator is a monopoly pursuant to RCW 81.108.100. [1991 c 272 § 5.]

81.108.050 Maximum rates—Revisions—Waiver of provisions during state of emergency. (1) The maximum disposal rates that a site operator may charge generators shall be determined in accordance with this section. The rates shall include all charges for disposal services at the site.

(2) Initially, the maximum disposal rates shall be the initial rates established pursuant to RCW 81.108.040.

(3) Subsequently, the maximum disposal rates shall be adjusted in January of each year to incorporate inflation and volume adjustments. Such adjustments shall take effect thirty days after filing with the commission unless the commission authorizes that the adjustments take effect earlier, or the commission contests the calculation of the adjustments, in which case the commission may suspend the filing. A site operator shall provide notice to its customers concurrent with the filing.

(4)(a) Subsequently, a site operator may also file for revisions to the maximum disposal rates due to:

(i) Changes in any governmentally imposed fee, surcharge, or tax assessed on a volume or a gross revenue basis against or collected by the site operator, including site closure fees, perpetual care and maintenance fees, business and occupation taxes, site surveillance fees, leasehold excise taxes, commission regulatory fees, municipal taxes, and a tax or payment in lieu of taxes authorized by the state to compensate the county in which a site is located for that county's legitimate costs arising out of the presence of that site within that county; or

(ii) Factors outside the control of the site operator such as a material change in regulatory requirements regarding the physical operation of the site.

(b) Revisions to the maximum disposal rate shall take effect thirty days after filing with the commission unless the commission suspends the filing or authorizes the proposed adjustments to take effect earlier.

(5) Upon establishment of a contract rate pursuant to RCW 81.108.060 for a disposal fee, the site operator may not collect a disposal fee that is greater than the effective rate. The effective rate shall be in effect so long as such contract rate remains in effect. Adjustments to the maximum disposal rates may be made during the time an effective rate is in place. Contracts for disposal of extraordinary volumes pursuant to RCW 81.108.070 shall not be considered in determining the effective rate.

(6) The site operator may petition the commission for new maximum disposal rates at any time. Upon receipt of such a petition, the commission shall set the matter for hearing and shall issue an order within seven months of the filing of the petition. The petition shall be accompanied by the documents required to accompany the filing for initial rates. The hearing on the petition shall be conducted in accordance with the commission's rules of practice and procedure.

(7) This section shall only take effect following a finding that the site operator is a monopoly pursuant to RCW 81.108.100.

(8) During a state of emergency declared under RCW 43.06.010(12), the governor may waive or suspend the operation or enforcement of this section or any portion of this section or under any administrative rule, and issue any orders to facilitate the operation of state or local government or to promote and secure the safety and protection of the civilian population. [2008 c 181 § 411; 1997 c 243 § 1; 1991 c 272 § 6.]

Part headings not law—2008 c 181: See note following RCW 43.06.220.

81.108.060 Contracted disposal rates—Waiver of provisions during state of emergency. (1) At any time, a site operator may contract with any person to provide a contract disposal rate lower than the maximum disposal rate.

(2) A contract or contract amendment shall be submitted to the commission for approval at least thirty days before its effective date. The commission may approve the contract or suspend the contract and set it for hearing. If the commission takes no action within thirty days of filing, the contract or amendment shall go into effect according to its terms. Each contract filing shall be accompanied with documentation to show that the contract does not result in discrimination between generators receiving like and contemporaneous service under substantially similar circumstances and provides for the recovery of all costs associated with the provision of the service.

(3) This section shall only take effect following a finding that the site operator is a monopoly pursuant to RCW 81.108.100.

(4) During a state of emergency declared under RCW 43.06.010(12), the governor may waive or suspend the operation or enforcement of this section or any portion of this section or under any administrative rule, and issue any orders to facilitate the operation of state or local government or to promote and secure the safety and protection of the civilian population. [2008 c 181 § 412; 1991 c 272 § 7.]

Part headings not law—2008 c 181: See note following RCW 43.06.220.

81.108.070 Extraordinary volume adjustment. (1) In establishing the extraordinary volume adjustment, unless the

site operator and generator of the extraordinary volume agree to a contract disposal rate, one-half of the extraordinary volume delivery shall be priced at the maximum disposal rate and one-half shall be priced at the site operator's incremental cost to receive the delivery. Such incremental cost shall be determined in the initial rate proceeding.

(2) For purposes of the subsequent calculation of the volume adjustment, one-half of the total extraordinary volume shall be included in the calculation.

(3) This section shall only take effect following a finding that the site operator is a monopoly pursuant to RCW 81.108.100. [1991 c 272 § 8.]

81.108.080 Complaint—Hearing. (1) At any time, the commission or an interested person may file a complaint against a site operator alleging that the rates established pursuant to RCW 81.108.040 or 81.108.050 are not in conformity with the standards set forth in RCW 81.108.030 or that the site operator is otherwise not acting in conformity with the requirements of this chapter. Upon filing of the complaint, the commission shall cause a copy of the complaint to be served upon the site operator. The complaining party shall have the burden of proving that the maximum disposal rates determined pursuant to RCW 81.108.050 are not just, fair, reasonable, or sufficient. The hearing shall conform to the rules of practice and procedure of the commission for other complaint cases.

(2) The commission shall encourage alternate forms of dispute resolution to resolve disputes between a site operator and any other person regarding matters covered by this chapter. [1991 c 272 § 9.]

81.108.090 Revenue statement—Fees—Delinquent fee payments. (1) A site operator shall, on or before May 1, 1992, and each year thereafter, file with the commission a statement showing its gross operating revenue from intrastate operations for the preceding calendar year, or portion thereof, and pay to the commission a fee equal to one percent of the amount of the gross operating revenue, exclusive of site surveillance fees, perpetual care and maintenance fees, site closure fees, and state or federally imposed out-of-region surcharges.

(2) Fees collected under this chapter shall reasonably approximate the cost of supervising and regulating site operators. The commission may order a decrease in fees by March 1st of any year in which it determines that the moneys then in the radioactive waste disposal companies account of the public service revolving fund and the fees currently to be paid will exceed the reasonable cost of supervising and regulating site operators.

(3) Fees collected under this section or under any other provision of this chapter shall be paid to the commission and shall be transmitted to the state treasurer within thirty days to be deposited to the credit of the public service revolving fund.

(4) Any payment of a fee imposed by this chapter made after its due date shall include a late fee of two percent of the amount due. Delinquent fees shall accrue interest at the rate of one percent per month. [1994 c 83 § 5; 1991 c 272 § 10.]

81.108.100 Exemptions—Monopolies—Hearings—

Rates. (1) A low-level waste disposal site operator is exempt as specified in RCW 81.108.030(2)(a), 81.108.040(6), 81.108.050(7), 81.108.060(3), and 81.108.070(3) unless a monopoly situation exists with respect to the site operated by such site operator. A monopoly situation exists if either of the following is present:

(a) No disposal facility is available to Northwest compact generators of low-level radioactive waste other than the site or sites operated by such site operator or its affiliates; or

(b) Disposal rates at other sites are not reasonable alternatives for Northwest compact generators, considering: Disposal rates at other facilities; current disposal rates charged by the site operator; historic relationships between the site operator's rates and rates at other facilities; and changes in the operator's rates considering changes in waste volumes, taxes, and fees. A monopoly situation does not exist if either of the following facilities operates or is projected to operate after December 31, 1992:

(i) Any existing low-level radioactive waste disposal site outside the state of Washington, other than facilities operated by affiliates of a site operator, provided that such site or sites do not charge disposal rates that discriminate against Northwest compact generators, except to the extent, through December 31, 1994, such discrimination is authorized by amendment of current federal law.

(ii) An existing facility within the Northwest compact not receiving low-level radioactive waste offers to receive such waste under substantially similar terms and conditions.

(2) The exemption shall be in effect until such time as the commission finds, after notice and hearing, upon motion by the commission or upon petition by any interested party, that a monopoly situation exists or will exist as of January 1, 1993. The finding shall be based upon application of the criteria set forth in this section. The commission may assess a site operator for all of the commission's costs of supervision and regulation prior to and relative to determining whether the exemption applies to the site operator. If the commission determines that a site operator is not subject to the exemption, it shall collect its costs of supervision and regulation under RCW 81.108.090.

(3) When an exemption is in effect, any increase in the rates charged by the operator effective January 1, 1993, for services other than the base rate for disposal of solid material in packages of twelve cubic feet or less shall be no more than the percentage increase in the base rate in effect on January 1, 1993. [1991 c 272 § 11.]

81.108.110 Competitive companies—Exemptions—

Waiver of provisions during state of emergency. (1) At any time after this chapter has been implemented with respect to a site operator, such site operator may petition the commission to be classified as competitive. The commission may initiate classification proceedings on its own motion. The commission shall enter its final order with respect to classification within seven months from the date of filing of a company's petition or the commission's motion.

(2) The commission shall classify a site operator as a competitive company if the commission finds, after notice and hearing, that the disposal services offered are subject to competition because the company's customers have reason-

ably available alternatives. In determining whether a company is competitive, the commission's consideration shall include, but not be limited to:

(a) Whether the system of interstate compacts and regional disposal sites established by federal law has been implemented so that the Northwest compact site located near Richland, Washington is the exclusive site option for disposal by customers within the Northwest compact states;

(b) Whether waste generated outside the Northwest compact states is excluded; and

(c) The ability of alternative disposal sites to make functionally equivalent services readily available at competitive rates, terms, and conditions.

(3) The commission may reclassify a competitive site operator if reclassification would protect the public interest as set forth in this section.

(4) Competitive low-level radioactive waste disposal companies shall be exempt from commission regulation and fees during the time they are so classified.

(5) During a state of emergency declared under RCW 43.06.010(12), the governor may waive or suspend the operation or enforcement of this section or any portion of this section or under any administrative rule, and issue any orders to facilitate the operation of state or local government or to promote and secure the safety and protection of the civilian population. [2008 c 181 § 413; 1991 c 272 § 12.]

Part headings not law—2008 c 181: See note following RCW 43.06.220.

81.108.900 Construction. Nothing in this chapter shall be construed to affect the jurisdiction of another state agency. [1991 c 272 § 13.]

81.108.901 Effective dates—1991 c 272. (1) Sections 1 through 15 and 22 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions. Sections 1 through 14 and 22 of this act shall take effect July 1, 1991, and section 15 of this act shall take effect immediately [May 20, 1991].

(2) Sections 16 through 21 and 23 of this act shall take effect January 1, 1993. [1991 c 272 § 24.]

Chapter 81.112 RCW REGIONAL TRANSIT AUTHORITIES

Sections

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- 81.112.902 Effective date—1992 c 101.

Additional powers: RCW 81.104.120.

Funding sources

employer taxes: RCW 81.104.150.

sales and use taxes: RCW 81.104.170.

vehicle taxes: RCW 81.104.160.

81.112.010 Findings—Intent. The legislature recognizes that existing transportation facilities in the central Puget Sound area are inadequate to address mobility needs of the area. The geography of the region, travel demand growth, and public resistance to new roadways combine to further necessitate the rapid development of alternative modes of travel.

The legislature finds that local governments have been effective in cooperatively planning a multicounty, high capacity transportation system. However, a continued multi-jurisdictional approach to funding, construction, and operation of a multicounty high capacity transportation system may impair the successful implementation of such a system.

The legislature finds that a single agency will be more effective than several local jurisdictions working collectively at planning, developing, operating, and funding a high capacity transportation system. The single agency's services must be carefully integrated and coordinated with public transportation services currently provided. As the single agency's services are established, any public transportation services currently provided that are duplicative should be eliminated. Further, the single agency must coordinate its activities with other agencies providing local and state roadway services, implementing comprehensive planning, and implementing transportation demand management programs and assist in developing infrastructure to support high capacity systems including but not limited to feeder systems, park and ride facilities, intermodal centers, and related roadway and operational facilities. Coordination can be best achieved through common governance, such as integrated governing boards.

It is therefore the policy of the state of Washington to empower counties in the state's most populous region to create a local agency for planning and implementing a high capacity transportation system within that region. The authorization for such an agency, except as specifically provided in this chapter, is not intended to limit the powers of existing transit agencies. [1992 c 101 § 1.]

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

(1) "Authority" means a regional transit authority authorized under this chapter.

(2) "Board" means the board of a regional transit authority.

(3) "Facilities" means any lands, interest in land, air rights over lands, and improvements thereto including vessel terminals, and any equipment, vehicles, vessels, trains, stations, designated passenger waiting areas, and other components necessary to support the system.

(4) "Proof of payment" means evidence of fare prepayment authorized by a regional transit authority for the use of its facilities.

(5) "Service area" or "area" means the area included within the boundaries of a regional transit authority.

(6) "System" means a regional transit system authorized under this chapter and under the jurisdiction of a regional transit authority. [2009 c 279 § 4; 1999 c 20 § 2; 1992 c 101 § 2.]

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

Purpose—Intent—1999 c 20: See note following RCW 81.112.210.

81.112.030 Formation—Submission of ballot propositions to voters. Two or more contiguous counties each having a population of four hundred thousand persons or more may establish a regional transit authority to develop and operate a high capacity transportation system as defined in chapter 81.104 RCW.

The authority shall be formed in the following manner:

(1) The joint regional policy committee created pursuant to RCW 81.104.040 shall adopt a system and financing plan, including the definition of the service area. This action shall be completed by September 1, 1992, contingent upon satisfactory completion of the planning process defined in RCW 81.104.100. The final system plan shall be adopted no later than June 30, 1993. In addition to the requirements of RCW 81.104.100, the plan for the proposed system shall provide explicitly for a minimum portion of new tax revenues to be allocated to local transit agencies for interim express services. Upon adoption the joint regional policy committee shall immediately transmit the plan to the county legislative authorities within the adopted service area.

(2) The legislative authorities of the counties within the service area shall decide by resolution whether to participate in the authority. This action shall be completed within forty-five days following receipt of the adopted plan or by August 13, 1993, whichever comes first.

(3) Each county that chooses to participate in the authority shall appoint its board members as set forth in RCW 81.112.040 and shall submit its list of members to the secretary of the Washington state department of transportation. These actions must be completed within thirty days following each county's decision to participate in the authority.

(4) The secretary shall call the first meeting of the authority, to be held within thirty days following receipt of the appointments. At its first meeting, the authority shall elect officers and provide for the adoption of rules and other operating procedures.

(5) The authority is formally constituted at its first meeting and the board shall begin taking steps toward implementation of the system and financing plan adopted by the joint regional policy committee. If the joint regional policy committee fails to adopt a plan by June 30, 1993, the authority shall proceed to do so based on the work completed by that date by the joint regional policy committee. Upon formation of the authority, the joint regional policy committee shall cease to exist. The authority may make minor modifications to the plan as deemed necessary and shall at a minimum review local transit agencies' plans to ensure feeder service/high capacity transit service integration, ensure fare integration, and ensure avoidance of parallel competitive services. The authority shall also conduct a minimum thirty-day public comment period.

(6) If the authority determines that major modifications to the plan are necessary before the initial ballot proposition is submitted to the voters, the authority may make those modifications with a favorable vote of two-thirds of the entire membership. Any such modification shall be subject to the review process set forth in RCW 81.104.110. The modified plan shall be transmitted to the legislative authorities of the participating counties. The legislative authorities shall have forty-five days following receipt to act by motion or ordinance to confirm or rescind their continued participation in the authority.

(7) If any county opts to not participate in the authority, but two or more contiguous counties do choose to continue to participate, the authority's board shall be revised accordingly. The authority shall, within forty-five days, redefine the system and financing plan to reflect elimination of one or more counties, and submit the redefined plan to the legislative authorities of the remaining counties for their decision as to whether to continue to participate. This action shall be completed within forty-five days following receipt of the redefined plan.

(8) The authority shall place on the ballot within two years of the authority's formation, a single ballot proposition to authorize the imposition of taxes to support the implementation of an appropriate phase of the plan within its service area. In addition to the system plan requirements contained in RCW 81.104.100(2)(d), the system plan approved by the authority's board before the submittal of a proposition to the voters shall contain an equity element which:

(a) Identifies revenues anticipated to be generated by corridor and by county within the authority's boundaries;

(b) Identifies the phasing of construction and operation of high capacity system facilities, services, and benefits in each corridor. Phasing decisions should give priority to jurisdictions which have adopted transit-supportive land use plans; and

(c) Identifies the degree to which revenues generated within each county will benefit the residents of that county, and identifies when such benefits will accrue.

A simple majority of those voting within the boundaries of the authority is required for approval. If the vote is affirmative, the authority shall begin implementation of the projects identified in the proposition. However, the authority may not submit any authorizing proposition for voter-approved taxes prior to July 1, 1993; nor may the authority issue bonds or form any local improvement district prior to July 1, 1993.

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(9) If the vote on a proposition fails, the board may redefine the proposition, make changes to the authority boundaries, and make corresponding changes to the composition of the board. If the composition of the board is changed, the participating counties shall revise the membership of the board accordingly. The board may then submit the revised proposition or a different proposition to the voters. No single proposition may be submitted to the voters more than twice. Beginning no sooner than the 2007 general election, the authority may place additional propositions on the ballot to impose taxes to support additional phases of plan implementation.

(10) At the 2007 general election, the authority shall submit a proposition to support a system and financing plan or additional implementation phases of the authority's system and financing plan as part of a single ballot proposition that includes a plan to support a regional transportation investment plan developed under chapter 36.120 RCW. The authority's plan shall not be considered approved unless both a majority of the persons voting on the proposition residing within the authority vote in favor of the proposition and a majority of the persons voting on the proposition residing within the proposed regional transportation investment district vote in favor of the proposition.

(11) Additional phases of plan implementation may include a transportation subarea equity element which (a) identifies the combined authority and regional transportation investment district revenues anticipated to be generated by corridor and by county within the authority's boundaries, and (b) identifies the degree to which the combined authority and regional transportation investment district revenues generated within each county will benefit the residents of that county, and identifies when such benefits will accrue. For purposes of the transportation subarea equity principle established under this subsection, the authority may use the five subareas within the authority's boundaries as identified in the authority's system plan adopted in May 1996.

(12) If the authority is unable to achieve a positive vote on a proposition within two years from the date of the first election on a proposition, the board may, by resolution, reconstitute the authority as a single-county body. With a two-thirds vote of the entire membership of the voting members, the board may also dissolve the authority. [2007 c 509 § 3; 2006 c 311 § 12; 1994 c 44 § 1; 1993 sp.s. c 23 § 62; 1992 c 101 § 3.]

Findings—Intent—Constitutional challenges—Expedited appeals—Severability—Effective date—2007 c 509: See notes following RCW 36.120.070.

Findings—2006 c 311: See note following RCW 36.120.020.

Additional notes found at www.leg.wa.gov

81.112.040 Board appointments—Voting—Expenses. (1) The regional transit authority shall be governed by a board consisting of representatives appointed by the county executive and confirmed by the council or other legislative authority of each member county. Membership shall be based on population from that portion of each county which lies within the service area. Board members shall be appointed initially on the basis of one for each one hundred forty-five thousand population within the county. Such appointments shall be made following consultation with city and town jurisdictions within the service area. In addition, the

secretary of transportation or the secretary's designee shall serve as a member of the board and may have voting status with approval of a majority of the other members of the board. Only board members, not including alternates or designees, may cast votes.

Each member of the board, except the secretary of transportation or the secretary's designee, shall be:

(a) An elected official who serves on the legislative authority of a city or as mayor of a city within the boundaries of the authority;

(b) On the legislative authority of the county, if fifty percent of the population of the legislative official's district is within the authority boundaries; or

(c) A county executive from a member county within the authority boundaries.

When making appointments, each county executive shall ensure that representation on the board includes an elected city official representing the largest city in each county and assures proportional representation from other cities, and representation from unincorporated areas of each county within the service area. At least one-half of all appointees from each county shall serve on the governing authority of a public transportation system.

Members appointed from each county shall serve staggered four-year terms. Vacancies shall be filled by appointment for the remainder of the unexpired term of the position being vacated.

The governing board shall be reconstituted, with regard to the number of representatives from each county, on a population basis, using the official office of financial management population estimates, five years after its initial formation and, at minimum, in the year following each official federal census. The board membership may be reduced, maintained, or expanded to reflect population changes but under no circumstances may the board membership exceed twenty-five.

(2) Major decisions of the authority shall require a favorable vote of two-thirds of the entire membership of the voting members. "Major decisions" include at least the following: System plan adoption and amendment; system phasing decisions; annual budget adoption; authorization of annexations; modification of board composition; and executive director employment.

(3) Each member of the board is eligible to be reimbursed for travel expenses in accordance with RCW 43.03.050 and 43.03.060 and to receive compensation as provided in RCW 43.03.250. [1994 c 109 § 1; 1992 c 101 § 4.]

81.112.050 Area included—Elections. (1) At the time of formation, the area to be included within the boundary of the authority shall be that area set forth in the system plan adopted by the joint regional policy committee. Prior to submitting the system and financing plan to the voters, the authority may make adjustments to the boundaries as deemed appropriate but must assure that, to the extent possible, the boundaries: (a) Include the largest-population urban growth area designated by each county under chapter 36.70A RCW; and (b) follow election precinct boundaries. If a portion of any city is determined to be within the service area, the entire city must be included within the boundaries of the authority. Subsequent to formation, when territory is annexed to a city

located within the boundaries of the authority, the territory is simultaneously included within the boundaries of the authority and subject to all taxes and other liabilities and obligations applicable within the city with respect to the authority as provided in RCW 35.13.500 and 35A.14.475, subject to RCW 84.09.030 and 82.14.055, and notwithstanding any other provision of law.

(2) After voters within the authority boundaries have approved the system and financing plan, elections to add areas contiguous to the authority boundaries may be called by resolution of the regional transit authority, after consultation with affected transit agencies and with the concurrence of the legislative authority of the city or town if the area is incorporated, or with the concurrence of the county legislative authority if the area is unincorporated. Only those areas that would benefit from the services provided by the authority may be included and services or projects proposed for the area must be consistent with the regional transportation plan. The election may include a single ballot proposition providing for annexation to the authority boundaries and imposition of the taxes at rates already imposed within the authority boundaries, subject to RCW 84.09.030 and 82.14.055. [2015 3rd sp.s. c 44 § 328; 2010 c 19 § 3; 1998 c 192 § 1; 1992 c 101 § 5.]

Effective date—2015 3rd sp.s. c 44: See note following RCW 46.68.395.

81.112.060 Powers. An authority shall have the following powers:

(1) To establish offices, departments, boards, and commissions that are necessary to carry out the purposes of the authority, and to prescribe the functions, powers, and duties thereof.

(2) To appoint or provide for the appointment of, and to remove or to provide for the removal of, all officers and employees of the authority.

(3) To fix the salaries, wages, and other compensation of all officers and employees of the authority.

(4) To employ such engineering, legal, financial, or other specialized personnel as may be necessary to accomplish the purposes of the authority.

(5) To determine risks, hazards, and liabilities in order to obtain insurance consistent with these determinations. This insurance may include any types of insurance covering, and for the benefit of, one or more parties with whom the authority contracts for any purpose, and insurance for the benefit of its board members, authority officers, and employees to insure against liability for acts or omissions while performing or in good faith purporting to perform their official duties. All insurance obtained for construction of authority projects with a total project cost exceeding one hundred million dollars may be acquired by bid or by negotiation. In order to allow the authority flexibility to secure appropriate insurance by negotiation, the authority is exempt from RCW 48.30.270. [2007 c 166 § 1; 2000 2nd sp.s. c 4 § 32; 1992 c 101 § 6.]

81.112.070 General powers. In addition to the powers specifically granted by this chapter an authority shall have all powers necessary to implement a high capacity transportation system and to develop revenues for system support. An authority may contract with the United States or any agency

thereof, any state or agency thereof, any public transportation benefit area, any county, county transportation authority, city, metropolitan municipal corporation, special district, or governmental agency, within or without the state, and any private person, firm, or corporation for: (1) The purpose of receiving gifts or grants or securing loans or advances for preliminary planning and feasibility studies; (2) the design, construction, or operation of high capacity transportation system facilities; or (3) the provision or receipt of services, facilities, or property rights to provide revenues for the system. An authority shall have the power to contract pursuant to RCW 39.33.050. In addition, an authority may contract with any governmental agency or with any private person, firm, or corporation for the use by either contracting party of all or any part of the facilities, structures, lands, interests in lands, air rights over lands and rights-of-way of all kinds which are owned, leased, or held by the other party and for the purpose of planning, constructing, or operating any facility or performing any service that the authority may be authorized to operate or perform, on such terms as may be agreed upon by the contracting parties. Before any contract for the lease or operation of any authority facilities is let to any private person, firm, or corporation, a general schedule of rental rates for equipment with or without operators applicable to all private certificated carriers shall be publicly posted, and for other facilities competitive bids shall first be called upon such notice, bidder qualifications, and bid conditions as the board shall determine. This shall allow use of negotiated procurements. [1992 c 101 § 7.]

81.112.080 Additional powers—Acquisition of facilities—Disposal of property—Rates, tolls, fares, charges. An authority shall have the following powers in addition to the general powers granted by this chapter:

(1) To carry out the planning processes set forth in RCW 81.104.100;

(2) To acquire by purchase, condemnation, gift, or grant and to lease, construct, add to, improve, replace, repair, maintain, operate, and regulate the use of high capacity transportation facilities and properties within authority boundaries including surface, underground, or overhead railways, tramways, busways, buses, bus sets, entrained and linked buses, ferries, or other means of local transportation except taxis, and including escalators, moving sidewalks, personal rapid transit systems or other people-moving systems, passenger terminal and parking facilities and properties, and such other facilities and properties as may be necessary for passenger, vehicular, and vessel access to and from such people-moving systems, terminal and parking facilities and properties, together with all lands, rights-of-way, property, equipment, and accessories necessary for such high capacity transportation systems. When developing specifications for high capacity transportation system operating equipment, an authority shall take into account efforts to establish or sustain a domestic manufacturing capacity for such equipment. The right of eminent domain shall be exercised by an authority in the same manner and by the same procedure as or may be provided by law for cities of the first class, except insofar as such laws may be inconsistent with the provisions of this chapter. Public transportation facilities and properties which are owned by any city, county, county transportation authority,

public transportation benefit area, or metropolitan municipal corporation may be acquired or used by an authority only with the consent of the agency owning such facilities. Such agencies are hereby authorized to convey or lease such facilities to an authority or to contract for their joint use on such terms as may be fixed by agreement between the agency and the authority.

The facilities and properties of an authority whose vehicles will operate primarily within the rights-of-way of public streets, roads, or highways, may be acquired, developed, and operated without the corridor and design hearings that are required by *RCW 35.58.273 for mass transit facilities operating on a separate right-of-way;

(3) To dispose of any real or personal property acquired in connection with any authority function and that is no longer required for the purposes of the authority, in the same manner as provided for cities of the first class. When an authority determines that a facility or any part thereof that has been acquired from any public agency without compensation is no longer required for authority purposes, but is required by the agency from which it was acquired, the authority shall by resolution transfer it to such agency;

(4) To fix rates, tolls, fares, and charges for the use of such facilities and to establish various routes and classes of service. Fares or charges may be adjusted or eliminated for any distinguishable class of users. [1992 c 101 § 8.]

*Reviser's note: RCW 35.58.273 was repealed by 2002 c 6 § 2.

81.112.086 Maintenance plan. As a condition of receiving state funding, a regional transit authority shall submit a maintenance and preservation management plan for certification by the department of transportation. The plan must inventory all transportation system assets within the direction and control of the transit authority, and provide a plan for preservation of assets based on lowest life-cycle cost methodologies. [2006 c 334 § 28; 2003 c 363 § 306.]

Finding—Intent—2003 c 363: See note following RCW 35.84.060.

Additional notes found at www.leg.wa.gov

81.112.090 Agreements with operators of high capacity transportation services. Except in accordance with an agreement made as provided in this section, upon the date an authority begins high capacity transportation service, no person or private corporation may operate a high capacity transportation service within the authority boundary with the exception of services owned or operated by any corporation or organization solely for the purposes of the corporation or organization and for the use of which no fee or fare is charged.

The authority and any person or corporation legally operating a high capacity transportation service wholly within or partly within and partly without the authority boundary on the date an authority begins high capacity transportation service may enter into an agreement under which such person or corporation may continue to operate such service or any part thereof for such time and upon such terms and conditions as provided in such agreement. Such agreement shall provide for a periodic review of the terms and conditions contained therein. Where any such high capacity transportation service will be required to cease to operate within the authority boundary, the authority may agree with

the owner of such service to purchase the assets used in providing such service, or if no agreement can be reached, an authority shall condemn such assets in the manner and by the same procedure as is or may be provided by law for the condemnation of other properties for cities of the first class, except insofar as such laws may be inconsistent with this chapter.

Wherever a privately owned public carrier operates wholly or partly within an authority boundary, the Washington utilities and transportation commission shall continue to exercise jurisdiction over such operation as provided by law. [1992 c 101 § 9.]

81.112.100 Transfer of local government powers to authority. An authority shall have and exercise all rights with respect to the construction, acquisition, maintenance, operation, extension, alteration, repair, control and management of high capacity transportation system facilities that are identified in the system plan developed pursuant to RCW 81.104.100 that any city, county, county transportation authority, metropolitan municipal corporation, or public transportation benefit area within the authority boundary has been previously empowered to exercise and such powers shall not thereafter be exercised by such agencies without the consent of the authority. Nothing in this chapter shall restrict development, construction, or operation of a personal rapid transit system by a city or county.

An authority may adopt, in whole or in part, and may complete, modify, or terminate any planning, environmental review, or procurement processes related to the high capacity transportation system that had been commenced by a joint regional policy committee or a city, county, county transportation authority, metropolitan municipality, or public transportation benefit area prior to the formation of the authority. [1992 c 101 § 10.]

81.112.110 Acquisition of existing system—Components. If an authority acquires any existing components of a high capacity transportation system, it shall assume and observe all existing labor contracts relating to the transportation system and, to the extent necessary for operation of facilities, all of the employees of such acquired transportation system whose duties are necessary to operate efficiently the facilities acquired shall be appointed to comparable positions to those which they held at the time of such transfer, and no employee or retired or pensioned employee of such transportation systems shall be placed in any worse position with respect to pension seniority, wages, sick leave, vacation or other benefits that he or she enjoyed as an employee of the transportation system prior to such acquisition. At such times as may be required by such contracts, the authority shall engage in collective bargaining with the duly appointed representatives of any employee labor organization having existing contracts with the acquired transportation system and may enter into labor contracts with such employee labor organization. Facilities and equipment which are acquired after July 1, 1993, related to high capacity transportation services which are to be assumed by the authority as specifically identified in the adopted system plan shall be acquired by the authority in a manner consistent with RCW 81.112.070 through 81.112.100. [1992 c 101 § 11.]

81.112.120 Treasurer—Funds—Auditor—Bond.

The board of an authority, by resolution, shall designate a person having experience in financial or fiscal matters as treasurer of the authority. The board may designate, with the concurrence of the treasurer, the treasurer of a county within which the authority is located. Such a treasurer shall possess all of the powers, responsibilities, and duties the county treasurer possesses for a public transportation benefit area authority related to investing surplus authority funds. The board shall require a bond with a surety company authorized to do business in the state of Washington in an amount and under the terms and conditions the board, by resolution, from time to time finds will protect the authority against loss. The premium on any such bond shall be paid by the authority.

All authority funds shall be paid to the treasurer and shall be disbursed by the treasurer only on warrants issued by the authority upon orders or vouchers approved by the board.

The treasurer shall establish a special fund, into which shall be paid all authority funds, and the treasurer shall maintain such special accounts as may be created by the authority into which shall be placed all money as the board may, by resolution, direct.

If the treasurer of the authority is the treasurer of a county, all authority funds shall be deposited with the county depository under the same restrictions, contracts, and security as provided for county depositories. If the treasurer of the authority is some other person, all funds shall be deposited in such bank or banks authorized to do business in this state that have qualified for insured deposits under any federal deposit insurance act as the board, by resolution, shall designate.

The authority may by resolution designate a person having experience in financial or fiscal matters, as the auditor of the authority. Such auditor shall possess all of the powers, responsibilities, and duties related to creating and maintaining funds, issuing warrants, and maintaining a record of receipts and disbursements.

The board may provide and require a reasonable bond of any other person handling moneys or securities of the authority, but the authority shall pay the premium on the bond. [1992 c 101 § 12.]

81.112.130 General obligation bonds. Notwithstanding RCW 39.36.020(1), an authority may at any time contract indebtedness or borrow money for authority purposes and may issue general obligation bonds in an amount not exceeding, together with any existing indebtedness of the authority not authorized by the voters, one and one-half percent of the value of the taxable property within the boundaries of the authority; and with the assent of three-fifths of the voters therein voting at an election called for that purpose, may contract indebtedness or borrow money for authority purposes and may issue general obligation bonds therefor, provided the total indebtedness of the authority shall not exceed five percent of the value of the taxable property therein. Such bonds shall be issued and sold in accordance with chapter 39.46 RCW.

The term "value of the taxable property" shall have the meaning set forth in RCW 39.36.015. [1992 c 101 § 13.]

81.112.140 Revenue bonds. (1) An authority may issue revenue bonds to provide funds to carry out its authorized

functions without submitting the matter to the voters of the authority. The authority shall create a special fund or funds for the sole purpose of paying the principal of and interest on the bonds of each such issue, into which fund or funds the authority may obligate itself to pay such amounts of the gross revenue of the high capacity transportation system constructed, acquired, improved, added to, or repaired out of the proceeds of sale of such bonds, as the authority shall determine and may obligate the authority to pay such amounts out of otherwise unpledged revenue that may be derived from the ownership, use, or operation of properties or facilities owned, used, or operated incident to the performance of the authorized function for which such bonds are issued or out of otherwise unpledged fees, tolls, charges, tariffs, fares, rentals, special taxes, or other sources of payment lawfully authorized for such purpose, as the authority shall determine. The principal of, and interest on, such bonds shall be payable only out of such special fund or funds, and the owners of such bonds shall have a lien and charge against the gross revenue of such high capacity transportation system or any other revenue, fees, tolls, charges, tariffs, fares, special taxes, or other authorized sources pledged to the payment of such bonds.

Such revenue bonds and the interest thereon issued against such fund or funds shall be a valid claim of the owners thereof only as against such fund or funds and the revenue pledged therefor, and shall not constitute a general indebtedness of the authority.

(2) Notwithstanding subsection (1) of this section, such bonds may be issued and sold in accordance with chapter 39.46 RCW. [1992 c 101 § 14.]

81.112.150 Local improvement districts authorized—Special assessment bonds. (1) An authority may form a local improvement district to provide any transportation improvement it has the authority to provide, impose special assessments on all property specially benefited by the transportation improvements, and issue special assessment bonds or revenue bonds to fund the costs of the transportation improvement. Local improvement districts shall be created and assessments shall be made and collected pursuant to chapters 35.43, 35.44, 35.49, 35.50, 35.51, 35.53, and 35.54 RCW.

(2) The board shall by resolution establish for each special assessment bond issue the amount, date, terms, conditions, denominations, maximum fixed or variable interest rate or rates, maturity or maturities, redemption rights, registration privileges, if any, covenants, and form, including registration as to principal and interest, registration as to principal only, or bearer. Registration may include, but not be limited to: (a) A book entry system of recording the ownership of a bond whether or not physical bonds are issued; or (b) recording the ownership of a bond together with the requirement that the transfer of ownership may only be effected by the surrender of the old bond and either the reissuance of the old bond or the issuance of a new bond to the new owner. Facsimile signatures may be used on the bonds and any coupons. The maximum term of any special assessment bonds shall not exceed thirty years beyond the date of issue. Special assessment bonds issued pursuant to this section shall not be an indebtedness of the authority issuing the bonds, and the interest and principal on the bonds shall only be payable from spe-

cial assessments made for the improvement for which the bonds were issued and any local improvement guaranty fund that the authority has created. The owner or bearer of a special assessment bond or any interest coupon issued pursuant to this section shall not have any claim against the authority arising from the bond or coupon except for the payment from special assessments made for the improvement for which the bonds were issued and any local improvement guaranty fund the authority has created. The authority issuing the special assessment bonds is not liable to the owner or bearer of any special assessment bond or any interest coupon issued pursuant to this section for any loss occurring in the lawful operation of its local improvement guaranty fund. The substance of the limitations included in this subsection shall be plainly printed, written, or engraved on each special assessment bond issued pursuant to this section.

(3) Assessments shall reflect any credits given by the authority for real property or property right donations made pursuant to RCW 47.14.030.

(4) The board may establish and pay moneys into a local improvement guaranty fund to guarantee special assessment bonds issued by the authority. [1992 c 101 § 15.]

81.112.160 County assessor's duties. It shall be the duty of the assessor of each component county to certify annually to a regional transit authority the aggregate assessed valuation of all taxable property within the boundaries of the authority as the same appears from the last assessment roll of the county. [1992 c 101 § 16.]

81.112.170 Interim financing. A regional transit authority may apply for *high capacity transportation account funds and for central Puget Sound account funds for high capacity transit planning and system development.

Transit agencies contained wholly or partly within a regional transit authority may make grants or loans to the authority for high capacity transportation planning and system development. [1992 c 101 § 17.]

*Reviser's note: RCW 47.78.010, the high capacity transportation account, was repealed by 2017 3rd sp.s. c 25 § 39.

81.112.180 Rail fixed guideway public transportation system—Safety program plan and security and emergency preparedness plan. (1) Each regional transit authority that owns or operates a rail fixed guideway public transportation system as defined in RCW 81.104.015 shall submit a system safety program plan and a system security and emergency preparedness plan for that guideway to the state department of transportation by September 1, 1999, or at least one hundred eighty calendar days before beginning operations or instituting significant revisions to its plans. These plans must describe the authority's procedures for (a) reporting and investigating any reportable incident, accident, or security breach and identifying and resolving hazards or security vulnerabilities discovered during planning, design, construction, testing, or operations, (b) developing and submitting corrective action plans and annual safety and security audit reports, (c) facilitating on-site safety and security reviews by the state department of transportation and the federal transit administration, and (d) addressing passenger and employee safety and security. The plans must, at a minimum, conform to the

standards adopted by the state department of transportation as set forth in the most current version of the Washington state rail safety oversight program standard manual as it exists on March 25, 2016, or such subsequent date as may be provided by the department by rule, consistent with the purposes of this section. If required by the department, the regional transit authority shall revise its plans to incorporate the department's review comments within sixty days after their receipt, and resubmit its revised plans for review.

(2) Each regional transit authority shall implement and comply with its system safety program plan and system security and emergency preparedness plan. The regional transit authority shall perform internal safety and security audits to evaluate its compliance with the plans, and submit its audit schedule to the department of transportation pursuant to the requirements in the most current version of the Washington state rail safety oversight program standard manual as it exists on March 25, 2016, or such subsequent date as may be provided by the department by rule, consistent with the purposes of this section. The regional transit authority shall prepare an annual report for its internal safety and security audits undertaken in the prior year and submit it to the department no later than February 15th. The department shall establish the requirements for the annual report. The contents of the annual report must include, at a minimum, the dates the audits were conducted, the scope of the audit activity, the audit findings and recommendations, the status of any corrective actions taken as a result of the audit activity, and the results of each audit in terms of the adequacy and effectiveness of the plans.

(3) Each regional transit authority shall notify the department of transportation, pursuant to the most current version of the Washington state rail safety oversight program standard manual as it exists on March 25, 2016, or such subsequent date as may be provided by the department by rule, consistent with the purposes of this section, any reportable incident, accident, security breach, hazard, or security vulnerability. The department may adopt rules further defining any reportable incident, accident, security breach, hazard, or security vulnerability. The regional transit authority shall investigate any reportable incident, accident, security breach, hazard, or security vulnerability and provide a written investigation report to the department as described in the most current version of the Washington state rail safety oversight program standard manual as it exists on March 25, 2016, or such subsequent date as may be provided by the department by rule, consistent with the purposes of this section.

(4) The system security and emergency preparedness plan required in subsection (1) of this section is exempt from public disclosure under chapter 42.56 RCW. However, the system safety program plan as described in this section is not subject to this exemption. [2016 c 33 § 1; 2007 c 422 § 6; 2005 c 274 § 360; 1999 c 202 § 6.]

Effective date—2016 c 33: See note following RCW 81.104.115.

Additional notes found at www.leg.wa.gov

81.112.190 Requirements for signage. Each authority shall incorporate in plans for stations along any light-rail facility signing that is easily understood by the traveling public, including, but not limited to, persons with disabilities, non-English-speaking persons, and visitors from other

nations. The signage must employ graphics consistent with international symbols for transportation facilities and signage that are consistent with department of transportation guidelines and programs. The signage must also use distinguishing symbols or pictograms developed by the authority as a means to identify stations and may identify points of interest along the corridor for persons who use languages that are not Roman-alphabet based. These requirements are intended to apply to new sign installation and not to existing signs, installed before July 24, 2005. The authority may replace existing signs as it chooses; however, it shall use the new signing designs when existing signs are replaced. All signage must comply with requirements of applicable federal law and may include recommendations contained in federal publications providing directions on way-finding for persons with disabilities. [2005 c 19 § 3.]

Intent—Findings—2005 c 19: See note following RCW 35.95A.140.

81.112.210 Fare payment—Fines and penalties established—Enforcement. (1) An authority is authorized to establish, by resolution, a schedule of fines and penalties for civil infractions established in RCW 81.112.220. Fines established by an authority shall not exceed those imposed for class 1 infractions under RCW 7.80.120.

(2)(a) An authority may designate persons to monitor fare payment who are equivalent to and are authorized to exercise all the powers of an enforcement officer, defined in RCW 7.80.040. An authority is authorized to employ personnel to either monitor fare payment, or to contract for such services, or both.

(b) In addition to the specific powers granted to enforcement officers under RCW 7.80.050 and 7.80.060, persons designated to monitor fare payment also have the authority to take the following actions:

- (i) Request proof of payment from passengers;
- (ii) Request personal identification from a passenger who does not produce proof of payment when requested;
- (iii)(A) Issue a notice of infraction for a civil infraction established in RCW 81.112.220.

(B) The notice of infraction form to be used for violations under this subsection must be approved by the administrative office of the courts and must not include vehicle information; and

(iv) Request that a passenger leave the authority facility when the passenger has not produced proof of payment after being asked to do so by a person designated to monitor fare payment.

(3) Authorities shall keep records of citations in the manner prescribed by RCW 7.80.150. All civil infractions established by chapter 20, Laws of 1999 shall be heard and determined by a district or municipal court as provided in RCW 7.80.010 (1), (2), and (4). [2015 3rd sp.s. c 44 § 330; 2014 c 153 § 1; 2009 c 279 § 5; 1999 c 20 § 3.]

Effective date—2015 3rd sp.s. c 44: See note following RCW 46.68.395.

Purpose—Intent—1999 c 20: "The purpose of this act is to facilitate ease of boarding of commuter trains and light rail trains operated by regional transit authorities by allowing for barrier free entry ways. This act provides regional transit authorities with the power to require proof of payment; to set a schedule of fines and penalties not to exceed those classified as class 1 infractions under RCW 7.80.120; to employ individuals to monitor fare payment or contract for such services; to issue citations for fare nonpayment or

related activities; and to keep records regarding citations issued for the purpose of tracking violations and issuing citations consistent with established schedules. This act is intended to be consistent with and implemented pursuant to chapter 7.80 RCW with regard to civil infractions, the issuance of citations, and the maintenance of citation records." [1999 c 20 § 1.]

81.112.220 Fare payment—Proof of payment—Civil infractions. (1) Persons traveling on facilities operated by an authority shall pay the fare established by the authority and shall produce proof of payment in accordance with the terms of use established by the authority. Such persons shall produce proof of payment when requested by a person designated to monitor fare payment. The required manner of producing proof of payment specified in the terms of use established by the authority may include, but is not limited to, requiring a person using an electronic fare payment card to validate the card by presenting the card to an electronic card reader before or upon entering a public transportation vehicle or a restricted fare paid area.

(2) The following constitute civil infractions punishable according to the schedule of fines and penalties established by the authority under RCW 81.112.210(1):

(a) Failure to pay the required fare, except when the authority fails to meet the requirements of subsection (3) of this section;

(b) Failure to produce proof of payment in the manner required by the terms of use established by the authority including, but not limited to, the failure to produce a validated fare payment card when requested to do so by a person designated to monitor fare payment; and

(c) Failure to depart the facility when requested to do so by a person designated to monitor fare payment.

(3) If fare payment is required before entering a transit vehicle, as defined in RCW 9.91.025(2)(b), or before entering a fare paid area in a transit facility, as defined in RCW 9.91.025(2)(a), signage must be conspicuously posted at the place of boarding or within ten feet of the nearest entrance to a transit facility that clearly indicates: (a) The locations where tickets or fare media may be purchased; and (b) that a person using an electronic fare payment card must present the card to an electronic card reader before entering a transit vehicle or before entering a restricted fare paid area. [2012 c 68 § 3; 2009 c 279 § 6; 1999 c 20 § 4.]

Purpose—Intent—1999 c 20: See note following RCW 81.112.210.

81.112.230 Fare payment—Prosecution for theft, trespass, or other charges. Nothing in RCW 81.112.020 and 81.112.210 through 81.112.230 shall be deemed to prevent law enforcement authorities from prosecuting for theft, trespass, or other charges by any individual who:

(1) Fails to pay the required fare on more than one occasion within a twelve-month period;

(2) Fails to timely select one of the options for responding to the notice of civil infraction after receiving a statement of the options provided in this chapter for responding to the notice of infraction and the procedures necessary to exercise these options; or

(3) Fails to depart the facility when requested to do so by a person designated to monitor fare payment. [2009 c 279 § 7; 2006 c 270 § 12; 1999 c 20 § 5.]

Purpose—Intent—1999 c 20: See note following RCW 81.112.210.

(2018 Ed.)

81.112.235 Power conferred is supplemental. The powers and authority conferred by RCW 81.112.210 through 81.112.230 are in addition and supplemental to powers or authority conferred by any other law. RCW 81.112.210 through 81.112.230 do not limit any other powers or authority of a regional transit authority. [2009 c 279 § 8.]

81.112.300 Sale and leaseback, similar transactions—Authorized. (1) In order to enable regional transit authorities to acquire or finance equipment or facilities, or reduce the cost of equipment or facilities, regional transit authorities may enter into sale and leaseback, leaseout and leaseback, and other similar transactions with respect to equipment, facilities, and other real and personal property. In connection with any such transaction, a regional transit authority may execute, as it considers appropriate, contracts, agreements, notes, security agreements, conveyances, bills of sale, deeds, leases as lessee or lessor, and currency hedges, defeasance arrangements, interest rate, currency or other swap transactions, one or more payment undertaking agreements, and agreements relating to foreign and domestic currency. These agreements or instruments must have terms, maturities, durations, provisions as to governing laws, grants of security interests, and other provisions that are approved by the board of the regional transit authority.

(2) "Payment undertaking agreement" means one or more agreements, undertakings or arrangements under which all or a portion of the funds generated by a sale and leaseback, leaseout and leaseback, or other similar transaction are directed or paid over to a financial institution, insurance company, or other entity that agrees to meet or fulfill, in consideration for the funds, some or all of the obligations of the regional transit authority, or any public corporation or other entity created under RCW 81.112.320, to make future rent, debt service, or purchase price installment payments in connection with the transaction. [2000 2nd sp.s. c 4 § 18.]

Findings—2000 2nd sp.s. c 4 §§ 18-30: "The legislature finds that additional funds or other benefits can be made available to Washington regional transit authorities by facilitating their entry into sale and leaseback, leaseout and leaseback, and similar transactions that provide to private parties, in consideration for the funds or other benefits obtained by the regional transit authorities, tax benefits that are not otherwise available to regional transit authorities. The legislature further finds that such transactions have been encouraged by agencies of the federal government as ways to provide additional funds for public facilities. To facilitate such transactions for regional transit authorities, the legislature has determined that while regional transit authorities may currently have the necessary statutory authority and may currently enjoy exemptions from Washington state taxes for such transactions, an explicit statement of statutory authority and exemption from Washington state taxes is necessary and helpful for the parties to such transactions. In recognition of the complexity of such transactions, the legislature desires that the authority and exemptions provided by RCW 81.112.300, 81.112.310, 81.112.320, 82.08.834, 82.12.834, 82.04.050, 82.04.4201, 82.29A.134, 82.45.010, 84.36.605, 35.21.756, 35.21.755, and 81.112.330 be subject to certain limitations and be granted for a period as specified in RCW 81.112.330." [2000 2nd sp.s. c 4 § 17.]

Additional notes found at www.leg.wa.gov

81.112.310 Sale and leaseback—Conditions. Transactions undertaken under RCW 81.112.300 are subject to the following conditions:

(1) The financial institution, insurance company, or other entity that enters into a payment undertaking agreement with the regional transit authority or public development corporation or entity created under RCW 81.112.320 as a coun-

terparty must have a rating from at least two nationally recognized credit rating agencies, as of the date of execution of the payment undertaking agreement, that is within the two highest long-term investment grade rating categories, without regard to subcategories, or the obligations of the counterparty must be guaranteed by a financial institution, insurance company, or other entity with that credit rating. The payment undertaking agreement must require that the obligations of the counterparty or the guarantor, as the case may be, must be collateralized by collateral of a type and in an amount specified by the governing body of the regional transit authority if the credit ratings of the counterparty or its guarantor fall below the level required by this subsection.

(2) The amount to be paid by the counterparties under payment undertaking agreements for a transaction under the terms of the agreements, when combined with the amount of securities, deposits, and investments set aside by the regional transit authority for payment in respect of the transactions, together with interest or other earnings on the securities, deposits, or investments, must be sufficient to pay when due all amounts required to be paid by the regional transit authority, or public corporation or entity created under RCW 81.112.320, as rent, debt service, or installments of purchase price, as the case may be, over the full term of the transaction plus any optional purchase price due under the transaction. A certification by an independent financial expert, banker, or certified public accountant, who is not an employee of the regional transit authority or public corporation or entity created under RCW 81.112.320, certifying compliance with this requirement is conclusive evidence that the arrangements, by their terms, comply with the requirement under this subsection on the sufficiency of the amount.

(3) The payment undertaking agreements, and all other basic and material agreements entered into in connection with the transactions, must specify that the parties to the agreements consent to the jurisdiction of state courts of Washington for disputes arising out of the agreements and agree not to contest venue before such courts. Regardless of the choice of law specified in the foregoing agreements, the agreements must acknowledge that the regional transit authority or public development corporation or entity created under RCW 81.112.320 that is a party to the agreements is an entity created under the laws of the state of Washington whose power and authority and limitations and restrictions on the power and authority are governed by the laws of the state of Washington.

Payment undertaking agreements that meet the foregoing requirement must be treated for all relevant purposes as agreements under which future services are performed for a present payment and shall not be treated as payment agreements within the meaning of chapter 39.96 RCW. [2000 2nd sp.s. c 4 § 19.]

Findings—Construction—2000 2nd sp.s. c 4 §§ 18-30: See notes following RCW 81.112.300.

81.112.320 Sale and leaseback—Creation of public entity. To accomplish any of the activities under RCW 81.112.300, a regional transit authority may create a public corporation, commission, or authority under RCW 35.21.730 through 35.21.755, and authorize the corporation, commission, or authority to provide any of the facilities and services

that a regional transit authority may provide including any activities under RCW 81.112.300. A regional transit authority has all the powers, authorities, and rights granted to any city, town, or county or their agents under RCW 35.21.730 through 35.21.755 for the purposes of entering into and implementing transactions under RCW 81.112.300. [2000 2nd sp.s. c 4 § 20.]

Findings—Construction—2000 2nd sp.s. c 4 §§ 18-30: See notes following RCW 81.112.300.

Additional notes found at www.leg.wa.gov

81.112.330 Sale and leaseback—Restrictions, requirements. (1) Except as provided in subsection (3) of this section, no regional transit authority may initiate a transaction authorized under RCW 81.112.300 after June 30, 2007.

(2) The termination of authority to enter into transactions after June 30, 2007, does not affect the validity of any transactions entered into under RCW 81.112.300.

(3) A regional transit authority may enter into a transaction in accordance with RCW 81.112.300 after June 30, 2007, to replace or refinance a transaction that relates to specific obligations entered into on or before that date and that has terminated, or is, under the terms of the replacement or refinance, to terminate, before the final stated term of that transaction. The exemptions from taxes provided by RCW 82.08.834, 82.12.834, 82.04.4201, 82.29A.134, 82.36.605 [84.36.605], 35.21.756, 82.04.050, 82.45.010, and 35.21.755 apply to the replacement or refinance transactions.

(4) A regional transit authority, or public corporation or entity created under RCW 81.112.320, that undertakes a transaction authorized by RCW 81.112.300, shall provide to the state finance committee, or its financial advisor, at the state finance committee's discretion, a copy of all material agreements executed in connection with the transaction within three months of the closing of the transaction and shall make a report to the state finance committee, the president of the senate, and the speaker of the house of representatives on transactions authorized by RCW 81.112.300. The report must include the amount of the transactions, the expected savings or losses resulting from the transactions, the transaction costs, including fees and detailed pricing information, the risks associated with the transaction, and any other information the regional transit authority determines relevant. The report must be submitted within six months of the closing of each transaction. [2000 2nd sp.s. c 4 § 30.]

Findings—Construction—2000 2nd sp.s. c 4 §§ 18-30: See notes following RCW 81.112.300.

81.112.340 Supplemental transportation improvements. If the legislative authority of a city provides or contracts for supplemental transportation improvements, as described in RCW 35.21.925 or under chapter 36.73 RCW, a regional transit authority serving the city or border jurisdictions shall coordinate its services with the supplemental transportation improvements to maximize efficiencies in public transportation services within and across service boundaries. [2010 c 251 § 6.]

81.112.350 Transit-oriented development strategy system plan—Requirements—Definitions—Quarterly

reports. (1) A regional transit authority that includes a county with a population of more than one million five hundred thousand must develop and seek voter approval for a system plan, which meets the requirements of any transportation subarea equity element used by the authority, to implement a regional equitable transit-oriented development strategy for diverse, vibrant, mixed-use and mixed-income communities consistent with transit-oriented development plans developed with community input by any regional transportation planning organization within the regional transit authority boundaries. This system plan, which must be part of any authorizing proposition submitted to the voters after July 15, 2015, must include the following:

(a) The regional transit authority must contribute at least four million dollars each year for five consecutive years beginning within three years of voter approval of the system plan to a revolving loan fund to support the development of affordable housing opportunities related to equitable transit-oriented development within the boundaries of the regional transit authority.

(b)(i) A requirement that when a regional transit authority disposes or transfers any surplus property, including, but not limited to, property acquired prior to July 15, 2015, a minimum of eighty percent of the surplus property to be disposed or transferred, including air rights, that is suitable for development as housing, must be offered for either transfer at no cost, sale, or long-term lease first to qualified entities that agree to develop affordable housing on the property, consistent with local land use and zoning laws.

(ii)(A) If a qualified entity receives surplus property from a regional transit authority after being offered the property as provided in (b)(i) of this subsection, the authority must require a minimum of eighty percent of the housing units constructed on property obtained under (b)(i) of this subsection to be dedicated to affordable housing.

(B) If a qualified entity sells property or development rights obtained through (b)(i) of this subsection, it must use the proceeds from the sale to construct affordable housing within one-half mile of a light rail station or transit station.

(c) A requirement that the regional transit authority must work in good faith to implement all requirements of this section, but is not required to comply with a requirement imposed by (b)(i) or (ii) of this subsection if the requirement is in conflict, as determined by the relevant federal agency, with provisions of the applicable federal transit administration master grant agreement, federal transit administration full funding grant agreement with the regional transit authority, or the equivalent federal railroad administration agreement necessary to establish or maintain eligibility for a federal grant program.

(d) A requirement that (b) of this subsection does not apply to property to be transferred to governments or third parties in order to facilitate permitting, construction, or mitigation of high capacity transportation facilities and services.

(2) For the purposes of this section:

(a) "Affordable housing" means long-term housing for persons, families, or unrelated persons living together whose adjusted income is at or below eighty percent of the median income, adjusted for household size, for the county where the housing is located.

(2018 Ed.)

(b) "Qualified entity" means a local government, housing authority, and nonprofit developer.

(3) A regional transit authority implementing subsection (1)(b) of this section must, at the end of each fiscal quarter, send a report to the appropriate committees of the legislature and post a report on its web site detailing the following activities:

(a) Any transfers of property that have occurred in the previous fiscal quarter pursuant to subsection (1)(b) of this section; and

(b) Any progress in implementing any regional equitable transit-oriented development strategy for diverse, vibrant, mixed-use and mixed-income communities approved by the voters pursuant to this section. [2015 3rd sp.s. c 44 § 329.]

Reviser's note: This section was directed to be codified in chapter 81.104 RCW, but placement in chapter 81.112 RCW appears to be more appropriate.

Effective date—2015 3rd sp.s. c 44: See note following RCW 46.68.395.

81.112.360 Sales and use tax offset fee. (1) Beginning January 1, 2017, and until the requirements in subsection (4) of this section are met, a regional transit authority must pay to the department of revenue, for deposit into the Puget Sound taxpayer accountability account, a sales and use tax offset fee.

(2) A sales and use tax offset fee is three and twenty-five one-hundredths percent of the total payments made by the regional transit authority to construction contractors on construction contracts that are (a) for new projects identified in the system plan funded by any proposition approved by voters after January 1, 2015, and (b) excluded from the definition of retail sale under RCW 82.04.050(10).

(3) Fees are due monthly by the twenty-fifth day of the month, with respect to payments made to construction contractors during the previous month.

(4) A sales and use tax offset fee is due until the regional transit authority has paid five hundred eighteen million dollars.

(5) Except as otherwise provided in this section, the provisions of chapter 82.32 RCW apply to this section.

(6) The department of revenue must oversee the collection of the sales and use tax offset fee and may adopt rules necessary to implement this section. [2015 3rd sp.s. c 44 § 422.]

Effective date—2015 3rd sp.s. c 44: See note following RCW 46.68.395.

81.112.900 Section headings not part of law—1992 c 101. Section headings as used in this act do not constitute any part of the law. [1992 c 101 § 33.]

81.112.902 Effective date—1992 c 101. This act shall take effect July 1, 1992. [1992 c 101 § 35.]

Chapter 81.116 RCW MARINE PILOTAGE TARIFFS

Sections

81.116.010	Definitions.
81.116.020	Pilotage services—Tariffs—Commission shall establish—Duties.

- 81.116.030 Filing of revised tariff—Requirements—Notice of petition—Effective date—Burden of proof.
 81.116.040 Dispute resolution.
 81.116.050 Tariffs established shall remain in effect.
 81.116.060 Costs for setting of tariff rates.
 81.116.900 Implementation—2018 c 107.

81.116.010 Definitions. (Effective July 1, 2019.) The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

- (1) "Board" means the board of pilotage commissioners.
- (2) "Commission" means the utilities and transportation commission.
- (3) "Person with a substantial interest" means: (a) A pilot or group of pilots licensed under chapter 88.16 RCW; (b) a vessel operator or other person utilizing the services of a licensed pilot and paying pilotage fees and charges for such services or an organization representing such vessel operators or persons; and (c) any other person or business that can show that the requested tariff changes would be likely to have a substantial economic impact on its operations. [2018 c 107 § 7.]

Effective date—2018 c 107: See note following RCW 88.16.055.

81.116.020 Pilotage services—Tariffs—Commission shall establish—Duties. (Effective July 1, 2019.) (1) The commission shall establish in tariffs the rates for pilotage services provided under chapter 88.16 RCW.

(2) The commission shall maintain a list of persons who have indicated to the commission a desire to be notified of any potential change in pilotage tariffs and in any proposed rules regarding the setting of pilotage tariffs.

(3) The commission shall ensure that the tariffs provide rates that are fair, just, reasonable, and sufficient for the provision of pilotage services.

(4) In setting tariffs, the commission may fix extra compensation for extra services to vessels in distress, for awaiting vessels, for all vessels in direct transit to or from a Canadian port where Puget Sound pilotage is required for a portion of the voyage, or for being carried to sea on vessels against the will of the pilot, and for such other services as may be determined by the board. In setting tariffs, the commission must include a tariff surcharge to fund the stipend the board of pilotage commissioners is authorized to pay to pilot trainees and to use in its pilot training program under RCW 88.16.035. As an element of the Puget Sound pilotage district tariff, the commission may consider pilot retirement expenses incurred in the prior year in the Puget Sound pilotage district. However, under no circumstances shall the state be obligated to fund or pay for any portion of retirement payments for pilots or retired pilots.

(5) In exercising duties under this section, the commission may:

- (a) Request assistance from the board;
- (b) Assign an administrative law judge to handle the proceeding and prepare an initial order, which the commission may review pursuant to RCW 34.05.464, or assign an administrative law judge as a facilitator for settlement purposes; and
- (c) Adopt rules or issue orders to implement the provisions of chapter 107, Laws of 2018. [2018 c 107 § 8.]

Effective date—2018 c 107: See note following RCW 88.16.055.

81.116.030 Filing of revised tariff—Requirements—Notice of petition—Effective date—Burden of proof. (Effective July 1, 2019.) (1) Any person with a substantial interest may file with the commission a revised tariff with an effective date no earlier than thirty days from the date of filing and no earlier than one year following the effective date the tariffs in effect at the time of filing were established.

(2) The proposed tariff must be accompanied by:

- (a) The names and contact information of the person or persons requesting the tariff revision;
- (b) A description of why the existing tariffs are not fair, just, reasonable, and sufficient, along with financial information to demonstrate a need for the tariff revision and information addressing the criteria for approval of tariff revisions set forth in RCW 81.116.020(3);

(c) If the petitioner proposes a tariff with an annual or periodic adjustment mechanism, information justifying such a mechanism; and

(d) Any other information required by the commission by rule or by order.

(3) After receipt of a proper petition, the commission shall give notice of the petition to interested persons that have stated a desire to be notified pursuant to RCW 81.116.020(2). Any person with a substantial interest in the proposed tariff revision may submit comments in support or opposition of the petition within twenty days of the notice.

(4) The filed tariff shall take effect on its stated effective date unless, within thirty days of filing of the tariff, the commission suspends it. The commission may suspend the tariff for a period not exceeding ten months from the time the change would otherwise go into effect. During that time, the commission may set the matter for a hearing pursuant to chapter 34.05 RCW or set the matter for consideration at a subsequent open public meeting.

(5) The burden of proof to show that the tariff rates are not fair, just, reasonable, and sufficient is upon the person with a substantial interest that files the revised tariff. [2018 c 107 § 9.]

Effective date—2018 c 107: See note following RCW 88.16.055.

81.116.040 Dispute resolution. (Effective July 1, 2019.) The commission shall encourage alternative forms of dispute resolution to resolve disputes between an association or group of pilots and any other person regarding matters covered by this chapter. [2018 c 107 § 10.]

Effective date—2018 c 107: See note following RCW 88.16.055.

81.116.050 Tariffs established shall remain in effect. (Effective July 1, 2019.) The tariffs established by the board prior to July 1, 2019, shall remain in effect and be deemed pilotage tariffs set by the commission until such time as they are changed by the commission pursuant to this chapter. [2018 c 107 § 11.]

Effective date—2018 c 107: See note following RCW 88.16.055.

81.116.060 Costs for setting of tariff rates. (Effective July 1, 2019.) The commission may include as part of the tariff for pilotage services provided under chapter 88.16 RCW reasonable costs for the setting of tariff rates under this chapter. The costs of the commission included as part of the

tariff must be appropriated from the pilotage account in RCW 88.16.061. [2018 c 107 § 12.]

Effective date—2018 c 107: See note following RCW 88.16.055.

81.116.900 Implementation—2018 c 107. To ensure that this act is implemented in a timely manner, the utilities and transportation commission may adopt rules under RCW 81.116.020 prior to July 1, 2019, and may accept tariff filings from a person with a substantial interest beginning thirty days after the effective date of these adopted rules. The utilities and transportation commission must suspend a tariff filing made before July 1, 2019, within thirty days of receipt of the filing. Any tariff filings made under this section may not take effect until after June 30, 2019. [2018 c 107 § 15.]

Chapter 81.900 RCW CONSTRUCTION

Sections

- 81.900.010 Continuation of existing law.
- 81.900.020 Title, chapter, section headings not part of law.
- 81.900.030 Invalidity of part of title not to affect remainder.
- 81.900.040 Repeals and saving.
- 81.900.050 Emergency—1961 c 14.

81.900.010 Continuation of existing law. The provisions of this title insofar as they are substantially the same as statutory provisions repealed by this chapter, and relating to the same subject matter, shall be construed as restatements and continuations, and not as new enactments. [1961 c 14 § 81.98.010. Formerly RCW 81.98.010.]

81.900.020 Title, chapter, section headings not part of law. Title headings, chapter headings, and section or subsection headings, as used in this title do not constitute any part of the law. [1961 c 14 § 81.98.020. Formerly RCW 81.98.020.]

81.900.030 Invalidity of part of title not to affect remainder. If any provision of this title, or its application to any person or circumstance is held invalid, the remainder of the title, or the application of the provision to other persons or circumstances is not affected. [1961 c 14 § 81.98.030. Formerly RCW 81.98.030.]

81.900.040 Repeals and saving. See 1961 c 14 s 81.98.040. Formerly RCW 81.98.040.

81.900.050 Emergency—1961 c 14. This act is necessary for the immediate preservation of the public peace, health and safety, the support of the state government and its existing public institutions, and shall take effect immediately. [1961 c 14 § 81.98.050. Formerly RCW 81.98.050.]

