

The board of county commissioners shall also at said hearing, levy, in the manner hereinafter provided for the levy of maintenance assessments, such assessment as they shall deem necessary to provide funds for the maintenance of the system of improvement until the first annual assessment for maintenance shall fall due.

EXPLANATORY NOTE: RCW 85.08.350 was decodified. The reference to this section has been amended to refer to RCW 85.08.340 which contains the session law contents of the decodified section.

Sec. 231. Section 2, chapter 125, Laws of 1975 1st ex. sess. and RCW 88.16.180 are each amended to read as follows:

Notwithstanding the provisions of RCW 88.16.070, any oil tanker, whether enrolled or registered, of fifty thousand deadweight tons or greater, shall be required to take a Washington state licensed pilot while navigating Puget Sound and adjacent waters and shall be liable for and pay pilotage rates pursuant to RCW (~~88.16.030 as now or hereafter amended~~) 88.16.035.

EXPLANATORY NOTE: RCW 88.16.030 was repealed by 1977 ex.s. c 337 § 17. The reference to this section has been amended to refer to a later enactment, RCW 88.16.035, which contains the substance of the repealed section. The phrase "as now or hereafter amended" is not needed because of the enactment of RCW 1.12.028 and has therefore been deleted.

Passed the Senate January 18, 1983.

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CHAPTER 4

[Senate Bill No. 3038]

UTILITIES AND TRANSPORTATION COMMISSION—OBSOLETE REFERENCES CORRECTED

AN ACT Relating to state government; amending section 2, chapter 25, Laws of 1974 ex. sess. as amended by section 2, chapter 68, Laws of 1980 and RCW 18.27.090; amending section 4, chapter 130, Laws of 1913 and RCW 19.29.040; amending section 2, chapter 221, Laws of 1939 and RCW 19.90.020; amending section 12, chapter 221, Laws of 1939 and RCW 19.90.120; amending section 2, chapter 130, Laws of 1945 and RCW 54.04.100; amending section 81, chapter 255, Laws of 1927 and RCW 79.01.324; amending section 2, chapter 312, Laws of 1927 and RCW 79.36.240; amending section 5, chapter 312, Laws of 1927 and RCW 79.36.270; amending section 7, chapter 312, Laws of 1927 and RCW 79.36.280; amending section 80.08.105, chapter 14, Laws of 1961 and RCW 80.08.105; amending section 81.08.105, chapter 14, Laws of 1961 and RCW 81.08.105; and declaring an emergency.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. Section 2, chapter 25, Laws of 1974 ex. sess. as amended by section 2, chapter 68, Laws of 1980 and RCW 18.27.090 are each amended to read as follows:

This chapter shall not apply to:

(1) An authorized representative of the United States government, the state of Washington, or any incorporated city, town, county, township, irrigation district, reclamation district, or other municipal or political corporation or subdivision of this state;

(2) Officers of a court when they are acting within the scope of their office;

(3) Public utilities operating under the regulations of the (~~public service~~) utilities and transportation commission in construction, maintenance, or development work incidental to their own business;

(4) Any construction, repair, or operation incidental to the discovering or producing of petroleum or gas, or the drilling, testing, abandoning, or other operation of any petroleum or gas well or any surface or underground mine or mineral deposit when performed by an owner or lessee;

(5) The sale or installation of any finished products, materials, or articles of merchandise which are not actually fabricated into and do not become a permanent fixed part of a structure;

(6) Any construction, alteration, improvement, or repair of personal property;

(7) Any construction, alteration, improvement, or repair carried on within the limits and boundaries of any site or reservation under the legal jurisdiction of the federal government;

(8) Any person who only furnished materials, supplies, or equipment without fabricating them into, or consuming them in the performance of, the work of the contractor;

(9) Any work or operation on one undertaking or project by one or more contracts, the aggregate contract price of which for labor and materials and all other items is less than five hundred dollars, such work or operations being considered as of a casual, minor, or inconsequential nature. The exemption prescribed in this subsection does not apply in any instance wherein the work or construction is only a part of a larger or major operation, whether undertaken by the same or a different contractor, or in which a division of the operation is made into contracts of amounts less than five hundred dollars for the purpose of evasion of this chapter or otherwise. The exemption prescribed in this subsection does not apply to a person who advertises or puts out any sign or card or other device which might indicate to the public that he is a contractor, or that he is qualified to engage in the business of contractor;

(10) Any construction or operation incidental to the construction and repair of irrigation and drainage ditches of regularly constituted irrigation districts or reclamation districts; or to farming, dairying, agriculture, viticulture, horticulture, or stock or poultry raising; or to clearing or other work upon land in rural districts for fire prevention purposes; except when any of the above work is performed by a registered contractor;

(11) An owner who contracts for a project with a registered contractor;

(12) Any person working on his own property, whether occupied by him or not, and any person working on his residence, whether owned by him or not but this exemption shall not apply to any person otherwise covered by this chapter who constructs an improvement on his own property with the intention and for the purpose of selling the improved property;

(13) Owners of commercial properties who use their own employees to do maintenance, repair, and alteration work in or upon their own properties;

(14) A licensed architect or civil or professional engineer acting solely in his professional capacity, an electrician licensed under the laws of the state of Washington, or a plumber licensed under the laws of the state of Washington or licensed by a political subdivision of the state of Washington while operating within the boundaries of such political subdivision. The exemption provided in this subsection is applicable only when the licensee is operating within the scope of his license;

(15) Any person who engages in the activities herein regulated as an employee of a registered contractor with wages as his sole compensation or as an employee with wages as his sole compensation;

(16) Contractors on highway projects who have been prequalified as required by chapter 13 of the Laws of 1961, RCW 47.28.070, with the ((highway)) department of transportation to perform highway construction, reconstruction, or maintenance work.

Sec. 2. Section 4, chapter 130, Laws of 1913 and RCW 19.29.040 are each amended to read as follows:

It shall be the duty of the ((~~public service commission~~ {~~director of labor and industries~~}) director of labor and industries of Washington to enforce all the provisions and rules of this chapter and ((~~it~~ {~~he~~}) the director is hereby empowered upon hearing to amend, alter and change any and all rules herein contained, or any part thereof, and to supplement the same by additional rules and requirements, after first giving reasonable public notice and a reasonable opportunity to be heard to all affected thereby: PROVIDED, That no rule amending, altering or changing any rule supplementary to the rules herein contained shall provide a less measure of safety than that provided by the rule amended, altered or changed.

A violation of any rule herein contained or of any rule or requirement made by the ((~~commission~~ {~~director of labor and industries~~}) director of labor and industries which it is hereby permitted to make shall be deemed a violation of this chapter.

Sec. 3. Section 2, chapter 221, Laws of 1939 and RCW 19.90.020 are each amended to read as follows:

It shall be unlawful for any person, engaged in the production, manufacture, distribution or sale of any article or product of general use or consumption, with the intent to destroy the competition of any regular established dealer in such article or product, or to prevent the competition of any person, who in good faith, intends and attempts to become such

dealer, to discriminate between different sections of the same community, city, town or village in this state, by selling or furnishing such article or product at a lower price in one such section than in another: PROVIDED, That nothing herein contained shall prevent differentials which make allowances for differences, if any, in the grade, quality or quantity when based and justified in the cost of manufacture, sale or delivery, or the actual cost of transportation from the point of production if a raw product or commodity, or from the point of manufacture if a manufactured product or commodity, or from the point of shipment to the point of destination: PROVIDED FURTHER, That nothing herein contained shall prevent a selection of customers or a functional classification by any person of any customer as broker, jobber, wholesaler or retailer or a differential in price for any article or product as between any customers in different functional classifications. Motion picture films when licensed for exhibition to motion picture houses shall not be deemed to be an article or product under this chapter. Neither shall anything in this chapter be deemed to apply to any service, article or product for which rates are established under the jurisdiction of the (~~department of public service~~) utilities and transportation commission of the state of Washington and which are sold or furnished by any public utility corporation, or installation and repair services rendered in connection with any services, article or products; or to any service, article or product sold or furnished by a publicly owned public utility and upon which the rates would have been established under the jurisdiction of the (~~department of public service~~) utilities and transportation commission of the state of Washington if such service, article or product had been sold or furnished by a public utility corporation, or installation and repair services rendered in connection with any such service, articles or products.

The inhibition of this chapter against locality discrimination shall embrace any scheme of special rebates, collateral contracts or any device of any nature whereby such discrimination is, in substance or fact, effected in violation of the spirit and intent of this section: PROVIDED, HOWEVER, That nothing in this section shall be construed to prohibit the meeting in good faith of a legal competitive price.

Sec. 4. Section 12, chapter 221, Laws of 1939 and RCW 19.90.120 are each amended to read as follows:

In any civil or criminal action proof of average over-all cost of doing business for any particular inventory period when added to the cost of production of each article or product, as to a producer, or invoice or replacement cost, whichever is lower, of each article or product, as to a distributor, shall be presumptive evidence of cost, and proof of transportation tariffs when fixed and approved by the (~~department of public service~~) utilities and transportation commission of the state of Washington shall be presumptive evidence of delivery cost, as to any article or product involved in any such action.

Sec. 5. Section 2, chapter 130, Laws of 1945 and RCW 54.04.100 are each amended to read as follows:

Whenever a decree of public use and necessity heretofore has been or hereafter shall be entered in condemnation proceedings conducted by a public utility district for the acquisition of electrical distribution properties, or whenever it has executed a contract for the purchase of such properties, the district may cause to be filed with the ~~((department of public service))~~ utilities and transportation commission a copy of such contract or a certified copy of the decree, together with a petition requesting that the ~~((department))~~ commission cause a rate to be filed with it for the sale of wholesale power to the district. Thereupon the ~~((department of public service))~~ utilities and transportation commission shall order that a rate be filed with the ~~((department))~~ commission forthwith for the sale of wholesale power to such district. The term "wholesale power" means electric energy sold for purposes of resale. The ~~((department))~~ commission shall have authority to enter such order as to any public service corporation which owns or operates the electrical distribution properties being condemned or purchased or as to any such corporation which owns or operates transmission facilities within a reasonable distance of such distribution properties and which engages in the business of selling wholesale power, pursuant to contract or otherwise. The rate filed shall be for the period of service specified by the district, or if the district does not specify a particular period, such rate shall apply from the commencement of service until the district terminates same by thirty days' written notice.

Upon reasonable notice, any such public service corporation shall furnish wholesale power to any public utility district owning or operating electrical distribution properties. Whenever a public service corporation shall furnish wholesale power to a district and the charge or rate therefor is reviewed by the ~~((department))~~ commission, such reasonable rate as the ~~((department))~~ commission finally may fix shall apply as to power thereafter furnished and as to that previously furnished under such charge or rate from the time that the complaint concerning the same shall have been filed by the ~~((department))~~ commission or the district, as the case may be.

Sec. 6. Section 81, chapter 255, Laws of 1927 and RCW 79.01.324 are each amended to read as follows:

Should the owner or operator of any private railroad, skid road, flume, canal, watercourse or other easement operating over lands acquired since the fifteenth day of June, 1911, or hereafter acquired, from the state, as in the previous sections provided, fail to agree with the state, or any grantee thereof, as to the reasonable and proper rules, regulations and charges, concerning the transportation of timber, mineral, stone, sand, gravel or other valuable materials, from lands contiguous to, or in proximity to, the lands over which such private railroad, skid road, flume, canal, watercourse or

other easement, is operated, for transporting or moving such valuable materials, the state, or such person, firm or corporation, owning and desiring to have such valuable materials transported or moved, may apply to the state (~~(department of public works)~~) utilities and transportation commission and have the reasonableness of the rules and regulations and charges inquired into, and it shall be the duty of the (~~(department of public works)~~) utilities and transportation commission to inquire into the same and it is hereby given the same power and authority to investigate the same as it is now authorized to investigate or inquire into the reasonableness of rules, regulations and charges made by railroad companies, and it is authorized and empowered to make any such order as it would make in an inquiry against a railroad company, and in case such private railroad, skid road, flume, canal, watercourse or easement, is not then in use, may make such reasonable, proper and just rules and regulations concerning the use thereof for the purposes aforesaid as may be just and proper, and such order shall have the same force and effect, and be binding upon the parties to such hearing, as though such hearing and order was made affecting a common carrier railroad.

Sec. 7. Section 2, chapter 312, Laws of 1927 and RCW 79.36.240 are each amended to read as follows:

Every grant, deed, conveyance, lease or contract hereafter made to any person, firm or corporation over and across any state lands for the purpose of right of way for any logging and/or lumbering railroad, private railroad, skid road, flume, canal, watercourse or other easement to be used in the hauling of timber, stone, mineral or other natural products of the land and the manufactured products thereof and all necessary machinery, supplies or materials to be used in transporting, cutting, manufacturing, mining or quarrying any or all of such products, shall be subject to the right of the state, or any grantee or successor in interest thereof, owning or hereafter acquiring from the state any timber, stone, mineral, or other natural products, or any state lands containing valuable timber, stone, mineral or other natural products of the land, of having such timber, stone, mineral or other natural products, and the manufactured products thereof and all necessary machinery, supplies or materials to be used in transporting, cutting, manufacturing, mining or quarrying any or all of such products transported or moved over such railroad, skid road, flume, canal, watercourse or other easement, after the same is or has been put in operation, upon paying therefor just and reasonable rates for transportation or for the use of such railroad, skid road, flume, canal, watercourse or other easement, and upon complying with just, reasonable and proper rules affecting such transportation, which rates, rules and regulations shall be under the supervision and control of the (~~(director of public works)~~) utilities and transportation commission of the state of Washington.

Sec. 8. Section 5, chapter 312, Laws of 1927 and RCW 79.36.270 are each amended to read as follows:

Should the owner or operator of any logging and/or lumbering railroad, private railroad, skid road, flume, canal, watercourse or other easement operating over lands hereafter acquired from the state, as in RCW 79.36.230 through 79.36.290 set out, fail to agree with the state or with any subsequent grantee or successor in interest thereof as to the reasonable and proper rules, regulations and charges concerning the transportation of timber, stone, mineral or other natural products of the land, or the manufactured products thereof and all necessary machinery, supplies or materials to be used in transporting, cutting, manufacturing, mining or quarrying any or all of such products for carrying and transporting such products or for the use of the railroad, skid road, flume, canal, watercourse or other easement in transporting such products, the state or such person, firm or corporation owning and desiring to ship such products may apply to the ~~((director of public works))~~ utilities and transportation commission and have the reasonableness of the rules, regulations and charges inquired into and it shall be the duty of the ~~((director of public works))~~ utilities and transportation commission to inquire into the same in the same manner, and ~~((he))~~ it is hereby given the same power and authority to investigate the same as ~~((he))~~ it is now authorized to investigate and inquire into the rules and regulations and charges made by railroads and is authorized and empowered to make such order as ~~((he))~~ it would make in an inquiry against a railroad, and in case such logging and/or lumbering railroad, private railroad, skid road, flume, canal, watercourse or other easement is not then in use, may make such reasonable, proper and just rules and regulations concerning the use thereof for the purposes aforesaid as may be just and proper and such order shall have the same force and effect and shall be binding upon the parties to such hearing as though such hearing and order was made affecting a railroad.

Sec. 9. Section 7, chapter 312, Laws of 1927 and RCW 79.36.280 are each amended to read as follows:

In case any person, firm or corporation owning and/or operating any logging and/or lumbering railroad, private railroad, skid road, flume, canal, watercourse or other easement subject to the provisions of RCW 79.36.230 through 79.36.290 shall fail to comply with any rule, regulation or order made by the ~~((director of public works))~~ utilities and transportation commission, after an inquiry as provided for in RCW 79.36.270, each person, firm or corporation shall be subject to a penalty not exceeding one thousand dollars, and in addition thereto, the right of way over state lands theretofore granted to such person, firm or corporation, and all improvements and structures on such right of way and connected therewith, shall revert to the state of Washington, and may be recovered by it in an action instituted in any court of competent jurisdiction, unless such state lands have been sold.

Sec. 10. Section 80.08.105, chapter 14, Laws of 1961 and RCW 80.08-.105 are each amended to read as follows:

All stocks and stock certificates or other evidence of interest or ownership, and bonds, notes and other evidences of indebtedness issued by any public service company after chapter 151, Laws of 1933 takes effect, upon the authority of any articles of incorporation or amendments thereto or vote of the stockholders or directors filed, taken or had, or other proceedings taken or had, previous to the taking effect of chapter 151, Laws of 1933, shall be void, unless an order of the ((department)) commission authorizing the issuance of such stock or stock certificates or other evidence of interest or ownership, or bonds, notes or other evidences of indebtedness shall have been obtained from the ((department)) commission prior to such issue; but no failure in any other respect to comply with the terms or conditions of the order of authorization of the ((department)) commission and no defect in, or in connection with the application for or issuance of, such order shall render void any stock or stock certificate or other evidence of interest or ownership, or any bond, note or other evidence of indebtedness, except as to a corporation or person taking the same otherwise than in good faith and for value and without actual notice. The ((department)) commission may by its order impose such condition or conditions as it may deem reasonable and necessary.

For the purposes of this section ((~~"department"~~)) "commission" shall mean the ((~~department of public works~~)) utilities and transportation commission or such body as shall have succeeded to the powers and duties thereof.

Sec. 11. Section 81.08.105, chapter 14, Laws of 1961 and RCW 81.08-.105 are each amended to read as follows:

All stocks and stock certificates or other evidence of interest or ownership, and bonds, notes and other evidences of indebtedness issued by any public service company after chapter 151, Laws of 1933 takes effect, upon the authority of any articles of incorporation or amendments thereto or vote of the stockholders or directors filed, taken or had, or other proceedings taken or had, previous to the taking effect of chapter 151, Laws of 1933, shall be void, unless an order of the ((department)) commission authorizing the issuance of such stock or stock certificates or other evidence of interest or ownership, or bonds, notes or other evidences of indebtedness shall have been obtained from the ((department)) commission prior to such issue; but no failure in any other respect to comply with the terms or conditions of the order of authorization of the ((department)) commission and no defect in, or in connection with the application for or issuance of, such order shall render void any stock or stock certificate or other evidence of interest or ownership, or any bond, note or other evidence of indebtedness, except as to a corporation or person taking the same otherwise than in good faith and for value and without actual notice. The ((department)) commission may by

its order impose such condition or conditions as it may deem reasonable and necessary.

For the purposes of this section (~~("department")~~) "commission" shall mean the (~~(department of public works)~~) utilities and transportation commission or such body as shall have succeeded to the powers and duties thereof.

NEW SECTION. Sec. 12. This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect immediately.

EXPLANATORY NOTE

The powers and duties of the department of public works, the department of public service, the department of public utilities, and the public service commission have devolved upon the utilities and transportation commission through a series of statutes as follows: 1935 c 8 § 1; 1945 c 267 §§ 1, 5, and 7; 1949 c 117 §§ 1, 3, and 8; and 1961 c 290 § 1. The purpose of this bill is to change the statutory references to these obsolete agencies to refer to the utilities and transportation commission.

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CHAPTER 5

[Senate Bill No. 3039]

CORRECTION OF STATE STATUTES

AN ACT Relating to the correction of state statutes; rearranging misplaced statutory material in the teachers' retirement laws; correcting a clerical error in the laws against discrimination; amending section 1, chapter 80, Laws of 1947 as last amended by section 6, chapter 52, Laws of 1982 1st ex. sess. and RCW 41.32.010; amending section 5, chapter 259, Laws of 1981 and RCW 49.60.330; and declaring an emergency.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. Section 1, chapter 80, Laws of 1947 as last amended by section 6, chapter 52, Laws of 1982 1st ex. sess. and RCW 41.32.010 are each amended to read as follows:

As used in this chapter, unless a different meaning is plainly required by the context:

(1) (a) "Accumulated contributions" for persons who establish membership in the retirement system on or before September 30, 1977, means the sum of all regular annuity contributions with regular interest thereon.

(b) "Accumulated contributions" for persons who establish membership in the retirement system on or after October 1, 1977, means the sum of all contributions standing to the credit of a member in the member's individual account together with the regular interest thereon.